

South Australia

# Environment Protection Act 1993

An Act to provide for the protection of the environment; to establish the Environment Protection Authority and define its functions and powers; and for other purposes.

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

## **Part 1—Preliminary**

### **1—Short title**

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

### **3—Interpretation**

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

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

*administering agency*—see Division 1A of Part 3;

*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;

*appropriate person*, in relation to the issuing of a site contamination assessment order or site remediation order, means the person who is the appropriate person under Part 10A to be issued with the order;

*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;

*background concentrations*, in relation to chemical substances on a site or below its surface, means results obtained from carrying out assessments of the presence of the substances in the vicinity of the site in accordance with guidelines from time to time issued by the Authority;

*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;

*cause* site contamination—see section 103D;

*chemical substance* means any organic or inorganic substance, whether a solid, liquid or gas (or combination thereof), and includes waste;

*Chief Executive* of the Authority means a person who is, for the time being, taken to be the Chief Executive of the Authority in accordance with section 14A;

*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 council within the meaning of the *Local Government Act 1999*;

***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;

***domestic partner*** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

***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 pollution; 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 pollution;

***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;

**holding company** has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

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

**injury** includes illness;

**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;

**liability** for site contamination means—

- (a) liability to be issued with an order under Part 10A in respect of the site contamination; or
- (b) liability to pay an amount ordered by the Court under Part 11 in respect of the site contamination;

**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 person with a right to occupy the place or a licensee or any holder of a right 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 (after consultation under section 5A) or by an environment protection policy to be a pollutant,

but does not include anything declared by regulation or by an environment protection policy not 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;

**prescribed person** means—

- (a) a natural person; or
- (b) a body corporate that is not the holder of an environmental authorisation under this Act; or
- (c) if the regulations specify a scheme under which the holder of an environmental authorisation may apply to the Authority to be accredited as an accredited licensee in respect of a particular prescribed activity of environmental significance—a body corporate that is an accredited licensee under such a scheme;

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

***related body corporate*** has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

***remediate*** a site means treat, contain, remove or manage chemical substances on or below the surface of the site so as to—

- (a) eliminate or prevent actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses; and
- (b) eliminate or prevent, as far as reasonably practicable—
  - (i) actual or potential harm to water that is not trivial; and
  - (ii) any other actual or potential environmental harm that is not trivial, taking into account current or proposed land uses,

and ***remediation*** has a corresponding meaning;

***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;

***sensitive use*** means—

- (a) use for residential purposes; or
- (b) use for a pre-school within the meaning of the *Development Regulations 1993*; or
- (c) use for a primary school; or
- (d) use of a kind prescribed by regulation;

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

***site*** means an area of land (whether or not in the same ownership or occupation);

***site contamination***—see section 5B;

***site contamination assessment order*** means a site contamination assessment order under Part 10A;

***site contamination audit*** means a review carried out by a person that—

- (a) examines assessments or remediation carried out by another person in respect of known or suspected site contamination on or below the surface of a site; and
- (b) is for the purpose of determining any 1 or more of the following matters:
  - (i) the nature and extent of any site contamination present or remaining on or below the surface of the site;
  - (ii) the suitability of the site for a sensitive use or another use or range of uses;
  - (iii) what remediation is or remains necessary for a specified use or range of uses;

**site contamination auditor** means a person accredited under Division 4 of Part 10A as a site contamination auditor;

**site contamination audit report**, in relation to a site contamination audit, means a detailed written report that—

- (a) sets out the findings of the audit and complies with the guidelines from time to time issued by the Authority; and
- (b) includes a summary of the findings of the audit certified, in the prescribed form, by the site contamination auditor who personally carried out or directly supervised the audit;

**site contamination audit statement**, in relation to a site contamination audit, means a copy (that must comply with the regulations) of the summary of the findings of the audit certified, in the prescribed form, by the site contamination auditor who personally carried out or directly supervised the audit;

**site contamination consultant** means a person other than a site contamination auditor who, for fee or reward, assesses the existence or nature or extent of site contamination;

**site remediation order** means a site remediation order under Part 10A;

**spouse**—a person is the spouse of another if they are legally married;

**undertake** an activity includes commence or proceed with an activity or cause, suffer or permit an activity to be commenced or to proceed;

**vehicle** includes any vessel or aircraft;

**waste** means—

- (a) any discarded, rejected, abandoned, unwanted or surplus matter, whether or not intended for sale or for recycling, reprocessing, recovery or purification by a separate operation from that which produced the matter; or
- (b) anything declared by regulation (after consultation under section 5A) or by an environment protection policy to be waste,

whether of value or not;

**water** means—

- (a) water occurring naturally above or under the ground; or
- (b) water introduced to an aquifer or other area under the ground; or
- (c) an artificially created body of water or stream that is for public use or enjoyment;

**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, domestic partner, 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.

#### **4—Responsibility for pollution**

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).

#### **5—Environmental harm**

- (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—
- (a) an environmental nuisance; and
  - (b) anything declared by regulation (after consultation under section 5A) or by an environment protection policy to be environmental harm.
- (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.

#### **5A—Consultation with prescribed bodies required before certain regulations made**

Before a regulation is made declaring something to be a pollutant or waste or to constitute environmental harm, the Minister must consult with prescribed bodies, in accordance with the regulations, in relation to the proposed regulation.

#### **5B—Site contamination**

- (1) For the purposes of this Act, *site contamination* exists at a site if—
  - (a) chemical substances are present on or below the surface of the site in concentrations above the background concentrations (if any); and
  - (b) the chemical substances have, at least in part, come to be present there as a result of an activity at the site or elsewhere; and
  - (c) the presence of the chemical substances in those concentrations has resulted in—
    - (i) actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses; or
    - (ii) actual or potential harm to water that is not trivial; or
    - (iii) other actual or potential environmental harm that is not trivial, taking into account current or proposed land uses.
- (2) For the purposes of this Act, environmental harm is caused by the presence of chemical substances—
  - (a) whether the harm is a direct or indirect result of the presence of the chemical substances; and
  - (b) whether the harm results from the presence of the chemical substances alone or the combined effects of the presence of the chemical substances and other factors.
- (3) For the purposes of this Act, site contamination does not exist at a site if circumstances of a kind prescribed by regulation apply to the site.



## 6—Act binds Crown

- (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.

## 7—Interaction with other Acts

- (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 2000* 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 2000* 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.

## 8—Civil remedies not affected

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.

## 9—Territorial and extra-territorial application of Act

- (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 a contravention of this Act,

the person is liable to a penalty in respect of the contravention 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.

## Part 2—Objects of Act

### 10—Objects of Act

- (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
    - (ia) to establish processes for carrying out assessments of known or suspected site contamination and, if appropriate, remediation of the sites; 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 administering agencies and persons involved in the administration of this Act must have regard to, and seek to further, the objects of this Act.

### **10A—Matters to be taken into account in relation to specially protected areas**

The Minister, the Authority and all other bodies and persons involved in the administration of this Act must, if taking any action under this Act within or in relation to—

- (a) any part of the Adelaide Dolphin Sanctuary within the meaning of the *Adelaide Dolphin Sanctuary Act 2005*—
  - (i) seek to further the objects and objectives of that Act; and

- (ii) take into account the provisions of the Adelaide Dolphin Sanctuary Management Plan under that Act; or
- (b) any part of a marine park within the meaning of the *Marine Parks Act 2007*—
  - (i) seek to further the objects of that Act; and
  - (ii) take into account the provisions of the management plan for the marine park under that Act; or
- (c) any part of the Murray-Darling Basin within the meaning of the *Murray-Darling Basin Act 1993*—
  - (i) seek to further the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act (insofar as they may be relevant); and
  - (ii) take into account the provisions of the River Murray Implementation Strategy under that Act.



## **Part 3—Administering agencies, conferences and the Fund**

### **Division 1—Environment Protection Authority**

#### **11—Establishment of Authority**

- (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 Part 6A; or
  - (c) the enforcement of this Act.
- (5) Any direction given to the Authority by the Minister must be in writing.

#### **13—Functions of Authority**

- (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.

## **14—Powers of Authority**

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) with the approval of a Minister administering an administrative unit, 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.

## **14A—Chief Executive**

- (1) If—
- (a) in accordance with section 14(b), the Authority makes use of the services of an administrative unit's employees and of its facilities; and
  - (b) the Minister administering that administrative unit approves the application of this section to the position of chief executive of that administrative unit,
- the person for the time being holding or acting in the position of chief executive of that administrative unit will be taken to be the Chief Executive of the Authority for the purposes of this Act.
- (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.



## 14B—Board of Authority

- (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 appointed by the Governor.
- (3) The Chief Executive of the Authority is a member of the Board *ex officio*.
- (3a) 1 of the appointed members of the Board will be appointed by the Governor to be the presiding member of the Board.
- (3b) 1 of the appointed members of the Board may be appointed by the Governor to be the deputy presiding member of the Board.
- (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.
- (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 as a member of the Board during any period of absence of the member.

## 15—Terms and conditions of office

- (2) An appointed member of the Board is to be appointed for a term, not exceeding 3 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.

## **16—Proceedings of Board**

- (1) The Board must meet at least 11 times in each calendar year or more frequently where necessary for the performance of its functions.
- (2) The presiding member will preside at each meeting of the Board at which he or she is present.
- (2a) If the presiding member is absent from a meeting of the Board—
- (a) if a member appointed as deputy presiding member is present—that member will preside; or
  - (b) in any other case—an appointed member of the Board chosen by the members present at the meeting will preside.
- (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 appointed 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.
- (6a) The Chief Executive of the Authority is not entitled to vote at a meeting of the Board.
- (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.
- (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.

### **17—Board may establish committees and subcommittees**

- (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) will consist of such persons as the Board thinks fit and 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.
- (4) The *Public Sector (Honesty and Accountability) Act 1995* applies to the members of a committee or subcommittee as if the committee or subcommittee were an advisory body and the Minister responsible for the administration of this Act were the relevant Minister.

## **Division 1A—Administering agencies**

### **18A—Administering agencies**

- (1) The following bodies are, in addition to the Authority, administering agencies for the purposes of this Act:
  - (a) councils declared to be administering agencies by the Minister by notice in the Gazette;
  - (b) any other public authorities prescribed by regulation as administering agencies.
- (2) The Minister may only declare a council to be an administering agency at the request of the council.

- (3) The Minister may, if the Minister thinks fit after consultation with the council, and must at the request of the council, by subsequent notice in the Gazette, declare that a council that is an administering agency will cease to be an administering agency on a day specified in the notice.

### **18B—Powers and functions of administering agencies**

- (1) An administering agency that is a council has the function of administering and enforcing this Act in relation to activities in its area other than—
  - (a) prescribed activities of environmental significance or activities undertaken at the same place as a prescribed activity of environmental significance;
  - (b) activities undertaken by the Crown, the council or another public authority or a prescribed person or body;
  - (c) any other activities prescribed by regulation for the purposes of this subsection.
- (2) An administering agency, other than the Authority or a council, has the function of administering and enforcing this Act in relation to activities prescribed by regulation (subject to any conditions specified in the regulations) other than prescribed activities of environmental significance or activities undertaken at the same place as a prescribed activity of environmental significance.
- (3) The conferral of a function on an administering agency under subsection (1) or (2) is not to be taken to limit or affect the performance of that function by the Authority.
- (4) A reference in this Act to an administering agency is, in relation to an administering agency other than the Authority, a reference to the administering agency only in relation to functions conferred on the administering agency under this section.

### **18C—Delegation**

- (1) An administering agency, other than the Authority, may, by instrument executed by the administering agency, delegate a function conferred on the administering agency under this Division to—
  - (a) a committee of the administering agency; or
  - (b) a subsidiary of the administering agency; or
  - (c) an employee of the administering agency; or
  - (d) the employee of the administering agency for the time being occupying a particular office or position; or
  - (e) an authorised officer.
- (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 administering agency from acting in any matter.

### **18D—Reports by administering agencies**

An administering agency must report to the Authority, at such intervals as the Authority requires, on the performance by the administering agency of functions conferred on the administering agency under this Division.

## **Division 2—Round-table conference**

### **19—Round-table conference**

- (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.

## **Division 3—Environment Protection Fund**

### **24—Environment Protection Fund**

- (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;
  - (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);
  - (ba) the prescribed percentage of amounts recovered by the Authority, by negotiation or as a result of civil proceedings, in respect of a contravention of this Act;
  - (c) any money required to be paid into the Fund by way of a financial assurance under Division 5 of Part 6;

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- (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.

## Part 4—General environmental duty

### 25—General environmental duty

- (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; and
  - (c) failure to comply with the duty will be taken to be a contravention of this Act for the purposes of section 135.





## Part 5—Environment protection policies

### Division 1—General

#### 26—Interpretation

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.

#### 27—Nature and contents of environment protection policies

- (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*;
  - (b) set out matters to be taken into account by the Authority or another administering agency in determining any specified matters required to be determined by the Authority or another administering agency for the purposes of this Act;
  - (c) set out requirements, standards, goals and guidelines;
  - (d) specify that certain requirements or standards (*mandatory provisions*) are to be enforceable under Division 2.
- (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, B, C, D or E 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 or another administering agency.

## **28—Normal procedure for making policies**

- (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) Before commencing to prepare a draft environment protection policy, the Authority—
- (a) must consult with the Minister in relation to the general purpose and intended effect of the proposed policy; and
  - (b) after consulting with the Minister, must 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

- (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) stating that the Authority's response to any submissions will be available for inspection by interested persons as provided by subsection (9); and
  - (e) appointing a place and time at which a public information session will be held by the Authority in relation to the draft policy.
- (8) Where written submissions are made in response to an advertisement published under subsection (3), 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) Where written submissions are made in response to a draft policy, the Authority must, as soon as is reasonably practicable after the end of the period specified for the making of submissions, prepare a response to the submissions and make the response available for inspection by interested persons during ordinary business hours at the principal office of the Authority until the Authority reports to the Minister on the draft policy under subsection (11).
- (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.

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

- (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 a national environment protection measure has been made, amended or revoked or has expired—
- (a) the normal procedure for making environment protection policies under this Division does not apply in relation to—

- (i) a draft environment protection policy to implement the national environment protection measure or the amendment, revocation or expiry; or
    - (ii) a draft environment protection policy that amends or revokes another environment protection policy as the Minister considers necessary or desirable in consequence of implementation of the national environment protection measure or the amendment, revocation or expiry; and
  - (b) the Minister may refer a draft policy referred to in paragraph (a) directly to the Governor.
- (1b) For the purposes of subsection (1a), a draft environment protection policy will be taken to implement a national environment protection measure despite the fact that it includes provisions that are not included in or required by the measure if the Minister is satisfied that the provisions relate to the enforcement of the policy (including the imposition of penalties for contravention of the policy) or are otherwise necessary for the application of the policy in this jurisdiction.
- (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.

### **30—Reference of policies to Parliament**

- (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.

### **31—Interim policies**

- (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.

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

- (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.

### **33—Availability and evidence of policies**

- (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**

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

- (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, C, D or E 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—\$150 000;
  - (ii) is a natural person—Division 1 fine;
- (b) For a category B offence—Division 6 fine;
- (c) For a category C offence—Division 7 fine;
- (d) For a category D offence—Division 9 fine;
- (e) For a category E offence—Division 11 fine.

Expiation fee:

- (a) For a category B offence—Division 6 fee;
  - (b) For a category C offence—Division 7 fee;
  - (c) For a category D offence—Division 9 fee;
  - (d) For a category E offence—Division 11 fee.
- (3) For the purposes of this section, contravention of a mandatory provision of an environment protection policy is a category A, B, C, D or E 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.





## **Part 6—Environmental authorisations and development authorisations**

### **Division 1—Requirement for works approval**

#### **35—Requirement for works approval**

- (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**

#### **36—Requirement for licence**

- (1) 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.

- (2) The Authority may, by notice in writing, exempt a person undertaking a prescribed activity of environmental significance from subsection (1) if the Authority is satisfied that—
- (a) another person who is principally responsible for the activity will be authorised in accordance with that subsection to undertake the activity; and
  - (b) the activity can be properly regulated through the authorisation granted to that other person.
- (3) The Authority may, by notice in writing, revoke an exemption under subsection (2).

- (4) The subsequent Divisions of this Part do not apply to an exemption under subsection (2).

## **Division 3—Exemptions**

### **37—Exemptions**

Subject to this Act, 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**

### **38—Applications for environmental authorisations**

- (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.

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

- (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, inviting 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 on which the notice was published); and
  - (b) if the application relates to an activity that is to be undertaken on a particular piece of land—cause notice of the application to be given to the owner or occupier of each piece of adjacent land, inviting the owner or occupier to make written submissions in relation to the application within a period specified in the notice (being not less than 14 days from the day on which the notice is given to the owner or occupier).

- (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 129 of the *Natural Resources Management Act 2004*, 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) Subsection (1) does not apply in relation to—
- (aa) an application for an exemption from the application of a provision of an environment protection policy if the environment protection policy provides that subsection (1) does not apply in relation to such applications; or
  - (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.
- (4) Notice is not required to be given to an owner or occupier of adjacent land under subsection (1)(b) in circumstances prescribed by regulation.
- (5) Where written submissions are made in response to a notice published or given under this section, the Authority must forward a copy of the submissions to the applicant and allow the applicant an opportunity to respond, in writing, to the submissions within a period specified by the Authority.
- (6) A notice to be given to the owner or occupier of adjacent land under subsection (1)(b) may be given by addressing it to the "owner or occupier" and posting it to, or leaving it at, the adjacent land.
- (7) In this section—
- adjacent land**, in relation to other land, means land—
- (a) that abuts on the other land; or
  - (b) that is no more than 60 metres from the other land and is directly separated from the other land only by—
    - (i) a road, street, footpath, railway or thoroughfare; or
    - (ii) a watercourse; or
    - (iii) a reserve or other similar open space.

#### **40—Grant of environmental authorisations**

- (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.
- (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.

#### **41—Authorisations may be held jointly**

- (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.

#### **42—Time limit for determination of applications**

- (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*.

#### **43—Term and renewal of environmental authorisations**

- (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.
- (4a) Before determining an application for renewal, the Authority may, by notice in writing served on an applicant, require the applicant—
  - (a) to undertake public consultation in relation to the application, in accordance with requirements specified in the notice; and
  - (b) to report to the Authority, at a time and in a manner specified in the notice, on the results of the consultation.

- (5) Subject to any condition of the authorisation excluding or limiting the right of renewal under this section and to the applicant complying with any notice under subsection (4a), 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 or appropriate for the protection or restoration of the environment that the holder of the authorisation be bound by conditions of an authorisation (and may do so notwithstanding that the activity undertaken pursuant to the authorisation has ceased but only if the activity ceases after the commencement of this subsection).
- (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.

#### **44—Applicants may lodge proposed environment improvement programmes**

- (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.

## **45—Conditions**

- (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
  - (ab) if the authorisation is granted or renewed for a term exceeding one year—at any time during the period of three calendar months following the anniversary of the date on which the authorisation was granted or renewed (provided that such conditions may only be of a type described in section 52(1)); 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
      - (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.

## **46—Notice and submissions in respect of proposed variations of conditions**

- (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); and
  - (c) if the proposed variation relates to an activity that is to be undertaken on a particular piece of land—cause notice of the proposed variation to be given to the owner or occupier of each piece of adjacent land—
    - (i) setting out the reasons for the proposed variation; and
    - (ii) inviting the owner or occupier 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 owner or occupier).
- (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 129 of the *Natural Resources Management Act 2004*, 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.
- (4a) Notice is not required to be given to an owner or occupier of adjacent land under subsection (1)(c)—
  - (a) if the proposed variation—

- (i) 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; and
    - (ii) will not, in the opinion of the Authority, result in any adverse effect on the adjoining land or on the amenity value of the adjoining land; or
  - (b) in circumstances prescribed by regulation.
- (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.
- (5a) Where written submissions are made in response to a notice published under subsection (1)(b) or given to the owner or occupier of adjacent land under subsection (1)(c), the Authority must forward a copy of the submissions to the holder of the environmental authorisation and allow the holder of the environmental authorisation an opportunity to respond, in writing, to the submissions within a period specified by the Authority.
- (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.
- (7) A notice to be given to the owner or occupier of adjacent land under subsection (1)(c) may be given by addressing it to the "owner or occupier" and posting it to, or leaving it at, the adjacent land.
- (8) In this section—  
***adjacent land***, in relation to other land, means land—
- (a) that abuts on the other land; or
  - (b) that is no more than 60 metres from the other land and is directly separated from the other land only by—
    - (i) a road, street, footpath, railway or thoroughfare; or
    - (ii) a watercourse; or
    - (iii) a reserve or other similar open space.

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

- (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
  - (ea) have regard to the waste strategy for the State adopted under the *Zero Waste SA Act 2004* (if relevant); 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
  - (h) have regard to any written submissions (and any responses to such 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 *Natural Resources Management Act 2004* 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.

#### **48—Annual fees and returns**

- (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.
- (2a) The Authority may, by condition of an environmental authorisation or by notice in writing, require the holder of the authorisation to verify any information required under subsection (2) in such manner as the Authority thinks fit.

- (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.

#### **49—Transfer of environmental authorisations**

- (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.
- (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.

### **50—Death of person holding environmental authorisation**

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.

### **50A—Avoidance of duplication of procedures etc**

- (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.
- (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**

### **50B—Special conditions not exhaustive**

This Division does not limit the requirements that may be imposed as conditions of environmental authorisations.

### **51—Conditions requiring financial assurance to secure compliance with Act**

- (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 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 activities previously undertaken at the place to which the authorisation relates, 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.

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

- (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, or activities previously undertaken at the place to which the authorisation relates, and to make specified reports to the Authority on the results of such tests and monitoring;
  - (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.

### **52A—Conditions requiring closure and post-closure plans**

- (1) The Authority may, by conditions of an environmental authorisation granted in relation to an activity, require the holder of the authorisation—
- (a) to prepare, in accordance with specified requirements and to the satisfaction of the Authority, a plan for the cessation of the activity; and
  - (b) to prepare, in accordance with specified requirements and to the satisfaction of the Authority, a plan for the management and monitoring, after cessation of the activity, of any land on which the activity was carried out; and
  - (c) to comply with any plan so prepared to the satisfaction of the Authority.
- (2) The Authority may only impose conditions under this section on an environmental authorisation if satisfied that the conditions are reasonably required for the purpose of preventing or minimising environmental harm that may result from the activity undertaken pursuant to the authorisation after the activity has ceased.
- (3) The regulations may limit the circumstances in which conditions may be imposed under this section or make any other provisions relating to the imposition of conditions under this section.
- (4) If the Authority imposes any conditions on an environmental authorisation granted in relation to an activity requiring the holder of the authorisation to prepare a plan described in subsection (1)(b), the following provisions apply:
- (a) the Authority must specify the period during which compliance with the plan will be required (which may be until a specified day or until the holder of the authorisation satisfies the Authority that a specified event has occurred or that compliance with specified standards has been achieved); and
  - (b) at the end of the specified period, the Authority must notify the holder of the authorisation, in writing, that compliance with the plan is no longer required; and
  - (c) if the Authority has notified the holder of the authorisation that compliance with the plan is no longer required, the Authority may not issue an environment protection order under section 93A for the purpose of preventing or minimising environmental harm that may result from the activity.



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

The Authority may, by conditions of an environmental authorisation—

- (a) require the holder of the authorisation to prepare, in accordance with specified requirements and 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, or activities previously undertaken at the place to which the authorisation relates, 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.

### **54—Conditions requiring environment improvement programme**

- (1) The Authority may, by conditions of an environmental authorisation, require the holder of the authorisation—
  - (a) to develop, in accordance with specified requirements and 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
  - (ab) to undertake public consultation, in accordance with specified requirements, in the course of developing the proposed environment improvement program; 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.

### **54A—Conditions requiring training of employees etc**

The Authority may, by conditions of an environmental authorisation, require the holder of the authorisation to provide such information, instruction, training and supervision as is reasonably necessary to ensure that employees and agents of the holder of the authorisation and any other persons involved in carrying out the activity undertaken pursuant to the authorisation understand, and are able to comply with, any requirements imposed by or under this Act (including any conditions of the authorisation).

### **54B—Conditions requiring certificate of compliance**

- (1) The Authority may, by conditions of an environmental authorisation, require the holder of the authorisation to supply to the Authority certificates of compliance that include any of the following information:
  - (a) the extent to which the conditions of the authorisation have or have not been complied with;
  - (b) particulars of any failure to comply with the conditions and the reasons for such failure;
  - (c) any action taken, or to be taken, to prevent any recurrence of that failure or to mitigate the effects of that failure.
- (2) A certificate of compliance must, if required by the Authority, be certified as correct by a person approved by the Authority.
- (3) It is not an excuse for a person to refuse or fail to provide information required to be included in a certificate of compliance on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (4) If compliance by a person with a requirement to include information in a certificate of compliance might tend to incriminate the person or make the person liable to a penalty, then the information included 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).

### **54C—Conditions requiring approval of certain works and processes**

- (1) The Authority may, by conditions of an environmental authorisation, require the holder of the environmental authorisation to seek the Authority's approval in relation to—
  - (a) the construction or alteration of a building or structure, or the installation or alteration of plant or equipment, for use for an activity carried on under the environmental authorisation; or
  - (b) a change in a process undertaken under the environmental authorisation.
- (2) If conditions of an environmental authorisation (whether imposed before or after the commencement of this section) require the holder of the environmental authorisation to seek the Authority's approval in relation to a matter of a kind referred to in subsection (1)(a) or (b), an application for such approval must—
  - (a) be made in a manner and form determined by the Authority; and

- (b) be accompanied by the prescribed fee.
- (3) If the Authority requires further information to determine the application, the Authority may, by notice in writing served on the applicant no later than 2 months after the application is made, require the applicant to furnish further specified information in writing.
- (4) If 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.

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

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

- (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.

### **56—Surrender of environmental authorisations**

- (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**

### **57—Criteria for decisions of Authority in relation to the development authorisations**

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, any relevant environment protection policies and the waste strategy for the State adopted under the *Zero Waste SA Act 2004* (if relevant).

## **Part 6A—Sustainability licence endorsements**

### **57A—Requirement for endorsement of licence**

A person must not represent that a licence is a sustainability licence, or permit another person to do so, unless the licence is endorsed under this Part as a sustainability licence.

Maximum penalty: Division 2 fine.

### **57B—Applications for endorsements**

- (1) An application for an endorsement of a licence as a sustainability licence 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) An application for an endorsement may be combined with an application for a licence or renewal of a licence.
- (3) If the Authority requires further information to determine the application, the Authority may, by written notice served on the applicant no later than 2 months after the application is made, require the applicant to furnish further specified information in writing.
- (4) If 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.
- (5) If the Authority refuses an application for an endorsement, it must give the applicant written notice of the refusal and the reasons for the refusal.

### **57C—Endorsement of licences**

- (1) The Authority may endorse a licence as a sustainability licence if—
  - (a) the holder of the licence has made due application for the endorsement; and
  - (b) the holder of the licence has undertaken—
    - (i) to implement, within a period agreed with the Authority, specific and substantial measures agreed with the Authority designed, in connection with the activities authorised by the licence—
      - (A) to protect, restore or enhance the environment beyond standards required by or under this Act; and
      - (B) to facilitate consultation with the community and deal with complaints; and
    - (ii) to facilitate auditing of the implementation of the measures in accordance with an auditing programme agreed with the Authority; and
    - (iii) to review and renegotiate the measures and auditing programme in good faith from time to time in accordance with a review programme agreed with the Authority; and
    - (iv) to implement the measures, and facilitate auditing of implementation of the measures, as renegotiated following review; and

- (c) the holder of the licence has paid the sustainability endorsement fee prescribed or determined under the regulations; and
  - (d) any other requirements prescribed by the regulations have been complied with.
- (2) The Authority may, in conjunction with endorsing a licence as a sustainability licence, undertake to provide support to the holder of the licence to facilitate implementation, and auditing of implementation, of the measures forming the basis of the endorsement.
- (3) An undertaking made under this section is not enforceable.

#### **57D—Term and renewal of endorsements**

- (1) Subject to this Act, the term of an endorsement of a licence as a sustainability licence is co-extensive with the term of the licence, and the endorsement is renewed for a further term on each renewal of the licence.
- (2) An application for the renewal of a licence endorsed as a sustainability licence must include information relating to the measures implemented for the purposes of the endorsement as required by the Authority by written notice to the applicant.
- (3) If the holder of a licence fails to include the required information in an application for renewal of the licence, the application will be taken not to have been duly made until the information is furnished as required by the Authority.

#### **57E—Annual fees and returns**

- (1) If an annual authorisation fee is payable in respect of a licence endorsed as a sustainability licence, the amount prescribed or determined under the regulations as the annual sustainability endorsement fee is to be added to the annual authorisation fee and, for the purposes of this Act, the amount will be taken to form part of the annual authorisation fee payable by the licensee.
- (2) An annual return lodged in respect of a licence endorsed as a sustainability licence must include information relating to the measures implemented for the purposes of the endorsement as required by the Authority by written notice to the holder of the licence.
- (3) If the holder of a licence fails to include the required information in an annual return, the Authority may, by written notice, require the holder to make good the default.
- (4) If the holder of a licence fails to make good the default within the period allowed by the Authority (being not less than 14 days after the day on which the notice is given to the holder), the Authority may, by written notice, revoke the endorsement of the licence as a sustainability licence.
- (5) In this section, a reference to an endorsement of a licence as a sustainability licence includes a reference to such an endorsement that has been suspended by reason of the licence being suspended.

#### **57F—Transfer of endorsements**

- (1) An endorsement may, with the approval of the Authority, be transferred simultaneously with the transfer of a licence.

- (2) The Authority must decide whether or not to grant approval for the transfer of an endorsement on the same basis as would apply if the transferee were an applicant for an endorsement.

### **57G—Suspension or revocation of endorsements**

- (1) The Authority may, by written notice to the holder of a licence endorsed as a sustainability licence, revoke the endorsement—
  - (a) if the holder of the licence acts contrary to an undertaking forming the basis of the endorsement; or
  - (b) if the Authority is unable to reach agreement with the holder on the renegotiation of the measures or auditing programme; or
  - (c) on other grounds prescribed by the regulations.
- (2) Before the Authority revokes an endorsement under subsection (1), the Authority must—
  - (a) give the holder of the licence written notice of its proposed action specifying reasons for the proposed action; and
  - (b) allow the holder of the licence at least 14 days within which to make submissions to the Authority in relation to the proposed action.
- (3) The Authority must revoke an endorsement of a licence as a sustainability licence at the written request of the holder of the licence.
- (4) If a licence endorsed as a sustainability licence is suspended, the endorsement is suspended for the period of the suspension of the licence.
- (5) If a licence endorsed as a sustainability licence is cancelled or surrendered, the endorsement is revoked.





## **Part 7—Voluntary audits and environment performance agreements**

### **58—Protection for information produced in voluntary environmental audits**

- (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.

### **59—Environment performance agreements**

- (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.

### **60—Registration of environment performance agreements in relation to land**

- (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.

- (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.



## Part 8—Special environment protection provisions

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

#### 61—Interpretation

- (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 *Natural Resources Management Act 2004*.

- (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.

#### 61A—Proclamation of water protection areas

- (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).

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

- (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 *Natural Resources Management Act 2004* 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.

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

- (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.

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

- (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 *Natural Resources Management Act 2004*;
  - (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 *Natural Resources Management Act 2004*.
- (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).
- (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 region of a regional NRM 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.

### **64A—Action by Minister in case of unauthorised release of pollutant**

- (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.

### **64B—Risk of escape of pollutant from land etc**

- (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.

### **64C—Delegation of powers under sections 64A and 64B**

- (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.

#### **64D—Costs to be a charge on land**

- (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**

#### **64E—Outline of Division**

- (1) This Division establishes a litter control and waste management system for beverage containers through a regulatory scheme that has the following general features:
  - (a) beverage containers are prohibited from sale in the State unless approved by the Authority as category A or category B containers or exempted;
  - (b) empty category A containers bearing an approved refund marking are returnable to retailers of such containers for a refund;
  - (c) empty category B containers bearing an approved refund marking are returnable to collection depots for a refund;
  - (d) the operators of collection depots and persons carrying on business as super collectors must be approved by the Authority under this Division;
  - (e) the Authority has power to attach conditions to approvals under this Division to ensure the reuse, recycling or other appropriate disposal of returned containers.
- (2) This Division also, for the protection of the environment, prohibits the sale or supply of beverages in certain containers.

## 65—Interpretation

In this Division—

**approved collection depot**, means a collection depot in respect of which an approval under section 69 is in force;

**approved refund marking**, in relation to containers of a particular class, means a marking specified by the Authority as a condition of an approval under section 68 for containers of that class indicating the refund amount for the containers;

**beverage** means a liquid intended for human consumption by drinking but does not include a liquid of a kind excluded from the ambit of this definition by the regulations;

**category A container** means a container of a class approved by the Authority under section 68 as category A containers, being a container that may, subject to this Division, be presented for a refund at a place in the State where beverages are sold by retail in containers of that class;

**category B container** means a container of a class approved by the Authority under section 68 as category B containers, being a container that may, subject to this Division, be presented at a collection depot for a refund;

**collection depot** means a facility or premises for the collection and handling of category B containers delivered to the facility or premises in consideration of the payment of refund amounts, and includes a facility or premises of a kind prescribed by regulation;

**container** means—

- (a) a container that—
  - (i) is made for the purpose of containing a beverage; and
  - (ii) 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; or
- (b) a container of a kind prescribed by regulation;

**corresponding law** means a law of another State or a Territory of the Commonwealth declared by the regulations to be a corresponding law for the purposes of this Division;

**Food Standards Code** has the same meaning as in the *Food Act 2001*;

**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;

**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;

*spiritous liquor* means—

- (a) a liqueur or other alcoholic beverage produced by distillation (for example, brandy, gin, rum, vodka or whisky); or
- (b) a beverage of a kind prescribed by regulation,

but does not include—

- (c) a pre-mixed beverage containing a beverage referred to in paragraph (a) or (b) and another beverage; or
- (d) a pre-mixed beverage of a kind excluded from the ambit of this definition by the regulations;

*super collector* means—

- (a) a person who, whether personally or through an agent, collects, handles and delivers for reuse, recycling or other disposal, containers received from collection depots; or
- (b) a person who carries on activities of a kind prescribed by regulation;

*waste management arrangement*, in relation to containers of a particular class, means an arrangement for the collection, sorting and aggregation of containers of that class when empty and their reuse, recycling or other disposal;

*wine* means—

- (a) a beverage produced by fermentation of grapes (whether or not with additives permitted under Standard 2.7.4 of the *Food Standards Code*); or
- (b) a beverage that is a blend of a beverage referred to in paragraph (a) and other grape products; or
- (c) a beverage of a kind prescribed by regulation,

but does not include—

- (d) a pre-mixed beverage containing a beverage referred to in paragraph (a), (b) or (c) and another beverage that is not a grape product; or
- (e) a pre-mixed beverage of a kind excluded from the ambit of this definition by the regulations.

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

This Division does not apply to glass containers made for the purpose of containing wine or spiritous liquor.

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

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.

## **68—Approval of classes of containers as category A or category B containers**

- (1) An application may be made (whether by a manufacturer, distributor or retailer of containers) to the Authority for approval of a class of containers as category A containers or category B containers.

- (2) An application for an approval under this section—
- (a) must be made in a manner and form determined by the Authority; and
  - (b) must be accompanied by the prescribed fee; and
  - (c) must, on request by the Authority, be accompanied by additional information to enable the Authority to determine the application.
- (3) An approval under this section—
- (a) must be granted subject to the following conditions:
    - (i) that containers of the class to which the approval relates must bear the refund marking specified by the Authority for containers of that class;
    - (ii) that the holder of the approval must have in place an effective and appropriate waste management arrangement in relation to containers of that class;
    - (iii) in the case of an approval in relation to category B containers—that the waste management arrangement must require the holder of the approval to provide specified super collectors with a declaration in the form determined by the Authority in relation to each sale of such containers by the holder of the approval as soon as practicable after the sale; and
  - (b) may be granted subject to any other conditions the Authority thinks fit; and
  - (c) must be notified in the Gazette.
- (4) Without limiting the grounds on which the Authority may refuse an application for an approval under this section, the Authority may refuse such an application if satisfied that—
- (a) the container material (including the labelling or refund marking) is unsuitable for recycling, reuse or other disposal considered appropriate by the Authority; or
  - (b) the manner of application of the labelling or refund marking proposed in respect of the class of containers is likely to render the containers unsuitable for recycling, reuse or other disposal considered appropriate by the Authority; or
  - (c) there is no ongoing, effective and appropriate waste management arrangement in place in relation to the class of containers.
- (5) If the Authority refuses an application for an approval under this section, it must give the applicant written notice of the refusal and the reasons for the refusal.
- (6) The Authority may, on its own initiative or on application, by notice in the Gazette, vary an approval under this section or vary or revoke a condition of such an approval or impose a condition or further condition.
- (7) The Authority may, by notice in the Gazette, revoke an approval under this section if satisfied that a condition of the approval has been contravened.

- (8) Before the Authority revokes an approval under subsection (7), the Authority must—
- (a) give the holder of the approval written notice of its proposed action specifying reasons for the proposed action; and
  - (b) allow the holder of the approval at least 14 days within which to make submissions to the Authority in relation to the proposed action.
- (9) A notice under this section—
- (a) must, in the case of a notice of approval, specify—
    - (i) the class of containers to which the approval relates by reference to the manufacturer or distributor of the containers and any 1 or more of the following:
      - (A) product name;
      - (B) container contents when full;
      - (C) container capacity;
      - (D) container material;
      - (E) any other factor considered relevant by the Authority;
    - (ii) the conditions of the approval; and
  - (b) may contain transitional provisions as to the operation of this Division in relation to containers that are—
    - (i) held by manufacturers, distributors or retailers for sale; or
    - (ii) sold but remaining to be returned as empty containers under this Division; and
  - (c) has effect from the date of publication of the notice or a future date specified in the notice.

## **69—Approval of collection depots and super collectors**

- (1) A person must not—
- (a) operate a collection depot; or
  - (b) carry on business as a super collector,
- without the approval of the Authority.
- Penalty:
- If the offender is a body corporate—Division 1 fine.
- If the offender is a natural person—Division 3 fine.
- (2) An application for an approval under this section—
- (a) must be made in a manner and form determined by the Authority; and
  - (b) must be accompanied by the prescribed fee; and
  - (c) must, on request by the Authority, be accompanied by additional information to enable the Authority to determine the application.

- (3) The Authority may, in determining—
- (a) an application for an approval under this section; or
  - (b) what should be the conditions of such an approval,
- have regard to the need for a sustainable waste management system for containers and, in particular, for that purpose, the need for—
- (c) ongoing, effective and appropriate waste management arrangements in relation to the classes of containers proposed to be handled under the approval; and
  - (d) effective processes for resolving disputes between the parties to those arrangements.
- (4) An approval under this section may be granted unconditionally or subject to conditions and must be notified (together with any conditions) in the Gazette.
- (5) If the Authority refuses an application for an approval under this section, the Authority must give the applicant written notice of the refusal and the reasons for the refusal.
- (6) The Authority may, on its own initiative or on application, by notice in the Gazette, vary an approval under this section or impose, vary or revoke a condition of an approval.
- (7) The Authority may, by notice in the Gazette, revoke an approval under this section if satisfied that a condition of the approval has been contravened.
- (8) Before the Authority acts on its own initiative under subsection (6) or acts under subsection (7), the Authority must—
- (a) notify the holder of the approval in writing of its proposed action specifying reasons for the proposed action; and
  - (b) allow the holder of the approval at least 14 days within which to make submissions to the Authority in relation to the proposed action.
- (9) A notice under this section has effect from the date of publication of the notice in the Gazette or a future date specified in the notice.

### **69A—Annual fees and returns for collection depots and super collectors**

- (1) The holder of an approval to operate a collection depot or carry on business as a super collector must—
- (a) in each year, lodge with the Authority, before the date fixed by regulation, an annual return containing the information required by the Authority by condition of the approval or by notice in writing; and
  - (b) in each year other than a year in which the approval is due to expire, pay to the Authority, before the date fixed by regulation, the fee fixed by regulation.
- (2) If a person fails to lodge a return or pay a fee in accordance with this section, the Authority may, by notice in writing, require the person to make good the default and, in addition, to pay to the Authority the amount fixed by regulation as a penalty for default.

- (3) If a person fails to comply with the notice within 14 days after the giving of the notice, the approval is suspended until the notice is complied with.
- (4) If a person fails to comply with the notice within 6 months after the giving of the notice, the approval is revoked.
- (5) The Authority must cause written notice of the suspension or revocation under this section to be given to the person.
- (6) An annual fee (including a penalty for default) payable under this section is recoverable by the Authority as a debt due to the Authority.

### **69B—Sale and supply of beverages in containers**

- (1) A retailer must not sell a beverage in a container unless the container—
  - (a) is a category A or category B container; and
  - (b) bears the approved refund marking for containers of that class.Penalty: Division 6 fine.  
Expiation fee: Division 6 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,unless the container is a category A or category B container and bears the approved refund marking for containers of that class.  
Penalty: Division 6 fine.  
Expiation fee: Division 6 fee.
- (3) A person must not—
  - (a) supply a beverage in a container bearing a refund marking to a distributor or retailer for sale by the distributor or retailer; or
  - (b) sell a beverage in a container bearing a refund marking for consumption,knowing that there is no waste management arrangement in place in relation to the container.  
Penalty: Division 3 fine.

### **69C—Offence to claim refund on beverage containers purchased outside State or corresponding jurisdiction**

- (1) A person must not present to a retailer, the operator of a collection depot or a person carrying on business as a super collector, for the purpose of claiming refund amounts, containers that the person knows or has reason to believe were not purchased in this State or a jurisdiction in which a corresponding law is in force.  
Penalty: Division 3 fine.

(2) Subject to subsection (3), a retailer, the operator of a collection depot or a person carrying on business as a super collector may request any person presenting containers for the purpose of claiming refund amounts to complete a declaration in the form prescribed by regulation for the purposes of this section stating that the person has no reason to believe that the containers were not purchased in this State or a jurisdiction in which a corresponding law is in force.

(3) If, within any 48 hour period, a person presents to a retailer or the operator of a collection depot 3 000 or more containers for the purpose of claiming refund amounts, the retailer or operator must request the person to complete a declaration of a kind referred to in subsection (2).

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

(4) A retailer, the operator of a collection depot or a person carrying on business as a super collector must—

(a) keep each declaration made under this section (or copy of the declaration) at his or her place of business in the State for 3 years from the date of the declaration; and

(b) have the document readily available for inspection at all reasonable times by an authorised officer.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

### **69D—Offence to contravene condition of beverage container approval**

The holder of a beverage container approval must not contravene a condition of the approval.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

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

(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 approved refund marking, or a former approved refund marking, 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 6 fine.

Expiation fee: Division 6 fee.

(2) A retailer or a person acting on the retailer's behalf may refuse or fail to accept delivery of a container if—

(a) the container is in an unclean condition; or



- (b) he or she reasonably believes the container was not purchased in this State or in a jurisdiction in which a corresponding law is in force; or
  - (c) the retailer or person acting on the retailer's behalf has made a request for a declaration under section 69C(2) or (3) in respect of the container and the request has been refused.
- (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.

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

- (1) Subject to subsection (2), the operator of an approved 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 that bear the approved refund marking, or a former approved refund marking, 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 6 fine.

Expiation fee: Division 6 fee.

- (2) The operator of an approved collection depot or a person acting on his or her behalf may refuse or fail to accept delivery of a container if—
- (a) the approval of the operator of the depot is subject to a condition limiting the operation of the depot to the receipt of category B containers of a specified class and the container does not belong to that class; or
  - (b) the container is in an unclean condition; or
  - (c) he or she reasonably believes the container was not purchased in this State or in a jurisdiction in which a corresponding law is in force; or
  - (d) the operator of the collection depot or a person acting on his or her behalf has made a request for a declaration under section 69C(2) or (3) in respect of the container and the request has been refused.

### **71A—Manner of payment of refund amounts**

A person who is required under this Division to pay a refund amount for a container must pay the amount—

- (a) in the case of a refund amount dispensed from a reverse vending machine—
  - (i) in cash; or
  - (ii) by way of credit note redeemable for cash; or
  - (iii) in a manner prescribed by regulation; or
- (b) in any other case—in cash.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

## 72—Certain containers prohibited

(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 6 fine.

Expiation fee: Division 6 fee.

(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.

Expiation fee: Division 6 fee.

## 73—Evidentiary provisions

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.

## **Part 9—General offences**

### **79—Causing serious environmental harm**

- (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.

### **80—Causing material environmental harm**

- (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.

### **81—Alternative finding**

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.

## **82—Causing environmental nuisance**

- (1) 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:

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

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

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

Penalty:

If the offender is a body corporate—Division 4 fine.

If the offender is a natural person—Division 6 fine.

Expiation fee: Division 6 fee.

## **83—Notification where serious or material environmental harm caused or threatened**

- (1) If 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 harm or threatened harm, notify the Authority of the harm or threatened harm, 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 harm or threatened harm if the person has reason to believe that the harm or threatened harm 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 harm or threatened harm 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).

## **83A—Notification of site contamination of underground water**

- (1) This section applies to—

- (a) an owner or occupier of a site; or

- (b) a site contamination auditor or a site contamination consultant engaged for the purposes of making determinations or assessments in relation to site contamination on or below the surface of a site.
- (2) A person to whom this section applies must notify the Authority in writing as soon as reasonably practicable after becoming aware of the existence of site contamination at the site or in the vicinity of the site (whether arising before or after the commencement of this section) that affects or threatens water occurring naturally under the ground or introduced to an aquifer or other area under the ground.

Penalty:

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

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

- (3) The notification must—
  - (a) describe the location of the site contamination sufficient to identify it; and
  - (b) include the information known to the person about the nature and extent of the site contamination.
- (4) For the purposes of this section—
  - (a) a person is not required to notify the Authority of a matter if the person has reason to believe that the matter has already come to the notice of the Authority or an officer engaged in the administration or enforcement of this Act; but
  - (b) a person is required to notify the Authority of a matter despite the fact that to do so might incriminate the person or make the person liable to a penalty.
- (5) A 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).

#### **84—Defence where alleged contravention of Part**

- (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—
- (a) the property harmed comprises water occurring naturally above or under the ground or water introduced to an aquifer or other area under the ground; or
  - (b) the pollution resulted in site contamination.
- (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**

#### **85—Appointment of authorised officers**

- (1) The Authority may 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 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.

#### **86—Identification of authorised officers**

- (1) An authorised officer, other than a member of the police force, must be issued with an identity card—
  - (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.

#### **87—Powers of authorised officers**

- (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 and remove 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 as reasonably required in connection with the administration or enforcement of this Act, 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;
- (ia) take onto or into any place or vehicle, and use, any equipment or apparatus (such as drilling, boring, earth-moving, testing, measuring, photographic, film, audio, video or other recording equipment or apparatus) as reasonably required in connection with the administration or enforcement 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, to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- (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; or
  - (c) the exercise of the power is reasonably required for the purposes of assessing the existence or causes of known or suspected site contamination.
- (3) An authorised officer may not exercise the power to enter or inspect, or to seize, 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.
- (8) An authorised officer appointed by a council may only exercise powers under this Act—
  - (a) within the area of the council; and
  - (b) within the area of any other council to the extent agreed to, in writing, by the other council.
- (9) Where the exercise of a power under this section (other than a power exercised with the authority of a warrant) results in any damage, the Authority or, if the power was exercised by an authorised officer appointed by a council, the council must make good the damage as soon as is reasonably practicable or pay reasonable compensation for the damage.

### **88—Issue of warrants**

- (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; or
  - (c) that site contamination may exist in a place or something may be found in a place that constitutes evidence of a cause of site contamination,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
    - (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.

## **89—Provisions relating to seizure**

- (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.

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

- (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 or other person with powers under this Act,

is guilty of an offence.

Penalty: Division 4 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 4 fine or division 5 imprisonment, or both.

### **91—Self-incrimination**

- (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.
- (2) If compliance by a prescribed 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).

### **92—Offences by authorised officers etc**

- (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

### 93—Environment protection orders

- (1) The Authority or another administering agency 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 or other administering agency;
    - (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 or at specified times or in specified circumstances;

- (iv) a requirement that the person prepare, in accordance with specified requirements and to the satisfaction of the Authority or other administering agency, a plan of action to prevent, minimise or control pollution or waste;
    - (v) a requirement that the person comply with such a plan of action to the satisfaction of the Authority or other administering agency;
    - (vi) a requirement that the person undertake specified tests or environmental monitoring;
    - (vii) a requirement that the person furnish to the Authority or other administering agency specified test, monitoring or compliance reports;
    - (viii) a requirement that the person appoint or engage a person with specified qualifications to prepare a plan or report or undertake tests or monitoring required by the order;
  - (d) must state that the person may, within 14 days, appeal to the Environment, Resources and Development Court against the order.
- (2aa) Despite any other provisions of this section, an environment protection policy may make provision as to the circumstances in which an environment protection order may be issued or as to the requirements or contents of an 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 129 of the *Natural Resources Management Act 2004*, be required under that Act, the Authority or other administering agency must, before issuing or varying the order, give notice of the proposal to the authority under the *Natural Resources Management Act 2004* 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 or another administering agency and served on the person.

- (6) The Authority, another administering agency 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 liability to a penalty under this Act for compliance with the requirement.
- (7) Where an environment protection order has been issued to a person by the Authority or another administering agency, the Authority or other administering agency (as the case may be) may, by written notice served on the person, 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—Division 9 fine;
- (c) If the order was issued in relation to a domestic activity in circumstances specified in an environment protection policy or for the purpose of giving effect to an environment protection policy—Division 9 fine;
- (d) 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—Division 9 fee;
  - (c) If the order was issued in relation to a domestic activity in circumstances specified in an environment protection policy or for the purpose of giving effect to an environment protection policy—Division 9 fee;
  - (d) In any other case—Division 6 fee.
- (8a) It is not an excuse for a person to refuse or fail to provide information in response to a requirement imposed by an environment protection order on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
  - (8b) If compliance by a prescribed person with a requirement to provide information imposed by an environment protection order might tend to incriminate the person or make the person liable to a penalty, then the information provided 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).
  - (9) A person must not hinder or obstruct a person complying with an environment protection order.

Penalty: Division 6 fine.



**93A—Environment protection orders relating to cessation of activity**

- (1) The Authority may issue an environment protection order for the purpose of preventing or minimising environmental harm that may result from a prescribed activity of environmental significance after the activity has ceased.
- (2) The regulations may—
  - (a) limit the circumstances in which an environment protection order may be issued under this section; or
  - (b) prescribe circumstances in which an environment protection order issued under this section will be taken to have been revoked.
- (3) An environment protection order issued for a purpose described in subsection (1)—
  - (a) must be in the form of a written notice served on the owner for the time being of the land on which the activity was undertaken (whether or not the owner was the person who had undertaken the activity);
  - (b) must—
    - (i) specify the person to whom it is issued (whether by name or a description sufficient to identify the person);
    - (ii) state the purpose for which it is issued and specify the environmental harm that it is directed towards preventing or minimising;
  - (c) may impose any requirement of a kind that could be imposed as a condition of an environmental authorisation or that is reasonably required for the purpose for which the order is issued (including a requirement of a kind that could be imposed in an order issued under section 93);
  - (d) 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 a person to whom an environment protection order has been issued in accordance with this section, vary or revoke the order.
- (5) A person to whom an environment protection order is issued in accordance with this section 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.

- (6) It is not an excuse for a person to refuse or fail to provide information in response to a requirement imposed by an environment protection order issued in accordance with this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

- (7) If compliance by a prescribed person with a requirement to provide information imposed by an environment protection order issued in accordance with this section might tend to incriminate the person or make the person liable to a penalty, then the information provided 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).
- (8) A person must not hinder or obstruct a person complying with an environment protection order issued in accordance with this section.  
Penalty: Division 6 fine.
- (9) This section is in addition to and does not limit the effect of section 93.
- (10) This section only applies in relation to a prescribed activity of environmental significance that ceases after the commencement of this section.

#### **94—Registration of environment protection orders in relation to land**

- (1) Where an environment protection order has been issued under this Division, the Authority or, if the order was issued by another administering agency, that administering agency may do either or both of the following:
  - (a) if the order was issued in relation to an activity carried on on land or an activity previously 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 a 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 each owner from time to time of the land (as the case may require); or
    - (ii) is to operate as the basis for a charge on the land, as provided by this Division, securing payment to the Authority or other administering agency 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 or another administering agency 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 or an activity previously 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—
    - (i) in the case of an environment protection order issued in relation to an activity carried on on land—each owner and occupier from time to time of the land; or
    - (ii) in the case of an environment protection order issued in relation to an activity previously carried on on land—each owner 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) if such a person ceases to own or occupy the land (as the case may be), he or she must, as soon as reasonably practicable, notify the Authority or, if the order was issued by another administering agency, that administering agency, in writing of the name or address of the new owner or occupier.
- (4a) If an environment protection order is registered under this section in relation to land, the Authority or, if the order was registered by another administering agency, that administering agency must, as soon as reasonably practicable, notify, in writing, each owner of the land and the occupier of the land of the registration and of the obligations of owners and occupiers under subsection (4).
- (4b) A notice to be given to the occupier of land under subsection (4a) may be given by addressing it to the "occupier" and posting it to, or leaving it at, the land.
- (5) A person 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 or, if the order was issued by another administering agency, that administering agency, 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 or another administering agency may, if it thinks fit, apply to the Registrar-General for cancellation of the registration of an environment protection order that has been registered in relation to land on the application of the Authority or other administering agency (as the case may be), 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 or other administering agency takes action under this Division to carry out the requirements of the order—on payment to the Authority or other administering agency of the amount recoverable by the Authority or other administering agency under this Division in relation to the action so taken.

## **95—Action on non-compliance with environment protection order**

- (1) If the requirements of an environment protection order are not complied with, the Authority or, if the order was issued by another administering agency, that administering agency may take any action required by the order.
- (2) Any action to be taken by the Authority or another administering agency under subsection (1) may be taken by an authorised officer acting on behalf of the Authority or other administering agency or by other persons authorised by the Authority or other administering agency 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 or other administering agency 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 or another administering agency in taking action under this section may be recovered by the Authority or other administering agency (as the case may be) as a debt from the person who failed to comply with the requirements of the environment protection order.
- (4a) Subject to subsection (4b), where—
  - (a) an environment protection order has been registered in relation to land under section 94; or
  - (b) the registration of an environment protection order in relation to land has been cancelled under that section,the Authority or, if the order was registered on the application of another administering agency, that administering agency may recover, as a debt from the person to whom the order was issued, an amount prescribed by regulation in respect of the registration or cancellation (as the case may be).
- (4b) No amount is recoverable by the Authority or another administering agency under subsection (4a) in relation to an environment protection order that has been revoked.
- (5) Where an amount is recoverable from a person by the Authority or another administering agency under this section—
  - (a) the Authority or other administering agency 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 or other administering agency 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**

#### **96—Information discovery orders**

- (1) The Authority or another administering agency may issue an information discovery order under this Division for the purpose of obtaining information reasonably required by the Authority or other administering agency (as the case may be) for the administration or enforcement of this Act.
- (2) An information discovery order may be issued to any person who the Authority or other administering agency 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 or other administering agency.
- (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 or other administering agency 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) Where an information discovery order has been issued to a person by the Authority or another administering agency, the Authority or other administering agency (as the case may be) may, by written notice served on the person, 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.

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

- (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 or, in the case of an information discovery order issued by another administering agency, that administering agency may take such action as is reasonably required to obtain the information.
- (2) Any action to be taken by the Authority or another administering agency under subsection (1) may be taken by an authorised officer acting on behalf of the Authority or other administering agency or by other persons authorised by the Authority or other administering agency 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 or other administering agency 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 or another administering agency in taking action under this section may be recovered by the Authority or other administering agency (as the case may be) as a debt from the person whose failure gave rise to the action.

### **98—Admissibility in evidence of information**

- (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 prescribed 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**

### **99—Clean-up orders**

- (1) Where the Authority or another administering agency is satisfied that a person has caused environmental harm by a contravention of this Act or a repealed environment law, the Authority or other administering agency 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;
  - (ca) may include requirements for—
    - (i) preparing, in accordance with specified requirements and to the satisfaction of the Authority or other administering agency, a plan of action in relation to the environmental harm; and
    - (ii) complying with such a plan of action to the satisfaction of the Authority or other administering agency;
  - (d) may include requirements for action to be taken to prevent or mitigate further environmental harm;
  - (e) may include requirements for specified testing or environmental monitoring;
  - (ea) may include requirements for furnishing to the Authority or other administering agency specified test, monitoring or compliance reports;
  - (eb) may include requirements that the person to whom it is issued appoint or engage a person with specified qualifications to prepare a plan or report or undertake tests or monitoring required by 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 129 of the *Natural Resources Management Act 2004*, be required under that Act, the Authority or other administering agency must, before issuing or varying the order, give notice of the proposal to the authority under the *Natural Resources Management Act 2004* 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 or another administering agency and served on the person.
- (6) The Authority, another administering agency 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 liability to a penalty under this Act for compliance with the requirement.
- (7) Where a clean-up order has been issued to a person by the Authority or another administering agency, the Authority or other administering agency (as the case may be) may, by written notice served on the person, 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.
- (9) It is not an excuse for a person to refuse or fail to provide information in response to a requirement imposed by a clean-up order on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (10) If compliance by a prescribed person with a requirement to provide information imposed by a clean-up order might tend to incriminate the person or make the person liable to a penalty, then the information 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).



**100—Clean-up authorisations**

- (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);
  - (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.

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

- (1) Where a clean-up order has been issued under this Division, the Authority or, if the order was registered by another administering agency, that administering agency 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 a 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 or other administering agency 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 or another administering agency under subsection (1) or the Authority under subsection (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 or, if the order was issued by another administering agency, that administering agency, in writing of the name and address of the new owner or occupier.

- (5a) If a clean-up order is registered under this section in relation to land, the Authority or, if the order was issued by another administering agency, that administering agency, must, as soon as reasonably practicable, notify, in writing, each owner of the land and the occupier of the land of the registration and of the obligations of owners and occupiers under subsection (5).
- (5b) A notice to be given to the occupier of land under subsection (5a) may be given by addressing it to the "occupier" and posting it to, or leaving it at, the land.
- (6) A person who fails to comply with subsection (5)(d) is guilty of an offence.  
Penalty: Division 6 fine.
- (7) The Registrar-General must—
- (a) on application by the Authority, cancel the registration of a clean-up order or clean-up authorisation that has been registered in relation to land; or
  - (b) if a clean-up order that has been registered in relation to land was issued by another administering agency, on application by the administering agency, cancel the registration of the clean-up order,

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 or another administering agency may, if it thinks fit, apply to the Registrar-General for cancellation of the registration of a clean-up order or clean-up authorisation that has been registered in relation to land on the application of the Authority or other administering agency (as the case may be), 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 or other administering agency takes action under this Division to carry out the requirements of the order—on payment to the Authority or other administering agency of the amount recoverable by the Authority or other administering agency 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.

## 102—Action on non-compliance with clean-up order

- (1) If the requirements of a clean-up order are not complied with, the Authority or, if the order was issued by another administering agency, that administering agency may take any action required by the order.
- (2) Any action to be taken by the Authority or another administering agency under subsection (1) may be taken by an authorised officer acting on behalf of the Authority or other administering agency or by other persons authorised by the Authority or other administering agency 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 or other administering agency 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.

### **103—Recovery of costs and expenses**

- (1) The reasonable costs and expenses incurred by the Authority or another administering agency in taking action on non-compliance with a clean-up order may be recovered by the Authority or other administering agency (as the case may be) as a debt from the person who failed to comply with the requirements of the order.
- (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.

(2a) Subject to subsection (2b), where—

- (a) a clean-up order or clean-up authorisation has been registered in relation to land under section 101; or
- (b) the registration of a clean-up order or clean-up authorisation in relation to land has been cancelled under that section,

the Authority or, in the case of an order that was registered on the application of another administering agency, that administering agency may recover, as a debt from the person whose contravention gave rise to the issuing of the order or authorisation, an amount prescribed by regulation in respect of the registration or cancellation (as the case may be).

(2b) No amount is recoverable by the Authority or another administering agency under subsection (2a) in relation to a clean-up order or clean-up authorisation that has been revoked.

- (3) Where an amount is recoverable from a person by the Authority or another administering agency under this section—
- (a) the Authority or other administering agency 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 or other administering agency 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.



## **Part 10A—Special provisions and enforcement powers for site contamination**

### **Division 1—Interpretation and application**

#### **103A—Interpretation**

In this Part—

*occupier*, in relation to land—

- (a) has the meaning assigned to the term by section 3; and
- (b) if, in accordance with the regulations, a person of a particular kind is to be taken to be an occupier of the land in the circumstances of the case—includes a person of that kind,

and *occupy* land has a corresponding meaning.

#### **103B—Application of Part to site contamination**

This Part applies to site contamination at a site whether the chemical substances were first present there, or the environmental harm resulted, before or after the commencement of this Part or this Act.

### **Division 2—Appropriate persons to be issued with orders and liability for site contamination**

#### **103C—General provisions as to appropriate persons**

- (1) Subject to this Part, the appropriate person to be issued with a site contamination assessment order or a site remediation order in respect of a site under Division 3 is—
  - (a) the person who caused the site contamination at the site; or
  - (b) if it is not practicable to issue the order to that person, the owner of the site provided that—
    - (i) before the person acquired the site, the person knew, or ought reasonably to have been aware, that chemical substances were present, or likely to be present, on or below the surface of the site such as to require, or be likely to require, remediation; or
    - (ii) —
      - (A) before the person acquired the site, the person knew, or ought reasonably to have been aware, that the activity that caused the site contamination at the site had been carried on at the site, or while the person was the owner, the person knew, or ought reasonably to have been aware, that the activity that caused the site contamination at the site was being carried on at the site; and
      - (B) the activity is an activity of a kind prescribed by the regulations as a potentially contaminating activity.

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- (2) However, if the basis for issuing a site contamination assessment order is only the Authority's suspicion under section 103H(1)(b) as to the existence of site contamination at the site, subsection (1) of this section does not apply and the appropriate person to be issued with the order is the owner of the site.
- (3) For the purposes of subsection (1), it is not practicable to issue a site contamination assessment order or a site remediation order to a person if the person—
  - (a) has died or, in the case of a body corporate, ceased to exist; or
  - (b) cannot, after reasonable inquiry, be identified or located; or
  - (c) would, in the opinion of the Authority, for any reason, be unable to carry out, or meet the costs and expenses of, the action required or authorised under the order.

**103D—Causing site contamination**

- (1) For the purposes of this Act, a person is to be taken to have *caused* site contamination if the person was the occupier of land when there was an activity at the land that caused or contributed to the site contamination.
- (2) If site contamination would not have resulted at a site but for a change of use of a kind prescribed by regulation (whether the change occurred before or after the commencement of this Part or this Act), the person who brought about the change of use of the site is to be taken to have *caused* the site contamination for the purposes of this Act.
- (3) The operation of subsection (2) in a particular case is not to be taken to exclude the possibility of another person or persons also having caused the site contamination under subsection (1).
- (4) For the purposes of subsection (2), a person does not bring about a change of use of a site because the person was a relevant authority that granted a consent or approval in respect of the site under the *Development Act 1993*.

**103E—Liability for site contamination subject to certain agreements**

- (1) If—
  - (a) site contamination exists at a site; and
  - (b) land that is all or portion of the site has been sold or transferred (whether before or after the commencement of this Part or this Act) subject to an agreement in writing under which the purchaser or transferee will assume liability for all or a specified part of the site contamination at the site,the purchaser or transferee is to be taken to have assumed the vendor's or transferor's liability for the site contamination in accordance with the agreement and this Act applies as if the purchaser or transferee (and not the vendor or transferor) had caused the site contamination or, as the case may be, the specified part of the site contamination.
- (2) Subsection (1) does not apply to an agreement—
  - (a) unless, in the case of an agreement entered into after the commencement of this Part—



- (i) the person has first given the purchaser or transferee a notice in a form approved by the Authority for the purposes of this section setting out the legal effect of the agreement under this section; and
  - (ii) a copy of the agreement is lodged with the Authority; or
- (b) if the Environment, Resources and Development Court determines, on application by the Authority, that the purchaser or transferee did not acquire the land in a genuine arms length transaction.

### **103F—Order may be issued to one or more appropriate persons**

If, in the application of this Division, there are 2 or more persons to whom it is practicable to issue an order under Division 3 as appropriate persons, the Authority may determine that—

- (a) any 1 of the persons is the appropriate person to be issued with the order; or
- (b) 2 or more of the persons are the appropriate persons to be issued with the order (with the effect that the persons are jointly and severally liable to comply with the requirements of the order).

### **103G—Court may order that director of body is appropriate person in certain circumstances**

- (1) If—
- (a) a body corporate has been issued with a site contamination assessment order or a site remediation order in respect of a site, or grounds exist for the issuing of any such order to a body corporate; and
  - (b) there is reason to believe that the body corporate is being or has been wound up, stripped of assets or subjected to other action as part of a scheme—
    - (i) to avoid meeting its obligations under or in connection with a site contamination assessment order or a site remediation order in respect of the site; or
    - (ii) to avoid its being issued with such an order,

the Environment, Resources and Development Court may, on application by the Authority, make an order that a person who was, during the period in which it appears to the Court that the scheme was principally devised, a director or otherwise concerned in the management of the body corporate, or of a holding company of the body corporate, is an appropriate person to be issued with a site contamination assessment order or a site remediation order, or both, in respect of the site.

- (2) Without limiting the effect of subsection (1), there will be reason for such a belief—
- (a) if—
    - (i) the body corporate is being or has been wound up; and
    - (ii) the body corporate has carried out 1 or more transactions—
      - (A) such as to give the liquidator of the body corporate a right to recover cash under section 567 of the *Corporations Act 2001* of the Commonwealth; or

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- (B) rendered voidable by section 588FE of the *Corporations Act 2001* of the Commonwealth; or
      - (C) by which the body corporate incurred a debt in relation to which a person contravened section 588G of the *Corporations Act 2001* of the Commonwealth; and
    - (iii) there was, at the time or times when the body corporate entered those transactions or a substantial portion of them, reason to believe that site contamination may exist at the site; or
  - (b) if—
    - (i) a holding company of the body corporate has contravened section 588V of the *Corporations Act 2001* of the Commonwealth in relation to the body corporate; and
    - (ii) there was, at the time of the contravention, reason to believe that site contamination may exist at the site; or
  - (c) if—
    - (i) the site has been transferred to a related body corporate (the *transferee*); and
    - (ii) a reasonable person could have anticipated that the transferee would be unable to pay its debts if it took steps to remediate the site (to the extent that a reasonable person would have expected would be necessary); and
    - (iii) there was, at the time of the transfer or when the body corporate entered the transactions for the transfer, or a substantial portion of them, reason to believe that site contamination may exist at the site.
- (3) The Court must not make an order under this section if the person against whom the order would be made satisfies the Court that—
- (a) the person had no knowledge, actual, imputed or constructive, of the scheme or any element of the scheme; or
  - (b) the person was not in a position to influence the conduct of the body corporate in relation to that scheme; or
  - (c) the person, if in such a position, used all due diligence to prevent the pursuit of the scheme by the body corporate.
- (4) The Court may make an order under this section despite the fact that the body corporate took steps to remediate the site.

### **Division 3—Orders and other action to deal with site contamination**

#### **103H—Site contamination assessment orders**

- (1) If—
- (a) the Authority is satisfied that site contamination exists at a site; or
  - (b) the Authority suspects that site contamination exists at a site because a potentially contaminating activity of a kind prescribed by regulation has taken place there,

the Authority may issue a site contamination assessment order in respect of the site to an appropriate person.

- (2) A site contamination assessment order—
  - (a) must be in the form of a written notice served on the person to whom it is issued; and
  - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
  - (c) must specify the site; and
  - (d) must include requirements for assessments to be carried out of the nature and extent of any site contamination on or below the surface of the site and, subject to subsection (3), if the Authority so determines, on or below the surface of land in the vicinity of the site; and
  - (e) must include a requirement for a written report of the assessments to be submitted to the Authority in a specified form within a specified period; and
  - (f) may include a requirement that a person with specified qualifications be appointed or engaged to carry out the assessments required by the order or to prepare the written report or the assessments; and
  - (g) may include a requirement for a site contamination audit to be carried out, in accordance with the guidelines issued from time to time by the Authority, and a site contamination audit report to be submitted to the Authority within a specified period; and
  - (h) may include a requirement for specified consultations to be carried out with owners or occupiers of land in the vicinity of the site; and
  - (i) must state that the person may, within 14 days, appeal to the Environment, Resources and Development Court against the order.
- (3) If the order is issued to an appropriate person as an owner of the site as distinct from a person who caused the site contamination, the order must be limited in its application to site contamination on or below the surface of the site.
- (4) Where a proposed site contamination assessment order or a proposed variation of such an order would require the undertaking of an activity for which a permit would, but for section 129 of the *Natural Resources Management Act 2004*, be required under that Act, the Authority must, before issuing or varying the order, give notice of the proposal to the authority under the *Natural Resources Management Act 2004* 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.
- (5) The Authority may, by written notice served on a person to whom a site contamination assessment order has been issued, vary or revoke the order.
- (6) A person to whom a site contamination assessment 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.

- (7) It is not an excuse for a person to refuse or fail to provide information in response to a requirement imposed by a site contamination assessment order on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (8) If compliance by a prescribed person with a requirement to provide information imposed by a site contamination assessment order might tend to incriminate the person or make the person liable to a penalty, then the information 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).

### **103I—Voluntary site contamination assessment proposals**

- (1) The Authority may agree not to issue a site contamination assessment order to a person in relation to known or suspected site contamination if the person undertakes to carry out an assessment in accordance with an approved voluntary site contamination assessment proposal.
- (2) An agreement under subsection (1) must be in writing and copies of the agreement must be served on the parties to the agreement.
- (3) The Authority may, on application by a person, approve a voluntary site contamination assessment proposal if satisfied that the terms of the proposal are appropriate.
- (4) The Authority must, if satisfied that the assessment has been carried out and completed in accordance with the approved proposal, notify the holder of the approval in writing that it is so satisfied.
- (5) If a notification is given to a person under subsection (4), the person may apply to the Court under Part 11 for an order for payment of the whole or a portion of the costs and expenses of the assessment against others as if the person had carried out the assessment in compliance with the requirements of a site contamination assessment order.

### **103J—Site remediation orders**

- (1) If—
  - (a) the Authority is satisfied that site contamination exists at a site; and
  - (b) the Authority considers that remediation of the site is required, taking into account current or proposed land uses,the Authority may issue a site remediation order in respect of the site to an appropriate person.
- (2) A site remediation order—
  - (a) must be in the form of a written notice served on the person to whom it is issued; and
  - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
  - (c) must specify the site; and
  - (d) must give particulars of the site contamination; and

- (e) may include requirements for the person to whom it is issued to remediate the site within a specified period; and
  - (f) may include requirements for—
    - (i) preparing, in accordance with specified requirements and to the satisfaction of the Authority, a plan of remediation; and
    - (ii) complying with such a proposal to the satisfaction of the Authority; and
  - (g) may include authorisation for the site to be remediated, or any other action to be taken in respect of its remediation, on the Authority's behalf by authorised officers or other persons authorised by the Authority; and
  - (h) may include a requirement for a written report of the remediation to be submitted to the Authority in a specified form within a specified period; and
  - (i) may include a requirement that a person with specified qualifications be appointed or engaged to—
    - (i) prepare a plan of remediation under paragraph (f); or
    - (ii) prepare a written report of the remediation under paragraph (h); or
    - (iii) carry out the remediation or other activities associated with the remediation; and
  - (j) may include requirements for a site contamination audit to be carried out, in accordance with the guidelines issued from time to time by the Authority, and a site contamination audit report to be submitted to the Authority within a specified period; and
  - (k) may include a requirement for specified consultations to be carried out with owners or occupiers of land in the vicinity of the site; and
  - (l) must state that the person may, within 14 days, appeal to the Environment, Resources and Development Court against the order.
- (3) If the order is issued to an appropriate person as an owner of the site as distinct from a person who caused the site contamination, the order must be limited in its application to site contamination on or below the surface of the site.
- (4) Where a proposed site remediation order (except an emergency site remediation order) or a proposed variation of a site remediation order would require the undertaking of an activity for which a permit would, but for section 129 of the *Natural Resources Management Act 2004*, be required under that Act, the Authority must, before issuing or varying the order, give notice of the proposal to the authority under the *Natural Resources Management Act 2004* 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.
- (5) An authorised officer may, if of the opinion that urgent action is required for the remediation of a site, issue a site remediation order imposing requirements of a kind referred to in subsection (2)(e) as reasonably required for the remediation of the site (an ***emergency site remediation order***).

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- (6) An emergency site remediation 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.
- (7) Where an emergency site remediation 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 site remediation order issued by the Authority and served on the person.
- (8) 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 site remediation 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.
- (9) The Authority may, by written notice served on a person to whom a site remediation order has been issued, vary or revoke the order.
- (10) Where, in accordance with subsection (2)(g), a site remediation order is issued authorising a person other than an authorised officer to take action, 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.
- (11) A person to whom a site remediation 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.
- (12) It is not an excuse for a person to refuse or fail to provide information in response to a requirement imposed by a site remediation order on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (13) If compliance by a prescribed person with a requirement to provide information imposed by a site remediation order might tend to incriminate the person or make the person liable to a penalty, then the information 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).

**103K—Voluntary site remediation proposals**

- (1) The Authority may agree not to issue a site remediation order to a person in relation to site contamination if the person undertakes to carry out remediation in accordance with an approved voluntary site remediation proposal.

- (2) An agreement under subsection (1) must be in writing and copies of the agreement must be served on the parties to the agreement.
- (3) The Authority may, on application by a person, approve a voluntary site remediation proposal if satisfied that the terms of the proposal are appropriate.
- (4) The Authority must, if satisfied that the remediation has been carried out and completed in accordance with the approved proposal, notify the holder of the approval in writing that it is so satisfied.
- (5) If a notification is given to a person under subsection (4), the person may apply to the Court under Part 11 for an order for payment of the whole or a portion of the costs and expenses of the remediation against others as if the person had carried out the remediation in compliance with the requirements of a site remediation order.

### **103L—Entry onto land by person to whom order is issued**

- (1) A site contamination assessment order or a site remediation order does not confer on the person to whom it is issued a power to enter land of which that person is not an occupier, to remain on such land or to do anything on such land, without the permission of—
  - (a) the occupier of the land; and
  - (b) the owner of the land (unless the order has been issued to the owner or the occupier is the owner).
- (2) However—
  - (a) if permission is withheld or withdrawn by the owner, the Authority may—
    - (i) revoke, suspend or vary the order; and
    - (ii) if the owner has been warned of the possible consequences of withholding or withdrawing permission, issue a site contamination assessment order or a site remediation order in respect of the land to the owner as if the owner were the appropriate person;
  - (b) if permission is withheld or withdrawn by the occupier, the Authority may—
    - (i) revoke, suspend or vary the order; and
    - (ii) if the occupier has been warned of the possible consequences of withholding or withdrawing permission, issue a site contamination assessment order or a site remediation order in respect of the land to the occupier as if the occupier were the appropriate person.
- (3) If a site remediation order is issued under subsection (2), this Act applies as if no person other than the person issued with the order has liability for site contamination described in the order in respect of the land.

### **103M—Liability for property damage etc caused by person entering land**

- (1) This section applies to a person who enters or does anything on land in order to carry out—
  - (a) the requirements of a site contamination assessment order or site remediation order; or

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- (b) an approved voluntary site contamination assessment proposal or approved voluntary site remediation proposal.
- (2) A person to whom this section applies is liable, except as prescribed by the regulations, to the occupier of the land for damage to property of the occupier, or other loss suffered by the occupier, as a result of the entry or other actions (including loss suffered by the occupier because of the interruption of the occupier's business on the land by such entry or actions).
- (3) A person to whom this section applies is liable, except as prescribed by the regulations, to the owner of the land for damage to land or other property of the owner, or other loss suffered by the owner, as a result of the entry or other actions.
- (4) A person who incurs a liability under this section must—
  - (a) take all reasonable steps to minimise and make good the damage or loss; and
  - (b) to the extent that it is not practicable for the person to make good the damage or loss—compensate the person suffering the damage or loss.
- (5) Proceedings for the recovery of compensation under this section must be brought by application to the Environment, Resources and Development Court.

**103N—Special management areas**

- (1) If the Authority has reason to believe that site contamination of a particular kind exists in a wide area, or in numerous areas, as a result of the same activity or proximate or related activities, the Authority may, by notice in the Gazette—
  - (a) declare that the area or areas described in the notice may be affected by site contamination described in the notice; and
  - (b) declare the area or areas to be a special management area or special management areas for the purposes of this section.
- (2) On the making of a declaration under this section, the Authority is to conduct a program in which it—
  - (a) publicises the matters to which the declaration relates; and
  - (b) establishes consultative processes involving itself and other relevant public authorities, industries, businesses, residents and others involved, or with a relevant interest, in the matter; and
  - (c) endeavours to bring about the making of 1 or more environment performance agreements or other voluntary arrangements under which the parties to the agreements or arrangements are to carry out, or contribute to or assist in the carrying out of—
    - (i) assessments of—
      - (A) the nature and extent of site contamination within the special management area or areas; and
      - (B) the remediation that is necessary; and
    - (ii) the preparation of plans of remediation; and
    - (iii) the remediation of the sites that are affected by the relevant site contamination.



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

**103O—Registration of site contamination assessment orders or site remediation orders in relation to land**

- (1) Where a site contamination assessment order or site remediation order has been issued under this Division, the Authority may do either or both of the following:
- (a) if the order was issued to an owner or occupier of the site—apply to the Registrar-General for registration of the order in relation to the site;
  - (b) apply to the Registrar-General for registration of the order in relation to land owned by a person to whom the order was issued.
- (2) An application under this section must—
- (a) describe the land to which it relates; and
  - (b) do either or both of the following as the case may require:
    - (i) state that the registration of the order in relation to the land will, by virtue of subsection (4), result in the order becoming binding on each owner from time to time of the land;
    - (ii) state that the registration of the order in relation to the land is to operate as the basis for a charge on land owned by the person to whom the order was issued, as provided by this Division, securing payment to the Authority of costs and expenses incurred in taking action in the event of non-compliance with requirements of the order or in taking action in pursuance of the order.
- (3) The Registrar-General must, on application by the Authority under subsection (1) and lodgement of a copy of the site contamination assessment order or site remediation order, register the order 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 site contamination assessment order or a site remediation order (other than an order authorising remediation of a site by authorised officers or other persons authorised by the Authority) was issued to an owner or occupier of the site and is registered under this section in relation to the site—
- (a) the order is binding on each owner from time to time of the site, and this Division applies as if the order had been issued to each owner; and
  - (b) a person who ceases to be an owner of the site must, as soon as reasonably practicable, notify the Authority in writing of the name and address of the new owner.
- (5) Where a site contamination assessment order or site remediation order is registered under this section in relation to a site, the Authority must, as soon as reasonably practicable, notify, in writing, each owner of the site of the registration and of the obligations of owners under subsection (4).
- (6) A person who fails to comply with subsection (4)(b) is guilty of an offence.  
Penalty: Division 6 fine.

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- (7) The Registrar-General must, on application by the Authority, cancel the registration of a site contamination assessment order or site remediation 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.
- (8) The Authority may, if it thinks fit, apply to the Registrar-General for cancellation of the registration of a site contamination assessment order or site remediation 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) if 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.

**103P—Notation of site contamination audit report in relation to land**

- (1) This section applies to a site contamination audit report relating to land whether or not required under this or any other Act.
- (2) The Registrar-General must, on application by the Authority, include in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office a notation that a site contamination audit report has been prepared in respect of the land and is to be found in the register kept by the Authority under section 109 of this Act.
- (3) The Registrar-General must, on application by the Authority, remove a notation made in relation to land under this section.

**103Q—Action on non-compliance with site contamination assessment order or site remediation order**

- (1) If—
  - (a) the requirements of a site contamination assessment order are not complied with; or
  - (b) a site remediation order requires remediation of the site by the person to whom it is issued and the requirements of the 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.

### **103R—Recovery of costs and expenses incurred by Authority**

- (1) Where action has been taken by the Authority either on non-compliance with the requirements of a site contamination assessment order or a site remediation order, or in pursuance of a site remediation order, the Authority may recover the reasonable costs and expenses incurred by the Authority in taking that action as a debt from the person to whom the order was issued.
- (2) Subject to subsection (3), where—
  - (a) a site contamination assessment order or site remediation order has been registered in relation to a site under section 103O; or
  - (b) the registration of a site contamination assessment order or site remediation order in relation to land has been cancelled under that section,the Authority may recover, as a debt from the person to whom the order was issued, an amount prescribed by regulation in respect of the registration or cancellation (as the case may be).
- (3) No amount is recoverable by the Authority under subsection (2) in relation to a site contamination assessment order or site remediation order that has been revoked.
- (4) 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 site contamination assessment order or site remediation order is registered under this Division.
- (5) A charge imposed on land by this section has priority over—
  - (a) any prior charge imposed 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 site contamination assessment order or site remediation order in relation to the land.

### **103S—Prohibition or restriction on taking water affected by site contamination**

- (1) If the Authority is satisfied that—
  - (a) there is site contamination that affects or threatens water; and
  - (b) action is necessary under this section to prevent actual or potential harm to human health or safety,

the Authority may, by notice in the Gazette, prohibit or restrict the taking of the water.

- (2) A notice under this section must—
  - (a) specify the water to which it relates; and
  - (b) give particulars of the site contamination affecting the water.
- (3) A person must not contravene a notice under this section.  
Penalty: Division 5 fine.
- (4) The Authority may, by notice in the Gazette, vary or revoke a notice under this section.

## **Division 4—Site contamination auditors and audits**

### **103T—Application of Division**

This Division applies to—

- (a) a site contamination audit; or
- (b) a site contamination audit report; or
- (c) a site contamination audit statement,

whether or not required under this or any other Act.

### **103U—Requirement for auditors to be accredited**

A person must not carry out a site contamination audit unless—

- (a) the person is a site contamination auditor and personally carries out or directly supervises the work involved in the audit; or
- (b) the person carries out the audit through the instrumentality of a site contamination auditor who personally carries out or directly supervises the work involved in the audit.

Penalty: Division 4 fine.

### **103V—Accreditation of site contamination auditors**

- (1) Only a natural person may be granted accreditation as a site contamination auditor.
- (2) The regulations may provide for matters relating to the accreditation of site contamination auditors, including (without limitation)—
  - (a) the grant or renewal of accreditation by the Authority; and
  - (b) referral of applications to an accreditation committee established by the Authority; and
  - (c) powers of the Authority or accreditation committee to examine applicants or require the provision of information by applicants; and
  - (d) application fees and accreditation fees; and
  - (e) the imposition or variation of conditions of accreditation; and
  - (f) the term for which accreditation may be granted or renewed; and

- (g) powers of the Authority to suspend or cancel accreditation and disqualify persons from obtaining accreditation; and
  - (h) the grounds for refusing the grant or renewal of accreditation or for suspending or cancelling accreditation or disqualifying persons from obtaining accreditation; and
  - (i) appeals to the Administrative and Disciplinary Division of the District Court against decisions of the Authority relating to accreditation.
- (3) The regulations may provide that persons of a specified class are to be taken to be accredited under this Division subject to compliance with requirements specified in the regulations.

### **103W—Illegal holding out as site contamination auditor**

- (1) A person must not hold himself or herself out as a site contamination auditor unless the person is accredited under this Division as a site contamination auditor.  
Penalty: Division 4 fine.
- (2) A person must not hold out another as a site contamination auditor unless the other person is accredited under this Division as a site contamination auditor.  
Penalty: Division 4 fine.

### **103X—Conflict of interest and honesty**

- (1) This section applies to—
- (a) a site contamination auditor; or
  - (b) a person who carries out a site contamination audit on behalf of another through the instrumentality of a site contamination auditor.
- (2) A person to whom this section applies must not, unless authorised by the Authority in writing, carry out a site contamination audit of a site—
- (a) if the person is an associate of another person by whom any part of the site is owned or occupied; or
  - (b) if the person has a direct or indirect pecuniary or personal interest in any part of the site or any activity that has taken place or is to take place at the site or part of the site; or
  - (c) if the person has been involved in, or is an associate of another person who has been involved in, assessment or remediation of site contamination at the site; or
  - (d) on the instructions of, or under a contract with, a site contamination consultant who has been involved in the assessment of site contamination at the site.

Penalty: Division 6 fine or Division 6 imprisonment.

- (3) A person to whom this section applies must not, in or in relation to a site contamination audit, site contamination audit report or site contamination audit statement, make a statement that the person knows to be false or misleading in a material particular (whether by reason of the inclusion or omission of any particular).

Penalty:

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

If the offender is a natural person—Division 3 fine or Division 6 imprisonment.

### **103Y—Annual returns and notification of change of address etc**

- (1) A site contamination auditor must, during the prescribed period each year, furnish the Authority with a return relating to site contamination audits for which the auditor is or was the responsible auditor, listing each such audit commenced, in progress, completed or terminated before completion during the period commencing—
  - (a) in the case of an auditor in his or her first year of accreditation—on the day on which accreditation was granted; or
  - (b) in any other case—on the first day of the prescribed period in the preceding year.

Penalty: Division 5 fine.

- (2) A return under this section must be in the form prescribed by regulation.
- (3) A site contamination auditor must, within 14 days after any change of address or any other change relating to his or her activities as a site contamination auditor that affects the accuracy of particulars last furnished to the Authority, notify the Authority of the change.

Penalty: Division 5 fine.

- (4) In this section—

***prescribed period*** means the period commencing 8 weeks before, and ending 4 weeks before, the anniversary of the day on which the auditor's accreditation was granted or last renewed;

***responsible auditor***—a site contamination auditor is the responsible auditor for a site contamination audit if the work involved in the audit is carried out personally by, or under the direct supervision of, the auditor.

### **103Z—Requirements relating to site contamination audits**

- (1) A site contamination auditor must, within 14 days after the commencement of a site contamination audit for which the auditor is the responsible auditor, notify the Authority in writing of the person who commissioned the audit and the location of the land to which the audit is to relate.

Penalty: Division 5 fine.

- (2) A site contamination auditor must, within 14 days after the termination before completion of a site contamination audit for which the auditor was the responsible auditor, notify the Authority in writing of the termination and the reasons for the termination.

Penalty: Division 5 fine.

- (3) A notification under subsection (1) or (2) must be in the form prescribed by regulation.

- (4) A site contamination auditor must, on the completion of each site contamination audit for which the auditor is the responsible auditor—
- (a) provide a site contamination audit report to the person who commissioned the audit; and
  - (b) at the same time, provide—
    - (i) a site contamination audit report to the Authority; and
    - (ii) a site contamination audit statement to the council for the area in which the land to which the audit relates is situated and any prescribed body.

Penalty: Division 5 fine.

- (5) In this section—

*responsible auditor*—a site contamination auditor is the responsible auditor for a site contamination audit if the work involved in the audit is carried out personally by, or under the direct supervision of, the auditor.

## **Division 5—Reports by site contamination auditors and consultants**

### **103ZA—Reports by site contamination auditors and consultants**

A site contamination auditor or site contamination consultant must, in any written report that the auditor or consultant prepares in relation to a site, clearly qualify any statement of the auditor's or consultant's opinion as to the existence of site contamination at the site by specifying the land uses that were taken into account in forming that opinion.

Penalty: Division 5 fine.

### **103ZB—Provision of false or misleading information**

A person must not make a statement that the person knows to be false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished to a site contamination auditor or site contamination consultant that might be relied on by the auditor or consultant in preparing a report relating to site contamination (whether or not required under this or any other Act).

Penalty:

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

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





## Part 11—Civil remedies and penalties

### 104—Civil remedies

- (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;
  - (ea) if a person who has been issued with a site contamination assessment order or site remediation order has incurred costs and expenses in carrying out the requirements of the order or reimbursing the Authority for action taken in pursuance of the order—an order for payment of the whole or a portion of the costs and expenses, as the Court considers appropriate, against 1 or more other persons who caused the site contamination;
  - (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 another administering agency; or
  - (b) by any person whose interests are affected by the subject matter of the application; or
  - (c) by any other person with the permission of the Court.
- (8) Before the Court may grant permission 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.
- (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 without notice to any person and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant permission 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 application without notice to any person; 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.
- (23) Without limiting the generality of subsection (22), in determining whether to make any order in relation to costs the Court may have regard to the following matters (so far as they are relevant):
- (a) whether the applicant is pursuing a personal interest only in bringing the proceedings or is furthering a wider group interest or the public interest;
  - (b) whether or not the proceedings raise significant issues relating to the administration of this Act.

#### **104A—Authority may recover civil penalty in respect of contravention**

- (1) Subject to this section, if the Authority is satisfied that a person has committed an offence by contravening a provision of this Act, the Authority may, as an alternative to criminal proceedings, recover, by negotiation or by application to the Environment, Resources and Development Court, an amount as a civil penalty in respect of the contravention.

- (2) The Authority may not recover an amount under this section in respect of a contravention if the relevant offence requires proof of intention or some other state of mind, and must, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under this section, having regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors.
- (3) The Authority may not make an application to the Court under this section to recover an amount from a person as a civil penalty in respect of a contravention—
  - (a) unless the Authority has served on the person a notice in the prescribed form advising the person that the person may, by written notice to the Authority, elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the Authority's notice to make such an election; or
  - (b) if the person serves written notice on the Authority, before the making of such an application, that the person elects to be prosecuted for the contravention.
- (4) The maximum amount that the Authority may recover by negotiation as a civil penalty in respect of a contravention is—
  - (a) the amount specified by this Act as the criminal penalty in relation to that contravention; or
  - (b) \$120 000,whichever is the lesser.
- (5) If, on an application by the Authority, the Environment, Resources and Development Court is satisfied on the balance of probabilities that a person has contravened a provision of this Act, the Court may order the person to pay to the Authority an amount as a civil penalty (but not exceeding the amount specified by this Act as the criminal penalty in relation to that contravention).
- (6) In determining the amount to be paid by a person as a civil penalty, the Court must have regard to—
  - (a) the nature and extent of the contravention; and
  - (b) any environmental harm or detriment to the public interest resulting from the contravention; and
  - (c) any financial saving or other benefit that the person stood to gain by committing the contravention; and
  - (d) whether the person has previously been found, in proceedings under this Act, to have engaged in any similar conduct; and
  - (e) any other matter it considers relevant.
- (7) The jurisdiction conferred by this section is to be part of the civil jurisdiction of the Court.
- (8) If conduct of a person constitutes a contravention of two or more provisions of this Act, an amount may be recovered from the person under this section in relation to the contravention of any one or more of those provisions (provided that the person is not liable to pay more than one amount as a civil penalty in respect of the same conduct).

- (9) Proceedings for an order under this section that a person pay an amount as a civil penalty in relation to a contravention of this Act, or for enforcement of such an order, are stayed if criminal proceedings are started or have already been started against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (10) Proceedings referred to in subsection (9) may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person.
- (11) Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—
  - (a) the person gave the evidence or produced the documents in the course of negotiations or proceedings under this section for the recovery of an amount as a civil penalty in relation to a contravention of this Act; and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the contravention.
- (12) However, subsection (11) does not apply to criminal proceedings in respect of the making of a false or misleading statement.
- (13) Proceedings for an order under this section 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 within 10 years after the date of the alleged contravention.
- (14) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings for an order under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- (15) 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

### 105—Emergency authorisations

- (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 issued to a person under this section—
  - (a) is subject to a condition that the person pay the prescribed fee (which may be recovered as a debt); and
  - (b) may be subject to such other conditions as the Authority or authorised officer considers appropriate and specifies in the authorisation.
- (3) A person incurs no liability to a penalty under this Act in respect of an act or omission authorised under this section.
- (4) A person who would, but for an authorisation under this section, have contravened a provision of this Act is, despite the authorisation, to be taken to have contravened that provision for the purposes of—
  - (a) any proceedings under section 104 in respect of the contravention;
  - (b) the issuing or enforcement of a clean-up order or clean-up authorisation under this Act in respect of the contravention.





## Part 13—Appeals to Court

### 106—Appeals to Court

- (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;
  - (ca) the holder of a licence may appeal to the Court against a decision of the Authority to renew the licence of its own initiative and without application by the holder of the licence;
  - (cab) an applicant for endorsement of a licence under Part 6A as a sustainability licence may appeal to the Court against a decision of the Authority to refuse to endorse the licence;
  - (cac) an applicant for approval of a transfer of an endorsement of a licence under Part 6A as a sustainability licence may appeal to the Court against a decision of the Authority to refuse to approve the transfer;
  - (cad) the holder of a licence may appeal to the Court against a decision of the Authority to revoke an endorsement of the licence under Part 6A as a sustainability licence;
  - (cb) a person who applied for a beverage container approval may appeal to the Court against a decision of the Authority—
    - (i) refusing to grant the approval; or
    - (ii) imposing a condition of the approval;
  - (cc) the holder of a beverage container approval may appeal to the Court against a decision of the Authority—

- (i) varying the approval or varying or imposing a condition of the approval; or
  - (ii) revoking the approval;
- (d) a person to whom an environment protection order, information discovery order, clean-up order, site contamination assessment order or site remediation order has been issued 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, clean-up order, site contamination assessment order or site remediation 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).

### **107—Operation and implementation of decisions or orders subject to appeal**

- (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.

**108—Powers of Court on determination of appeals**

- (1) 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.
- (2) However, no order for costs is to be made unless the Court considers such an order to be necessary in the interests of justice.



## Part 14—Public register

### 109—Public register

- (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:
  - (aa) details of any exemptions granted by the Authority under section 36(2);
  - (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;
  - (fa) details of endorsements of licences under Part 6A as sustainability licences and applications for such endorsements;
  - (g) details of beverage container approvals and applications for beverage container approvals;
  - (h) details of serious or material environmental harm caused or threatened in the course of an activity that come to the notice of the Authority;
  - (i) details of site contamination notified to the Authority under section 83A;
  - (ia) details of any environment protection order, clean-up order, clean-up authorisation, site contamination assessment order or site remediation order issued under this Act and of—
    - (i) any action taken by the person to whom the order was issued or by the Authority or another administering agency in consequence of the order; and
    - (ii) any report provided by the person to whom the order was issued in consequence of the order;

- (ib) details of each agreement for the exclusion or limitation of liability for site contamination to which section 103E applies;
  - (ic) details of each agreement entered into with the Authority relating to—
    - (i) an approved voluntary site contamination assessment proposal under section 103I; or
    - (ii) an approved voluntary site remediation proposal under section 103K;
  - (id) details of the circumstances giving rise to—
    - (i) declarations of special management areas under section 103N; or
    - (ii) prohibitions or restrictions on taking water under section 103S;
  - (ie) details of each notification relating to the commencement or the termination before completion of a site contamination audit under section 103Z;
  - (if) each site contamination audit report submitted to the Authority under section 103Z;
  - (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;
  - (ka) the following details of the recovery by the Authority, by negotiation, of an amount as a civil penalty in respect of an alleged contravention of this Act:
    - (i) the name of the person from whom the amount was recovered;
    - (ii) particulars of the alleged contravention;
    - (iii) the amount recovered;
  - (l) such other information as is prescribed.
- (3a) If an administering agency other than the Authority takes any action the details of which are required to be recorded in the register, the administering agency must ensure that those details are provided to the Authority as soon as practicable but, in any event, within three months after taking the action.
- (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.
- (6) A member of the public may, on payment of the prescribed fee, obtain a copy of any part of the register.
- (7) The Governor may, by regulation, provide for the removal by the Authority of information recorded in the register under this section.

## Part 15—Miscellaneous

### 110—Constitution of Environment, Resources and Development Court

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 Senior Judge 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.

### 111—Annual reports by Authority

- (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.
- (4) The report is, by force of this section, referred to the *Environment, Resources and Development Committee* of the Parliament.

### 112—State of environment reports

- (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
  - (ab) include a specific assessment of the state of the River Murray, especially taking into account the *Objectives for a Healthy River Murray* under the *River Murray Act 2003*; 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.
- (5) The Minister must, within a reasonable time after the report being delivered to the Minister, prepare and publish a response to the report.
- (6) The Minister must cause a copy of the Minister's response to be laid before each House of Parliament within 12 sitting days after the publication of the response.

### **113—Waste depot levy**

- (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.

### **114—Waste facilities operated by Authority**

- (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.

### **115—Delegations**

- (1) The Authority may, by instrument in writing, delegate a power or function under this Act—
- (a) to a specified public authority; or
  - (b) to a particular person or committee; or
  - (c) to the person for the time being performing particular duties or holding or acting in a particular position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
- (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the Authority to act in any matter; and
  - (c) is revocable at will.

### **116—Waiver or refund of fees and levies and payment by instalments**

The Authority or another administering agency may, in cases of a kind approved by the Minister—

- (a) waive the payment of, or refund, the whole or part of a fee or levy otherwise required to be paid to the Authority or other administering agency under this Act; or
- (b) allow the payment of a fee or levy by instalments.

### **117—Notices, orders or other documents issued by Authority or authorised officers**

- (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.

### **118—Service**

- (1) A notice, order or other document required or authorised by this Act to be given to or served on a person by the Minister, the Authority, another administering agency 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 or a beverage container approval—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 or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth—be given or served on the person in accordance with that Act.

### **119—False or misleading information**

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:

- (a) If the offender is a body corporate—Division 1 fine;
- (b) If the offender is a natural person—Division 3 fine.

### **120—Statutory declarations**

Where a person is required by or under this Act to furnish information to the Authority or another administering agency, the Authority or other administering agency 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 so verified.

### **120A—False or misleading reports**

- (1) A person who makes a false or misleading report to the Authority, another administering agency or a person engaged in the administration of this Act is guilty of an offence if—
  - (a) the person knows the report is false or misleading; and
  - (b) the report is of a kind that would reasonably call for investigation or action by the Authority or another administering agency.

Penalty: Division 4 fine.

- (2) Where a person is convicted of an offence against subsection (1), the court must, on application by the Authority or another administering agency, order the convicted person to pay to the Authority or other administering agency the reasonable costs and expenses incurred by the Authority or other administering agency in carrying out an investigation or taking action as a result of the false or misleading report.

### **121—Confidentiality**

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.

### **123—Continuing offences**

- (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.

## 124—General defence

- (1) It will be a defence in any criminal proceedings, or in any proceedings for the payment of an amount as a civil penalty, in respect of an alleged contravention of this Act, including—
  - (a) proceedings against 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) proceedings against an officer of a body corporate under this Part,if it is proved that the alleged contravention did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the contravention or contraventions 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 contravention 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, have contravened a provision of this Act is, despite that defence, to be taken to have contravened that provision for the purposes of—
  - (a) any proceedings under section 104 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.

## 125—Notice of defences

- (1) A person who, in criminal proceedings, 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—
  - (a) if the proceedings are for a summary offence and have been commenced by an authorised officer appointed by a council—to the council; or
  - (b) in any other case—to the Authority.

- (2) A notice under subsection (1) must be given—
  - (a) if the proceedings are for a summary offence—within 28 days after the summons to answer the charge is served on the person; or
  - (b) if the proceedings are for 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.

### **126—Proof of intention etc**

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 a contravention of this Act.

### **127—Imputation of conduct or state of mind of officer, employee etc**

- (1) For the purposes of proceedings for an offence against this Act or proceedings for the payment of an amount as a civil penalty in respect of an alleged contravention of 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
  - (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.

### **128—Statement of officer evidence against body corporate**

In proceedings for an offence against this Act by a body corporate or proceedings against a body corporate for the payment of an amount as a civil penalty in respect of an alleged contravention of this Act, a statement made by an officer of the body corporate is admissible as evidence against the body corporate.

### **129—Liability of officers of body corporate**

- (1) Where a body corporate contravenes a provision of this Act, a person who is an officer of the body corporate is—
  - (a) subject to the general defence under this Part, guilty of a contravention of this Act; and
  - (b) subject to subsection (2), liable to the same penalty as may be imposed for the principal contravention 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 contravenes a provision of this Act, an officer of the body corporate who knowingly promoted or acquiesced in the contravention is also guilty of contravening that provision.
- (4) An officer of a body corporate—
  - (a) may be prosecuted and convicted of an offence pursuant to subsection (1) or (3); or
  - (b) may be ordered to pay an amount as a civil penalty pursuant to subsection (1) or (3),

whether or not there has been a finding by a court that the body corporate committed the contravention.

- (5) If, in proceedings against a body corporate for an offence against this Act or for the imposition of a penalty in respect of a contravention of this Act—
  - (a) information or a document was admitted in evidence against the body corporate; and
  - (b) an officer of the body corporate had been required to give the information or produce the document under a provision of this Act; and
  - (c) the information or document was such as to tend to incriminate the body corporate of the offence or make the body corporate liable to the penalty (as the case may be),

the officer of the body corporate will not be guilty of a contravention of this Act as a result of the body corporate having been found guilty of the offence, or liable to the penalty, in those proceedings.

### **130—Reports in respect of alleged contraventions**

Where a person reports to the Authority or another administering agency an alleged contravention of this Act, the Authority or other administering agency (as the case may be) 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 or other administering agency in respect of the allegation.

### **131—Commencement of proceedings for summary offences**

- (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.

### **132—Offences and Environment, Resources and Development Court**

Offences constituted by this Act lie within the criminal jurisdiction of the Environment, Resources and Development Court.

### **133—Orders in respect of contraventions**

- (1) Where, in proceedings under this Act, the court finds that the defendant contravened this Act and the contravention has 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 found by a court to have contravened this Act, the court may, in addition to any penalty it may impose, order the 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 contravention.
- (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 a contravention if the contravention 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.

### **134—Appointment of analysts**

The Authority may, with the approval of the Minister, appoint a person to be an analyst for the purposes of this Act.

### **135—Recovery of administrative and technical costs associated with contraventions**

- (1) Where a person has contravened this Act and the Authority or another administering agency—
  - (a) has taken action to—
    - (i) investigate the contravention; or
    - (ii) issue an order under Part 10 in respect of the contravention; or
    - (iii) ensure that the person has complied with requirements imposed in relation to the contravention by an order under Part 10 or by an order of a court under this Act; or
  - (b) has, in taking such action, incurred costs and expenses in taking samples or in conducting tests, examinations or analyses,  
the Authority or other administering agency may, by notice in writing served on the person, require the person to pay to the Authority or other administering agency—
    - (c) in respect of action to investigate the contravention or to issue an order under Part 10 in respect of the contravention—a fee fixed by, or calculated in accordance with, the regulations; or
    - (d) in respect of action to ensure that the person has complied with requirements imposed in relation to the contravention by an order under Part 10 or by an order of a court under this Act—the reasonable costs and expenses incurred by the Authority or other administering agency in taking that action; or
    - (e) in respect of costs and expenses incurred in taking samples or in conducting tests, examinations or analyses—the reasonable costs and expenses so incurred by the Authority or other administering agency.
- (2) Subject to subsection (3), an amount payable to the Authority or another administering agency in accordance with a notice under this section must be paid within the period specified in the notice.
- (3) On application by a person who has been served a notice under this section, the Authority or other administering agency that served the notice may, by notice in writing—
  - (a) extend the time for payment of an amount payable in accordance with the notice; or
  - (b) waive payment of such an amount or reduce the amount payable.
- (4) A person who fails to pay an amount payable to the Authority or another administering agency in accordance with this section is guilty of an offence.

Penalty: Division 8 fine.

Expiation fee: \$500.



- (5) If a notice is issued under this section in respect of a contravention and—
- (a) the contravention is the subject of an appeal; or
  - (b) the notice requires payment of an amount in respect of the issue of an order under Part 10 and the order is the subject of an appeal,
- the notice is suspended until the appeal has been determined (but if the court, on appeal, finds that the contravention was committed or that the order was properly issued, as the case may be, the notice will have effect as if the period for payment specified in the notice commenced on the day on which the appeal was determined).
- (6) A notice served on the holder of an environmental authorisation under this section in respect of a contravention of a condition of the authorisation—
- (a) must not require the payment of a fee in respect of action taken, or costs and expenses incurred, in investigating the contravention unless the contravention has been established, or is taken to have been established, against the holder of the authorisation; but
  - (b) may require—
    - (i) the payment of a fee in respect of the issue of an order under Part 10 in respect of the contravention; or
    - (ii) the payment of reasonable costs and expenses incurred—
      - (A) in taking action to ensure compliance with requirements imposed in relation to the contravention by an order under Part 10 or by an order of a court under this Act; or
      - (B) in taking samples or in conducting tests, examinations or analyses in the course of taking such action,whether or not the contravention has been established, or is taken to have been established, against the holder of the authorisation.
- (7) For the purposes of subsection (6), a contravention of a condition of an environmental authorisation has been established, or is taken to have been established, against the holder of the authorisation if—
- (a) a court, in criminal proceedings or in proceedings under section 104A, has found that the holder of the authorisation committed the contravention; or
  - (b) the holder of the authorisation, by negotiation with the Authority under section 104A, has agreed to pay a civil penalty in respect of the contravention.
- (8) If an amount payable to the Authority or another administering agency is not paid in accordance with this section, the amount may be recovered as a debt by the Authority or other administering agency.

### **136—Assessment of reasonable costs and expenses**

For the purposes of this Act, the reasonable costs and expenses that have been or would be incurred by the Authority, another administering agency 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.

### 137—Recovery from related bodies corporate

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.

### 137A—Joint and several liability

Where an amount is recoverable by the Authority or another administering agency from two or more persons under a provision of this Act, the provision is to be construed as if those persons were jointly and severally liable to pay the amount to the Authority or other administering agency (as the case may be).

### 138—Enforcement of charge on land

- (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 Minister, the Authority or another administering agency, the Minister, the Authority or the other administering agency 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*.

### 139—Evidentiary provisions

- (1) In any proceedings, a certificate executed by the Minister, the Authority or another administering agency 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 Minister, the Authority or the other administering agency under this Act; or
  - (e) any other decision of the Minister, the Authority or the other administering agency; or
  - (f) the receipt or non-receipt by the Minister, the Authority or the other administering agency 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 Minister, the Authority, another administering agency or some other public authority under this Act, a certificate executed by the Minister, the Authority, the other administering agency 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, evidence by an authorised officer that he or she formed the opinion based on his or her own senses—
  - (a) that pollutants discharged or emitted from a place occupied by the defendant travelled to a place occupied by another person; and
  - (b) that the level, nature or extent of the pollution 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.
- (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 Minister, the Authority, another administering agency 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.

## 140—Regulations

- (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—
  - (aa) make provisions implementing a national environment protection measure;
  - (a) vary the provisions of Schedule 1;
  - (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.

## **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
- (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—
    - (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) the collection and handling of beverage containers by the holder of an approval to operate a collection depot under section 69; or
- (ga) the collection, handling and delivery for reuse, recycling or other disposal of beverage containers by the holder of an approval to carry on business as a super collector under section 69; or
- (h) the handling for charitable or non-profit purposes only of beverage containers bearing an approved 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;
- (w) an activity authorised by a lease or licence under the *Mining Act 1971*, the *Petroleum Act 2000* 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.

### **(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) in the case of poultry or poultry meat products—works with a rate of production exceeding 200 tonnes per year; or
- (b) in the case of any other animal meat or animal meat products—works with a rate of production exceeding 100 tonnes per year.

### **(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.

**(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 used as an amusement device under the *Work Health and Safety Act 2012*; 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.

(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 2000*, 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<sup>\*</sup>, 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<sup>\*</sup> practice or research; or
  - (e) a specimen or culture discarded in the course of medical<sup>\*</sup>, 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<sup>\*</sup>, 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

## Legislative history

### Notes

- This version is comprised of the following:

Part 1	1.7.2009
Part 2	1.7.2009
Part 3	18.11.2012
Part 4	1.7.2005
Part 5	1.7.2005
Part 6	1.9.2008
Part 6A	18.11.2012
Part 7	1.7.2005
Part 8	1.9.2008
Part 9	1.7.2009
Part 10	1.7.2009
Part 10A	1.7.2009
Part 11	1.7.2009
Part 12	1.7.2005
Part 13	18.11.2012
Part 14	18.11.2012
Part 15	1.2.2010
Schedule 1	1.1.2013
- Amendments of this version that are uncommenced are not incorporated into the text.
- 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.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Environment Protection Act 1993* repealed the following:

*Beverage Container Act 1975*

*Clean Air Act 1984*

*Environmental Protection Council Act 1972*

*Marine Environment Protection Act 1990*

*Noise Control Act 1977*

*Waste Management Act 1987*

## Legislation amended by principal Act

The *Environment Protection Act 1993* amended the following:

*Development Act 1993*

*Environment, Resources and Development Court Act 1993*

*Water Resources Act 1990*

## Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1993	76	<i>Environment Protection Act 1993</i>	27.10.1993	1.5.1995 ( <i>Gazette</i> 27.4.1995 p1563) except Sch 2 (cl 4(c))—27.10.1995 (s 7(5) <i>Acts Interpretation Act 1915</i> )
1994	18	<i>Parliamentary Committees (Miscellaneous) Amendment Act 1994</i>	12.5.1994	Sch (cl 2)—1.5.1995 ( <i>Gazette</i> 12.5.1994 p1188)
1994	(181)	<i>Environment Protection (Variation of— Act, Schedule 1) Regulations 1994</i> ( <i>Gazette</i> 27.10.1994 p1329)		1.5.1995: r 2
1995	1	<i>National Environment Protection Council (South Australia) Act 1995</i>	2.3.1995	Sch 2—2.3.1997 (s 7(5) <i>Acts Interpretation Act 1915</i> )
1995	(33)	<i>Environment Protection (Variation of— Act, Schedule 1) Regulations 1995</i> ( <i>Gazette</i> 13.4.1995 p1441)		1.5.1995: r 2
1995	30	<i>Petroleum Products Regulation Act 1995</i>	27.4.1995	1.7.1995 ( <i>Gazette</i> 1.6.1995 p2529)
1995	100	<i>Environment Protection (Forum Replacement) Amendment Act 1995</i>	14.12.1995	4.4.1996 ( <i>Gazette</i> 4.4.1996 p1886)
1996	63	<i>Development (Major Development Assessment) Amendment Act 1996</i>	15.8.1996	2.1.1997 ( <i>Gazette</i> 2.1.1997 p4)
1997	11	<i>Environment Protection (Miscellaneous) Amendment Act 1997</i>	27.3.1997	1.5.1997 ( <i>Gazette</i> 1.5.1997 p1666) except s 5—1.5.1995: s 2
1997	35	<i>Statutes Amendment (Water Resources) Act 1997</i>	19.6.1997	Pt 3 (ss 5—20)—2.7.1997 ( <i>Gazette</i> 26.6.1997 p3052)
1999	36	<i>Electricity Corporations (Restructuring and Disposal) Act 1999</i>	1.7.1999	Sch 4 (cll 18 & 19)—29.7.1999 ( <i>Gazette</i> 29.7.1999 p528)
2000	88	<i>Development (System Improvement Program) Amendment Act 2000</i>	21.12.2000	Sch 1 (cl 1)—2.4.2001 ( <i>Gazette</i> 29.3.2001 p1436)
2001	16	<i>Statutes Amendment (Avoidance of Duplication of Environmental Procedures) Act 2001</i>	17.5.2001	Pt 3 (s 5)—14.6.2001 ( <i>Gazette</i> 14.6.2001 p2221)
2001	(161)	<i>Environment Protection (Variation of— Act, Schedule 1) Regulations 2001</i> ( <i>Gazette</i> 28.6.2001 p2498)		28.6.2001: r 2
2001	(229)	<i>Environment Protection (Variation of— Act, Schedule 1—Railways) Regulations 2001</i> ( <i>Gazette</i> 11.10.2001 p4470)		11.10.2001: r 2

2001	66	<i>Aquaculture Act 2001</i>	6.12.2001	Sch (cl 1)—1.7.2002 ( <i>Gazette</i> 27.6.2002 p2681)
2002	43	<i>Statutes Amendment (Environment Protection) Act 2002</i>	5.12.2002	Pt 2 (ss 4—22)—10.4.2003 ( <i>Gazette</i> 10.4.2003 p1670)
2003	35	<i>River Murray Act 2003</i>	31.7.2003	Sch (cl 6)—24.11.2003 ( <i>Gazette</i> 20.11.2003 p4203)
2004	1	<i>Zero Waste SA Act 2004</i>	4.3.2004	Sch 1 (Pt 2)—7.5.2004 ( <i>Gazette</i> 6.5.2004 p1225)
2004	23	<i>Statutes Amendment (Courts) Act 2004</i>	8.7.2004	Sch 1—1.9.2004 ( <i>Gazette</i> 26.8.2004 p3402)
2004	34	<i>Natural Resources Management Act 2004</i>	5.8.2004	Sch 4 (c11 5—12)—1.7.2005 ( <i>Gazette</i> 30.6.2005 p2093)
2005	5	<i>Adelaide Dolphin Sanctuary Act 2005</i>	14.4.2005	Sch 2 (cl 17)—1.7.2005 ( <i>Gazette</i> 2.6.2005 p1684)
2005	21	<i>Environment Protection (Miscellaneous) Amendment Act 2005</i>	9.6.2005	1.7.2005 except ss 5(9), 9, 18, 27, 30, 39, 56, 58, 62(4), 70, 72, 73, 74 & 76—1.7.2006 ( <i>Gazette</i> 16.6.2005 p1829)
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 29 (s 110)—4.9.2006 ( <i>Gazette</i> 17.8.2006 p2831)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 31 (s 94)—1.6.2007 ( <i>Gazette</i> 26.4.2007 p1352)
2007	44	<i>Environment Protection (Site Contamination) Amendment Act 2007</i>	1.11.2007	10.12.2007 ( <i>Gazette</i> 6.12.2007 p4735) except s 4(6), (7), definitions of site contamination audit, site contamination audit report and site contamination audit statement (as inserted by s 4(8)), ss 103T, 103V, 103X, 103Y, 103Z (as inserted by s 11), 109(3)(ie) & (if) (as inserted by s 14)—20.11.2008 ( <i>Gazette</i> 20.11.2008 p5172) and except ss 4(1), definition of cause (as inserted by s 4(3)), 4(4), (5), definitions of site contamination assessment order, site remediation order (as inserted by s 4(8)), 6—10, new Pt 10A Divs 1—3 (as inserted by s 11), new ss 103U, 103W (as inserted by s 11), 12, 13 and s 109(3)(i)—(id) (as inserted by s 14)—1.7.2009 ( <i>Gazette</i> 21.5.2009 p1775)
2007	(252)	<i>Environment Protection (Variation of—Act, Schedule 1) Regulations 2007</i> ( <i>Gazette</i> 1.11.2007 p4148)		29.11.2007: r 2
2007	60	<i>Marine Parks Act 2007</i>	29.11.2007	Sch 1 (cl 17)—6.11.2008 ( <i>Gazette</i> 6.11.2008 p5055)
2008	14	<i>Environment Protection (Board of Authority) Amendment Act 2008</i>	12.6.2008	7.8.2008 ( <i>Gazette</i> 7.8.2008 p3568)
2008	35	<i>Environment Protection (Miscellaneous) Amendment Act 2008</i>	31.7.2008	1.9.2008 ( <i>Gazette</i> 28.8.2008 p3893)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 56 (ss 115—117)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
2010	22	<i>Statutes Amendment (Budget 2010) Act 2010</i>	18.11.2010	Pt 3 (ss 6—10)—18.11.2012 (s 7(5) <i>Acts Interpretation Act 1915</i> )

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<b>2012 40</b>	<b><i>Work Health and Safety Act 2012</i></b>	<b>15.11.2012</b>	<b>Sch 6 (cl 5)—1.1.2013: s 2</b>
2013 (227)	<i>Environment Protection (Variation of— Act, Schedule 1) Regulations 2013</i> ( <i>Gazette 5.9.2013 p3776</i> )		30.11.2013: r 2

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 21/2005 s 4	1.7.2005
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>24.11.2003</i>
s 3		
s 3(1)		
administering agency	inserted by 21/2005 s 5(1)	1.7.2005
appointed member	amended by 100/1995 s 3(a) amended by 43/2002 s 4(a)	4.4.1996 10.4.2003
appropriate person	inserted by 44/2007 s 4(1)	1.7.2009
background concentrations	inserted by 44/2007 s 4(2)	10.12.2007
Board	inserted by 43/2002 s 4(b)	10.4.2003
cause	inserted by 44/2007 s 4(3)	1.7.2009
chemical substance	inserted by 44/2007 s 4(3)	10.12.2007
Chief Executive	inserted by 43/2002 s 4(c) substituted by 14/2008 s 4	10.4.2003 7.8.2008
council	substituted by 21/2005 s 5(2)	1.7.2005
domestic partner	inserted by 43/2006 s 94(1)	1.6.2007
environmental nuisance	amended by 21/2005 s 5(3), (4)	1.7.2005
<i>the Forum</i>	<i>deleted by 100/1995 s 3(b)</i>	<i>4.4.1996</i>
holding company	inserted by 44/2007 s 4(4)	1.7.2009
liability	inserted by 44/2007 s 4(5)	1.7.2009
occupier	substituted by 21/2005 s 5(5)	1.7.2005
pollutant	amended by 21/2005 s 5(6)	1.7.2005
prescribed person	inserted by 21/2005 s 5(7)	1.7.2005
related body corporate	amended by 21/2005 s 5(8)	1.7.2005
remediate	inserted by 44/2007 s 4(6)	20.11.2008
sensitive use	inserted by 44/2007 s 4(7)	20.11.2008
site	inserted by 44/2007 s 4(8)	10.12.2007
site contamination	inserted by 44/2007 s 4(8)	10.12.2007

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site contamination assessment order	inserted by 44/2007 s 4(8)	1.7.2009
site contamination audit	inserted by 44/2007 s 4(8)	20.11.2008
site contamination auditor	inserted by 44/2007 s 4(8)	10.12.2007
site contamination audit report	inserted by 44/2007 s 4(8)	20.11.2008
site contamination audit statement	inserted by 44/2007 s 4(8)	20.11.2008
site contamination consultant	inserted by 44/2007 s 4(8)	10.12.2007
site remediation order	inserted by 44/2007 s 4(8)	1.7.2009
spouse	substituted by 43/2006 s 94(2)	1.6.2007
undertake	inserted by 21/2005 s 5(9)	1.7.2006
waste	substituted by 21/2005 s 5(10)	1.7.2005
water	substituted by 44/2007 s 4(9)	10.12.2007
s 3(2)	amended by 43/2006 s 94(3)	1.6.2007
s 5		
s 5(1)	substituted by 21/2005 s 6	1.7.2005
s 5A	inserted by 21/2005 s 7	1.7.2005
s 5B	inserted by 44/2007 s 5	10.12.2007
s 7		
s 7(2)	(b) and (c) deleted by 43/2002 s 5	10.4.2003
s 7(3)	amended by 36/1999 Sch 4 cl 19	29.7.1999
s 7(4)	amended by 21/2005 s 8	1.7.2005
s 9		
s 9(2)	substituted by 21/2005 s 9	1.7.2006
Pt 2		
s 10		
s 10(1)	amended by 44/2007 s 6	1.7.2009
s 10(2)	amended by 100/1995 s 4	4.4.1996
	amended by 21/2005 s 10	1.7.2005
s 10A	inserted by 35/2003 Sch cl 6(a)	24.11.2003
	substituted by 60/2007 Sch 1 cl 17	6.11.2008
s 10B	inserted by 5/2005 Sch 2 cl 17	1.7.2005
	deleted by 60/2007 Sch 1 cl 17	6.11.2008
Pt 3	heading substituted by 100/1995 s 5	4.4.1996
	heading substituted by 21/2005 s 11	1.7.2005
Pt 3 Div 1		
s 11		
s 11(4)	amended by 22/2010 s 6	18.11.2012
s 12	amended by 11/1997 s 3	1.5.1997
	deleted by 43/2002 s 6	10.4.2003

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s 13		
s 13(1)	substituted by 43/2002 s 7	10.4.2003
s 14	amended by 43/2002 s 8	10.4.2003
	amended by 14/2008 s 5	7.8.2008
<i>s 14A before substitution by 14/2008</i>	<i>inserted by 43/2002 s 9</i>	<i>10.4.2003</i>
<i>s 14A(5)</i>	<i>amended by 21/2005 s 12</i>	<i>1.7.2005</i>
s 14A	substituted by 14/2008 s 6	7.8.2008
s 14B	inserted by 43/2002 s 9	10.4.2003
s 14B(2)	amended by 14/2008 s 7(1)	7.8.2008
s 14B(3)	amended by 14/2008 s 7(2)	7.8.2008
s 14B(3a) and (3b)	inserted by 14/2008 s 7(3)	7.8.2008
<i>s 14B(7)</i>	<i>deleted by 21/2005 s 13</i>	<i>1.7.2005</i>
s 14B(8)	amended by 14/2008 s 7(4)	7.8.2008
s 15		
s 15(1)	<i>deleted by 43/2002 s 10(a)</i>	<i>10.4.2003</i>
s 15(2)	amended by 43/2002 s 10(b)	10.4.2003
	amended by 21/2005 s 14	1.7.2005
s 15(3)—(7)	amended by 43/2002 s 10(c)	10.4.2003
s 16		
s 16(1)	substituted by 43/2002 s 11(a)	10.4.2003
	amended by 35/2008 s 4	1.9.2008
s 16(2)	substituted by 43/2002 s 11(b)	10.4.2003
	amended by 21/2005 s 15(1)	1.7.2005
	substituted by 14/2008 s 8(1)	7.8.2008
s 16(2a)	inserted by 21/2005 s 15(2)	1.7.2005
	substituted by 14/2008 s 8(1)	7.8.2008
s 16(3)	substituted by 43/2002 s 11(b)	10.4.2003
s 16(4) and (5)	amended by 43/2002 s 11(c)	10.4.2003
s 16(6)	amended by 43/2002 s 11(c)	10.4.2003
	amended by 14/2008 s 8(2)	7.8.2008
s 16(6a)	inserted by 14/2008 s 8(3)	7.8.2008
s 16(7)—(11)	amended by 43/2002 s 11(c)	10.4.2003
s 17		
s 17(1)	substituted by 43/2002 s 12(a)	10.4.2003
s 17(2)	amended by 43/2002 s 12(b)	10.4.2003
	amended by 21/2005 s 16	1.7.2005
s 17(3)	amended by 43/2002 s 12(b)	10.4.2003
s 17(4)	inserted by 84/2009 s 115	1.2.2010
<i>s 18 before deletion by 84/2009</i>		
<i>s 18(1) and (3)</i>	<i>amended by 43/2002 s 13</i>	<i>10.4.2003</i>
s 18	<i>deleted by 84/2009 s 116</i>	<i>1.2.2010</i>



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Pt 3 Div 1A	inserted by 21/2005 s 17	1.7.2005
Pt 3 Div 2	substituted by 100/1995 s 6	4.4.1996
s 19		
s 19(4)	substituted by 43/2002 s 14	10.4.2003
s 19(5)	<i>substituted by 43/2002 s 14</i> <i>deleted by 14/2008 s 9</i>	<i>10.4.2003</i> <i>7.8.2008</i>
Pt 3 Div 3		
s 24		
s 24(3)	amended by 30/1995 Sch 4 cl (a) amended by 43/2002 s 15 amended by 21/2005 s 18	1.7.1995 10.4.2003 1.7.2006
s 24(4)	amended by 30/1995 Sch 4 cl (b)	1.7.1995
s 24(5)	<i>deleted by 100/1995 s 7</i>	<i>4.4.1996</i>
Pt 4		
s 25		
s 25(4)	amended by 21/2005 s 19(1), (2)	1.7.2005
Pt 5		
s 27		
s 27(2)	(iii) deleted by 21/2005 s 20(1) amended by 21/2005 s 20(2)	1.7.2005 1.7.2005
s 27(3)	amended by 21/2005 s 20(3)	1.7.2005
s 27(4)	amended by 21/2005 s 20(4)	1.7.2005
s 28		
s 28(3)	substituted by 21/2005 s 21(1)	1.7.2005
s 28(3a)	inserted by 100/1995 s 8(a) substituted by 43/2002 s 16	4.4.1996 10.4.2003
s 28(5)	substituted by 100/1995 s 8(b)	4.4.1996
s 28(6)	amended by 100/1995 s 8(c) amended by 21/2005 s 21(2)	4.4.1996 1.7.2005
s 28(7)	<i>deleted by 21/2005 s 21(3)</i>	<i>1.7.2005</i>
s 28(8)	amended by 21/2005 s 21(4)	1.7.2005
s 28(9)	substituted by 21/2005 s 21(5)	1.7.2005
s 28(10)	<i>amended by 100/1995 s 8(d)</i> <i>deleted by 21/2005 s 21(5)</i>	<i>4.4.1996</i> <i>1.7.2005</i>
s 28A	<i>inserted by 1/1995 Sch 2 cl 1(a)</i> <i>deleted by 21/2005 s 22</i>	<i>2.3.1997</i> <i>1.7.2005</i>
s 29		
s 29(1a) and (1b)	inserted by 1/1995 Sch 2 cl 1(b) substituted by 21/2005 s 23	2.3.1997 1.7.2005
s 29(2)	amended by 1/1995 Sch 2 cl 1(c)	2.3.1997
s 31		
s 31(1)	substituted by 100/1995 s 9	4.4.1996
s 34		

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s 34(1)	amended by 21/2005 s 24(1)	1.7.2005
s 34(2)	amended by 21/2005 s 24(2)	1.7.2005
s 34(3)	amended by 21/2005 s 24(3)	1.7.2005
Pt 6		
s 36		
s 36(1)	s 36 redesignated as s 36(1) by 21/2005 s 25	1.7.2005
s 36(2)—(4)	inserted by 21/2005 s 25	1.7.2005
s 37	amended by 21/2005 s 26	1.7.2005
s 39		
s 39(1)	substituted by 21/2005 s 27(1)	1.7.2006
s 39(1a)	inserted by 35/1997 s 5	2.7.1997
	amended by 34/2004 Sch 4 cl 5	1.7.2005
s 39(1b)	inserted by 35/1997 s 5	2.7.1997
s 39(3)	amended by 21/2005 s 27(2), (3)	1.7.2006
s 39(4)—(7)	inserted by 21/2005 s 27(4)	1.7.2006
s 42		
s 42(1)	s 42 redesignated as s 42(1) by 63/1996 s 12(a)	2.1.1997
s 42(2)	inserted by 63/1996 s 12(a)	2.1.1997
s 43		
s 43(4a)	inserted by 21/2005 s 28(1)	1.7.2005
s 43(5)	amended by 21/2005 s 28(2)	1.7.2005
s 43(6)	substituted by 21/2005 s 28(3)	1.7.2005
s 45		
s 45(3)	amended by 1/1995 Sch 2 cl 1(d)	2.3.1997
	amended by 21/2005 s 29	1.7.2005
s 46		
s 46(1)	amended by 21/2005 s 30(1)	1.7.2006
s 46(1a)	inserted by 35/1997 s 6(a)	2.7.1997
	amended by 34/2004 Sch 4 cl 6	1.7.2005
s 46(4)	amended by 35/1997 s 6(b)	2.7.1997
s 46(4a)	inserted by 21/2005 s 30(2)	1.7.2006
s 46(5a)	inserted by 21/2005 s 30(3)	1.7.2006
s 46(7) and (8)	inserted by 21/2005 s 30(4)	1.7.2006
s 47		
s 47(1)	amended by 63/1996 s 12(b)	2.1.1997
	amended by 35/1997 s 7	2.7.1997
	amended by 1/2004 Sch 1 cl 2	7.5.2004
	amended by 34/2004 Sch 4 cl 7	1.7.2005
	amended by 21/2005 s 31	1.7.2005
s 47(2a)	inserted by 63/1996 s 12(c)	2.1.1997
s 48		
s 48(2a)	inserted by 21/2005 s 32	1.7.2005
s 50A	inserted by 16/2001 s 5	14.6.2001

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s 50B	inserted by 35/2008 s 5	1.9.2008
s 51		
s 51(1)	amended by 21/2005 s 33(1)	1.7.2005
s 51(2)	amended by 21/2005 s 33(2)	1.7.2005
s 52		
s 52(1)	amended by 21/2005 s 34	1.7.2005
s 52A	inserted by 21/2005 s 35	1.7.2005
s 53	amended by 21/2005 s 36	1.7.2005
s 54		
s 54(1)	amended by 21/2005 s 37(1), (2)	1.7.2005
ss 54A and 54B	inserted by 21/2005 s 38	1.7.2005
s 54C	inserted by 35/2008 s 6	1.9.2008
s 57	amended by 1/2004 Sch 1 cl 3	7.5.2004
Pt 6A	inserted by 22/2010 s 7	18.11.2012
Pt 8		
Pt 8 Div 1		
s 61	substituted by 35/1997 s 8	2.7.1997
s 61(1)		
Water Resources Minister	amended by 34/2004 Sch 4 cl 8	1.7.2005
s 61A	inserted by 35/1997 s 9	2.7.1997
s 62	substituted by 35/1997 s 10	2.7.1997
s 62(1)	amended by 34/2004 Sch 4 cl 9	1.7.2005
s 64		
s 64(1)	amended by 35/1997 s 11(a), (b)	2.7.1997
s 64(1a)	inserted by 35/1997 s 11(c)	2.7.1997
	amended by 34/2004 Sch 4 cl 10(1), (2)	1.7.2005
s 64(1b)	inserted by 35/1997 s 11(c)	2.7.1997
s 64(9)	inserted by 35/1997 s 11(d)	2.7.1997
	amended by 34/2004 Sch 4 cl 10(3)	1.7.2005
ss 64A—64D	inserted by 35/1997 s 12	2.7.1997
Pt 8 Div 2		
s 64E	inserted by 35/2008 s 7	1.9.2008
s 65		
approved collection depot	inserted by 35/2008 s 8(1)	1.9.2008
approved refund marking	inserted by 35/2008 s 8(1)	1.9.2008
beverage	substituted by 35/2008 s 8(1)	1.9.2008
category A container	substituted by 35/2008 s 8(1)	1.9.2008
category B container	substituted by 35/2008 s 8(1)	1.9.2008
collection area	deleted by 35/2008 s 8(1)	1.9.2008

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collection depot	substituted by 35/2008 s 8(1)	1.9.2008
container	substituted by 35/2008 s 8(1)	1.9.2008
corresponding law	inserted by 35/2008 s 8(1)	1.9.2008
Food Standards Code	inserted by 35/2008 s 8(1)	1.9.2008
<i>refund marking</i>	<i>deleted by 35/2008 s 8(2)</i>	<i>1.9.2008</i>
<i>spirit-based beverage</i>	<i>deleted by 35/2008 s 8(3)</i>	<i>1.9.2008</i>
spiritous liquor	inserted by 35/2008 s 8(3)	1.9.2008
super collector	inserted by 35/2008 s 8(3)	1.9.2008
waste management arrangement	inserted by 35/2008 s 8(3)	1.9.2008
wine	inserted by 35/2008 s 8(3)	1.9.2008
<i>wine-based beverage</i>	<i>deleted by 35/2008 s 8(3)</i>	<i>1.9.2008</i>
s 66	amended by 35/2008 s 9	1.9.2008
ss 68 and 69	substituted by 35/2008 s 10	1.9.2008
ss 69A—69D	inserted by 35/2008 s 10	1.9.2008
s 70		
s 70(1)	amended by 35/2008 s 11(1), (2)	1.9.2008
s 70(2)	substituted by 35/2008 s 11(3)	1.9.2008
s 71	substituted by 35/2008 s 12	1.9.2008
s 71A	inserted by 35/2008 s 12	1.9.2008
s 72		
s 72(3)	amended by 35/2008 s 13(1)	1.9.2008
s 72(4)	amended by 35/2008 s 13(2)	1.9.2008
<i>Pt 8 Div 3</i>	<i>deleted by 35/2008 s 14</i>	<i>1.9.2008</i>
Pt 9		
s 79		
s 79(1)	amended by 43/2002 s 17(a), (b)	10.4.2003
s 79(2)	amended by 43/2002 s 17(c)	10.4.2003
s 80		
s 80(1)	amended by 43/2002 s 18(a), (b)	10.4.2003
s 80(2)	amended by 43/2002 s 18(c)	10.4.2003
s 82		
s 82(1)	s 82 amended and redesignated as s 82(1) by 21/2005 s 39(1), (2)	1.7.2006
s 82(2)	inserted by 21/2005 s 39(2)	1.7.2006
s 83		
s 83(1)	amended by 43/2002 s 19	10.4.2003
	amended by 21/2005 s 40(1), (2)	1.7.2005
s 83(2)	amended by 21/2005 s 40(3), (4)	1.7.2005
s 83A	inserted by 44/2007 s 7	1.7.2009
s 84		

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s 84(1a)	inserted by 35/1997 s 13	2.7.1997
	substituted by 44/2007 s 8	1.7.2009
Pt 10		
s 85		
s 85(1)	amended by 21/2005 s 41(1)	1.7.2005
s 85(3)	amended by 21/2005 s 41(2)	1.7.2005
s 86		
s 86(1)	amended by 21/2005 s 42	1.7.2005
s 87		
s 87(1)	amended by 21/2005 s 43(1)—(4)	1.7.2005
s 87(2)	amended by 44/2007 s 9	1.7.2009
s 87(3)	amended by 21/2005 s 43(5)	1.7.2005
s 87(8) and (9)	inserted by 21/2005 s 43(6)	1.7.2005
s 88		
s 88(1)	amended by 44/2007 s 10	1.7.2009
s 90		
s 90(1)	amended by 21/2005 s 44(1), (2)	1.7.2005
s 90(2)	amended by 21/2005 s 44(3)	1.7.2005
s 91		
s 91(2)	amended by 21/2005 s 45	1.7.2005
s 93		
s 93(1)	amended by 21/2005 s 46(1)	1.7.2005
s 93(2)	amended by 21/2005 s 46(2)—(4)	1.7.2005
s 93(2aa)	inserted by 21/2005 s 46(5)	1.7.2005
s 93(2a)	inserted by 35/1997 s 14	2.7.1997
	amended by 34/2004 Sch 4 cl 11(1), (2)	1.7.2005
	amended by 21/2005 s 46(6)	1.7.2005
s 93(2b)	inserted by 35/1997 s 14	2.7.1997
s 93(5)	amended by 21/2005 s 46(7)	1.7.2005
s 93(6)	amended by 21/2005 s 46(8), (9)	1.7.2005
s 93(7)	substituted by 21/2005 s 46(10)	1.7.2005
s 93(8)	amended by 21/2005 s 46(11)	1.7.2005
s 93(8a) and (8b)	inserted by 21/2005 s 46(12)	1.7.2005
s 93A	inserted by 21/2005 s 47	1.7.2005
s 94		
s 94(1)	amended by 21/2005 s 48(1)—(3)	1.7.2005
s 94(2)	amended by 21/2005 s 48(4), (5)	1.7.2005
s 94(3)	amended by 21/2005 s 48(6)	1.7.2005
s 94(4)	amended by 21/2005 s 48(7), (8)	1.7.2005
s 94(4a)	inserted by 21/2005 s 48(9)	1.7.2005
	amended by 35/2008 s 15	1.9.2008
s 94(4b)	inserted by 21/2005 s 48(9)	1.7.2005
s 94(5)	amended by 21/2005 s 48(10)	1.7.2005

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s 94(6)	amended by 21/2005 s 48(11)	1.7.2005
s 94(7)	substituted by 21/2005 s 48(12)	1.7.2005
s 95		
s 95(1)	amended by 21/2005 s 49(1)	1.7.2005
s 95(2)	substituted by 21/2005 s 49(2)	1.7.2005
s 95(3)	amended by 21/2005 s 49(3)	1.7.2005
s 95(4)	amended by 21/2005 s 49(4), (5)	1.7.2005
s 95(4a) and (4b)	inserted by 21/2005 s 49(6)	1.7.2005
s 95(5)	amended by 21/2005 s 49(7), (8)	1.7.2005
s 96		
s 96(1)	amended by 21/2005 s 50(1), (2)	1.7.2005
s 96(2)	amended by 21/2005 s 50(3)	1.7.2005
s 96(3)	amended by 21/2005 s 50(4)	1.7.2005
s 96(4)	substituted by 21/2005 s 50(5)	1.7.2005
s 97		
s 97(1)	amended by 21/2005 s 51(1)	1.7.2005
s 97(2)	substituted by 21/2005 s 51(2)	1.7.2005
s 97(3)	amended by 21/2005 s 51(3)	1.7.2005
s 97(4)	amended by 21/2005 s 51(4), (5)	1.7.2005
s 98		
s 98(2)	amended by 21/2005 s 52	1.7.2005
s 99		
s 99(1)	amended by 21/2005 s 53(1), (2)	1.7.2005
s 99(2)	amended by 21/2005 s 53(3), (4)	1.7.2005
s 99(2a)	inserted by 35/1997 s 15	2.7.1997
	amended by 34/2004 Sch 4 cl 12(1), (2)	1.7.2005
	amended by 21/2005 s 53(5)	1.7.2005
s 99(2b)	inserted by 35/1997 s 15	2.7.1997
s 99(5)	amended by 21/2005 s 53(6)	1.7.2005
s 99(6)	amended by 21/2005 s 53(7), (8)	1.7.2005
s 99(7)	substituted by 21/2005 s 53(9)	1.7.2005
s 99(9) and (10)	inserted by 21/2005 s 53(10)	1.7.2005
s 101		
s 101(1)	amended by 21/2005 s 54(1)	1.7.2005
	amended by 35/2008 s 16(1)	1.9.2008
s 101(3)	amended by 35/2008 s 16(2)	1.9.2008
s 101(4)	amended by 35/2008 s 16(3)	1.9.2008
s 101(5)	amended by 35/2008 s 16(4)	1.9.2008
s 101(5a)	inserted by 21/2005 s 54(2)	1.7.2005
	amended by 35/2008 s 16(5)	1.9.2008
s 101(5b)	inserted by 21/2005 s 54(2)	1.7.2005
s 101(6)	amended by 35/2008 s 16(6)	1.9.2008
s 101(7) and (8)	substituted by 35/2008 s 16(7)	1.9.2008

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s 102		
s 102(1)	amended by 35/2008 s 17(1)	1.9.2008
s 102(2)	substituted by 35/2008 s 17(2)	1.9.2008
s 102(3)	amended by 35/2008 s 17(3)	1.9.2008
s 103		
s 103(1)	substituted by 35/2008 s 18(1)	1.9.2008
s 103(2a)	inserted by 21/2005 s 55	1.7.2005
	substituted by 35/2008 s 18(2)	1.9.2008
s 103(2b)	inserted by 21/2005 s 55	1.7.2005
	amended by 35/2008 s 18(3)	1.9.2008
s 103(3)	amended by 35/2008 s 18(4), (5)	1.9.2008
Pt 10A	inserted by 44/2007 s 11	10.12.2007—except Divs 1—3—1.7.2009
Pt 10A Div 3		
s 103N		
s 103N(1)	amended by 35/2008 s 19	1.9.2008
Pt 10A Div 4	inserted by 44/2007 s 11	20.11.2008—except ss 103U & 103W—1.7.2009
Pt 11		
heading	substituted by 21/2005 s 56	1.7.2006
s 104		
s 104(1)	amended by 44/2007 s 12	1.7.2009
s 104(7)	amended by 21/2005 s 57(1)	1.7.2005
	amended by 17/2006 s 110(1)	4.9.2006
s 104(8)	amended by 17/2006 s 110(2)	4.9.2006
s 104(11)	amended by 17/2006 s 110(3), (4)	4.9.2006
s 104(14)	amended by 17/2006 s 110(5)	4.9.2006
s 104(23)	inserted by 21/2005 s 57(2)	1.7.2005
s 104A	inserted by 21/2005 s 58	1.7.2006
Pt 12		
s 105		
s 105(2)	substituted by 21/2005 s 59(1)	1.7.2005
s 105(3)	amended by 21/2005 s 59(2)	1.7.2005
s 105(4)	amended by 21/2005 s 59(3), (4)	1.7.2005
Pt 13		
s 106		
s 106(1)	amended by 21/2005 s 60(1), (2)	1.7.2005
	amended by 35/2008 s 20	1.9.2008
	amended by 44/2007 s 13(1)	1.7.2009
	amended by 22/2010 s 8	18.11.2012
s 106(3)	amended by 44/2007 s 13(2)	1.7.2009
s 108		
s 108(1)	s 108 redesignated as s 108(1) by 21/2005 s 61	1.7.2005

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s 108(2)	inserted by 21/2005 s 61	1.7.2005
Pt 14		
s 109		
s 109(3)	amended by 21/2005 s 62(1)—(3)	1.7.2005
	amended by 21/2005 s 62(4)	1.7.2006
	amended by 44/2007 s 14	20.11.2008 except (i)—(id)—1.7.2009
	amended by 22/2010 s 9	18.11.2012
s 109(3a)	inserted by 21/2005 s 62(5)	1.7.2005
s 109(7)	inserted by 21/2005 s 62(6)	1.7.2005
Pt 15		
s 110	amended by 88/2000 Sch 1 cl 1	2.4.2001
	amended by 23/2004 Sch 1	1.9.2004
s 111		
s 111(4)	inserted by 21/2005 s 63	1.7.2005
s 112		
s 112(3)	amended by 35/2003 Sch cl 6(b)	24.11.2003
s 112(5) and (6)	inserted by 21/2005 s 64	1.7.2005
s 115	substituted by 35/2008 s 21	1.9.2008
s 116	amended by 21/2005 s 65(1)—(3)	1.7.2005
s 117		
s 117(2)	amended by 43/2002 s 20(a)	10.4.2003
s 117(3)	amended by 43/2002 s 20(b)	10.4.2003
s 118		
s 118(1)	amended by 35/1997 s 16	2.7.1997
	amended by 21/2005 s 66(1)	1.7.2005
s 118(2)	amended by 21/2005 s 66(2)	1.7.2005
	amended by 35/2008 s 22	1.9.2008
s 119	amended by 21/2005 s 67	1.7.2005
s 120	substituted by 21/2005 s 68	1.7.2005
s 120A	inserted by 11/1997 s 4	1.5.1997
	substituted by 21/2005 s 68	1.7.2005
<i>s 122 before deletion by 84/2009</i>		
s 122(1)	<i>amended by 43/2002 s 21</i>	<i>10.4.2003</i>
	<i>amended by 21/2005 s 69(1)</i>	<i>1.7.2005</i>
s 122(3)	<i>amended by 21/2005 s 69(2)</i>	<i>1.7.2005</i>
s 122	<i>deleted by 84/2009 s 117</i>	<i>1.2.2010</i>
s 124		
s 124(1)	substituted by 21/2005 s 70(1)	1.7.2006
s 124(2)	amended by 21/2005 s 70(2)	1.7.2006
s 124(4)	amended by 21/2005 s 70(3), (4)	1.7.2006
s 125	substituted by 21/2005 s 71	1.7.2005



s 126	amended by 21/2005 s 72	1.7.2006
s 127		
s 127(1)	amended by 21/2005 s 73	1.7.2006
s 128		
s 128(1)	amended by 21/2005 s 74	1.7.2006
ss 129 and 130	substituted by 21/2005 s 75	1.7.2005
s 133		
s 133(1)	amended by 21/2005 s 76(1)	1.7.2006
s 133(1a)	inserted by 43/2002 s 22(a)	10.4.2003
	amended by 21/2005 s 76(2), (3)	1.7.2006
s 133(1b)	inserted by 43/2002 s 22(a)	10.4.2003
	amended by 21/2005 s 76(4)	1.7.2006
s 133(3)	inserted by 43/2002 s 22(b)	10.4.2003
s 135	amended by 35/1997 s 17	2.7.1997
	substituted by 21/2005 s 77	1.7.2005
s 136	amended by 21/2005 s 78	1.7.2005
s 137A	inserted by 21/2005 s 79	1.7.2005
s 138		
s 138(1)	amended by 35/1997 s 18	2.7.1997
	amended by 21/2005 s 80	1.7.2005
s 139		
s 139(1)	amended by 35/1997 s 19(a)	2.7.1997
	amended by 21/2005 s 81(1), (2)	1.7.2005
s 139(2)	amended by 21/2005 s 81(3), (4)	1.7.2005
s 139(4)	substituted by 21/2005 s 81(5)	1.7.2005
s 139(6)	amended by 35/1997 s 19(b)	2.7.1997
	amended by 21/2005 s 81(6)	1.7.2005
s 140		
s 140(2)	amended by 21/2005 s 82	1.7.2005
s 140(8)	<i>deleted by 18/1994 Sch cl 2</i>	1.5.1995
Sch 1		
Pt A		
cl 1		
cl 1(1)	amended by 181/1994 r 4(a)	1.5.1995
cl 1(2)	substituted by 181/1994 r 4(b)	1.5.1995
cl 1(6)	amended by 181/1994 r 4(c)	1.5.1995
cl 2		
cl 2(12)	amended by 181/1994 r 4(d)	1.5.1995
cl 2(14) and (15)	inserted by 181/1994 r 4(e)	1.5.1995
cl 3		
cl 3(2)	substituted by 181/1994 r 4(f)	1.5.1995
	amended by 161/2001 r 4(a)	28.6.2001
cl 3(3)	substituted by 181/1994 r 4(f)	1.5.1995

**Environment Protection Act 1993—1.1.2013 to 29.11.2013**

## Legislative history

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	(e)(i)(A) deleted by 35/2008 s 23(1)	1.9.2008
	amended by 35/2008 s 23(2), (3)	1.9.2008
cl 3(4)	amended by 181/1994 r 4(g)	1.5.1995
	amended by 21/2005 s 83(1)	1.7.2005
cl 4	substituted by 181/1994 r 4(h)	1.5.1995
cl 5	heading amended by 66/2001 Sch cl 1(a)	1.7.2002
cl 5(1)	substituted by 181/1994 r 4(i)	1.5.1995
	amended by 161/2001 r 4(b)	28.6.2001
cl 5(2)	<i>amended by 181/1994 r 4(j)</i>	<i>1.5.1995</i>
	<i>deleted by 66/2001 Sch cl 1(b)</i>	<i>1.7.2002</i>
cl 5(3)	amended by 181/1994 r 4(k)	1.5.1995
cl 5(4)	inserted by 181/1994 r 4(l)	1.5.1995
	amended by 33/1995 r 4(a), (b)	1.5.1995
	amended by 161/2001 r 4(c)	28.6.2001
cl 6		
cl 6(1)	substituted by 181/1994 r 4(m)	1.5.1995
	amended by 252/2007 r 4	29.11.2007
cl 6(4)	amended by 181/1994 r 4(n)	1.5.1995
	amended by 33/1995 r 4(c)	1.5.1995
cl 6(5)	amended by 181/1994 r 4(o)	1.5.1995
cl 6(6)	substituted by 181/1994 r 4(p)	1.5.1995
cl 6(9)	amended by 181/1994 r 4(q)	1.5.1995
cl 6(10)	amended by 181/1994 r 4(r)	1.5.1995
cl 6(11)	inserted by 181/1994 r 4(s)	1.5.1995
	amended by 161/2001 r 4(d)	28.6.2001
cl 7		
cl 7(2)	substituted by 229/2001 r 4	11.10.2001
	<b>amended by 40/2012 Sch 6 cl 5</b>	<b>1.1.2013</b>
cl 7(3)	amended by 181/1994 r 4(t), (u)	1.5.1995
cl 7(4)	amended by 181/1994 r 4(v)	1.5.1995
cl 7(6) and (7)	inserted by 181/1994 r 4(w)	1.5.1995
cl 8		
cl 8(1)	amended by 181/1994 r 4(x)	1.5.1995
cl 8(2)	amended by 181/1994 r 4(y)	1.5.1995
cl 8(3)	substituted by 181/1994 r 4(z)	1.5.1995
	amended by 21/2005 s 83(2)	1.7.2005
cl 8(4)	substituted by 181/1994 r 4(z)	1.5.1995
cl 8(5)	amended by 181/1994 r 4(aa)	1.5.1995
cl 8(6)	amended by 181/1994 r 4(ab)	1.5.1995
cl 8(7)	inserted by 181/1994 r 4(ac)	1.5.1995

*Sch 2 before deletion by  
21/2005*

*cl 5*

<i>cl 5(3a)</i>	<i>inserted by 11/1997 s 5</i>	<i>1.5.1995</i>
<i>cl 5(10)</i>	<i>inserted by 35/1997 s 20(a)</i>	<i>2.7.1997</i>
<i>cl 6</i>	<i>inserted by 35/1997 s 20(b)</i>	<i>2.7.1997</i>
<i>Sch 2</i>	<i>deleted by 21/2005 s 84</i>	<i>1.7.2005</i>

## Transitional etc provisions associated with Act or amendments

### *Environment Protection (Miscellaneous) Amendment Act 2005,* *Sch 1—Transitional provisions*

#### 1—Interpretation

In this Schedule—

*Minister* means the Minister responsible for the administration of the principal Act;

*principal Act* means the *Environment Protection Act 1993*.

#### 2—Environment, Resources and Development Committee to conduct inquiry into administering agencies

The Environment, Resources and Development Committee of the Parliament must, not less than 2 years after the commencement of section 17, inquire into, consider and report on the role and functions of administering agencies (other than the Environment Protection Authority) under the principal Act as amended by this Act.

#### 3—Amendment of environment protection policies by notice

- (1) The Minister may, by notice in the Gazette, amend an environment protection policy—
  - (a) to substitute, for references in the policy to a "Category C offence", references to a "Category D offence"; or
  - (b) to add to the policy references to another "administering agency" so that they appear in the alternative to references to the "Authority".
- (2) An amendment under subclause (1) comes into operation on the day fixed in the notice of the amendment.

#### 4—Environment protection policies in force under section 28A

The following provisions apply in relation to an environment protection policy in operation immediately before the commencement of section 22 by virtue of section 28A(1) of the principal Act:

- (a) on the commencement of section 22, the environment protection policy continues in operation as an environment protection policy made under the principal Act;
- (b) after the commencement of section 22, the normal procedure for making environment protection policies does not apply in relation to a draft environment protection policy—
  - (i) that revokes and replaces the environment protection policy if the Minister is satisfied that—

- (A) the draft environment protection policy covers the same subject matter as the policy it is revoking; and
  - (B) the only substantive changes relate to the enforcement of the policy (including the imposition of penalties for contravention of the policy) or are otherwise necessary or appropriate for the application of the policy in this jurisdiction; or
- (ii) that revokes the environment protection policy if the Minister is satisfied that an environment protection policy is not required for the implementation of the relevant national environment protection measure;
- (c) the Minister may refer a draft policy referred to in paragraph (b) directly to the Governor.

***Environment Protection (Miscellaneous) Amendment Act 2008,***  
***Sch 1—Transitional provisions***

**1—Interpretation**

In this Schedule—

*principal Act* means the *Environment Protection Act 1993*.

**2—Classes of containers approved under repealed provisions**

- (1) An approval of a class of containers as category A containers in force under Part 8 Division 2 of the principal Act immediately before the commencement of this clause will, on that commencement, continue as an approval of the class of containers as category A containers under section 68 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.
- (2) An approval of a class of containers as category B containers in force under Part 8 Division 2 of the principal Act immediately before the commencement of this clause will, on that commencement, continue as an approval of the class of containers as category B containers under section 68 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.

**3—Refund markings approved under repealed provisions**

An approval of a refund marking in relation to a class of containers in force under Part 8 Division 2 of the principal Act immediately before the commencement of this clause will, on that commencement, continue as if it were a marking specified by the Authority as a condition of approval in relation to that class of containers under section 68 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.

**4—Continuation of collection depot approvals**

An approval of a collection depot in force under Part 8 Division 2 of the principal Act immediately before the commencement of this clause will, on that commencement, continue as an approval in respect of the collection depot under section 69 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.

## 5—Super collectors

A person who carried on a business as a super collector immediately before the commencement of this clause is, if the person has made an application in a manner and form determined by the Authority accompanied by the prescribed fee and any information requested by the Authority, entitled to the grant, on that commencement, of an approval under section 69 of the principal Act as amended by this Act to carry on business as a super collector subject to conditions determined by the Authority.

### *Statutes Amendment (Budget 2010) Act 2010*

## 10—Transitional provision

If, immediately before the commencement of this section, a person holds an environmental authorisation granted or renewed by the Authority under the *Environment Protection Act 1993* purportedly as a sustainability licence or accredited sustainability licence, the environmental authorisation will be taken to have been endorsed under Part 6A of that Act as a sustainability licence on the basis of the measures, auditing programme and review programme specified in connection with the purported sustainability licence or accredited sustainability licence.

## Historical versions

Reprint No 1—1.5.1995  
Reprint No 2—1.7.1995  
Reprint No 3—4.4.1996  
Reprint No 4—2.1.1997  
Reprint No 5—2.3.1997  
Reprint No 7—1.5.1997  
Reprint No 8—2.7.1997  
Reprint No 9—29.7.1999  
Reprint No 10—2.4.2001  
Reprint No 11—14.6.2001  
Reprint No 12—28.6.2001  
Reprint No 13—11.10.2001  
Reprint No 14—1.7.2002  
Reprint No 15—10.4.2003  
Reprint No 16—24.11.2003  
7.5.2004  
1.9.2004  
1.7.2005  
1.7.2006  
4.9.2006  
1.6.2007  
29.11.2007  
10.12.2007  
7.8.2008  
1.9.2008

6.11.2008  
20.11.2008  
1.7.2009  
1.2.2010  
18.11.2012

## **Appendix—Divisional penalties and expiation fees**

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

<b>Division</b>	<b>Maximum imprisonment</b>	<b>Maximum fine</b>	<b>Expiation fee</b>
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.*