

South Australia

# Environment Protection (Waste Reform) Amendment Act 2017

An Act to amend the *Environment Protection Act 1993*; and to make a consequential amendment to the *Motor Vehicles Act 1959*.

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### Part 1—Preliminary

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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 (Waste Reform) Amendment Act 2017*.

#### 2—Commencement

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

#### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Environment Protection Act 1993*

#### 4—Amendment of section 3—Interpretation

- (1) Section 3(1), after the definition of *appropriate person* insert:

*approved recovered resource*—see section 4A;

- (2) Section 3(1), after the definition of *director* insert:

*disposal*, of waste or other matter—see subsection (4);

- (3) Section 3(1), definition of *pollutant*, (d)—delete paragraph (d) of the definition and substitute:
- (d) anything declared by regulation to be a pollutant for the purposes of this Act (following consultation by the Minister on the regulation with prescribed bodies in accordance with the regulations); or
  - (e) anything declared by an environment protection policy to be a pollutant for the purposes of this Act,
- (4) Section 3(1), definition of *pollutant*—after "not to be a pollutant" insert:  
for the purposes of this Act
- (5) Section 3(1), definition of *pollute*, (a)—after "deposit" insert:  
, dispose of
- (6) Section 3(1), definition of *pollute*, (b)—after "depositing," insert:  
disposal,
- (7) Section 3(1), after the definition of *repealed environment law* insert:  
*resource recovery*, in relation to waste or other matter, means—
- (a) reusing the waste or matter; or
  - (b) recycling the waste or matter; or
  - (c) recovering energy or other resources from the waste or matter;
- (8) Section 3(1), after the definition of *spouse* insert:  
*treatment*, of waste or other matter—see subsection (4);  
*unauthorised stockpiling*, of waste or other matter—see subsection (5);
- (9) Section 3(1), definition of *vehicle*—delete the definition and substitute:  
*vehicle* includes—
- (a) any vessel or aircraft; and
  - (b) a vehicle within the meaning of the *Road Traffic Act 1961*;
- vessel* includes a vessel within the meaning of the *Harbors and Navigation Act 1993*;
- (10) Section 3(1), definition of *waste*—delete the definition and substitute:  
*waste*—see section 4;  
*waste management hierarchy*—see section 4B;  
*waste transport business* means a waste transport business (category A) or a waste transport business (category B), each within the meaning of Schedule 1 Part A clause 3;
- (11) Section 3(1), after the definition of *water* insert:  
*water protection area*—see section 61;

(12) Section 3—after subsection (3) insert:

- (4) For the purposes of this Act, unless the contrary intention appears—
- (a) a reference to the *disposal of waste or other matter* includes a reference to stockpiling or abandoning the waste or matter; and
  - (b) a reference to the *treatment of waste or other matter* includes a reference to the treatment of waste or other matter for resource recovery; and
  - (c) a reference to the *treatment of waste or other matter for resource recovery* is a reference to the treatment of the waste or matter in some way—
    - (i) to recover material from the waste or matter that may be reused or recycled; or
    - (ii) to recover energy or other resources from the waste or matter; or
    - (iii) to prepare the waste for further treatment to recover material from the waste or matter that may be reused or recycled or to recover energy or other resources from the waste or matter,and includes, but is not limited to, sorting, shredding, crushing, compacting or packaging the waste or matter; and
  - (d) a reference to *waste or matter of a particular kind* includes a reference to material that contains waste or matter of that kind to a significant extent.
- (5) For the purposes of this Act, *unauthorised stockpiling* of waste or other matter will be taken to have occurred if a maximum allowable stockpile limit imposed by or under this Act in relation to the waste or other matter has been exceeded.

## **5—Insertion of sections 4 to 4B**

After section 3 insert:

### **4—Waste**

- (1) For the purposes of this Act, *waste* means—
- (a) any discarded, dumped, rejected, abandoned, unwanted or surplus matter, whether or not intended for sale or for purification or resource recovery by a separate operation from that which produced the matter; or
  - (b) any matter declared by regulation to be waste for the purposes of this Act (following consultation by the Minister on the regulation with prescribed bodies in accordance with the regulations); or
  - (c) any matter declared by an environment protection policy to be waste for the purposes of this Act,

whether or not of value.

- (2) However, waste does not include—
- (a) an approved recovered resource whilst it is being dealt with in accordance with the declaration of that resource—see section 4A; or
  - (b) anything declared by regulation or an environment protection policy not to be waste for the purposes of this Act,

even though the resource or the thing so declared might otherwise, but for the declaration, fall within the definition of waste in subsection (1).

#### **4A—Approved recovered resources**

- (1) The Authority may, by notice in the Gazette, declare that specified matter constitutes an *approved recovered resource* for the purposes of this Act and therefore does not, while it is being dealt with in accordance with the declaration, constitute waste for the purposes of this Act.
- (2) Regulations may be made in relation to declarations under this section and may, without limiting the generality of subsection (1), provide for—
- (a) the manner and form of applications for declarations; and
  - (b) application fees relating to declarations; and
  - (c) the criteria against which applications will be determined; and
  - (d) the provision of further information by applicants; and
  - (e) the imposition of conditions of declarations; and
  - (f) the term and renewal of declarations; and
  - (g) the grounds for refusing applications; and
  - (h) the variation or revocation of declarations by further notice in the Gazette; and
  - (i) the circumstances in which declarations may be varied or revoked.

#### **4B—Waste management hierarchy**

In this Act, a reference to the *waste management hierarchy* is a reference to an order of priority for the management of waste in which—

- (a) avoidance of the production of waste; and
- (b) minimisation of the production of waste; and
- (c) reuse of waste; and
- (d) recycling of waste; and

- (e) recovery of energy and other resources from waste; and
- (f) treatment of waste to reduce potentially degrading impacts; and
- (g) disposal of waste in an environmentally sound manner,

are pursued in order with, first, avoidance of the production of waste, and second, to the extent that avoidance is not reasonably practicable, minimisation of the production of waste, and third, to the extent that minimisation is not reasonably practicable, reuse of waste, and so on.

## **6—Amendment and redesignation of section 4—Responsibility for pollution**

- (1) Section 4—delete "or deposited" and substitute:  
    , deposited or disposed of
- (2) Section 4—delete "or depositing" and substitute:  
    , depositing or disposal
- (3) Section 4—redesignate the section as amended by this section as section 5C and relocate it so that it follows section 5B

## **7—Amendment of section 5—Environmental harm**

Section 5(1)(b)—delete paragraph (b) and substitute:

- (b) anything declared by regulation to be environmental harm for the purposes of this Act (following consultation by the Minister on the regulation with prescribed bodies in accordance with the regulations); and
- (c) anything declared by an environment protection policy to be environmental harm for the purposes of this Act.

## **8—Insertion of section 5D**

After section 5C (as redesignated under section 6 of this Act) insert:

### **5D—Liability for certain offences from vehicles**

- (1) If—
  - (a) an activity is carried on—
    - (i) in, at or from a vehicle; or
    - (ii) in connection with the use of a vehicle; and
  - (b) the activity results in a principal offence,

the owner of the vehicle is guilty of an offence against this section and is liable to the same penalty as is prescribed for the principal offence and the expiation fee (if any) that is fixed for the principal offence also applies in relation to the offence against this section.

- (2) However, the owner of a vehicle and the person who committed the principal offence (the *alleged principal offender*) are not both liable through the operation of this section to be found guilty of, or to expiate, an offence arising out of the same circumstances, and consequently a finding of guilt in relation to, or expiation by, the owner exonerates the alleged principal offender and conversely a finding of guilt in relation to, or expiation by, the alleged principal offender exonerates the owner.
- (3) An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a vehicle for an alleged offence against this section involving the vehicle must be accompanied by a notice inviting the owner, if he or she was not the alleged principal offender, to provide the issuing authority specified in the notice, within the period specified in the notice, with a statutory declaration—
- (a) setting out the name and address of the person who the owner believes to have been the alleged principal offender; or
  - (b) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged principal offence and has complied with the *Motor Vehicles Act 1959* or the *Harbors and Navigation Act 1993* (as the case may require) in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).
- (4) If the vehicle is owned by 2 or more persons—
- (a) a prosecution for an offence against this section may be brought against 1 of the owners or against some or all of the owners jointly as co-defendants; and
  - (b) if the case for the prosecution is proved and a defence is not established, the defendant or each of the defendants who does not establish a defence is liable to be found guilty of an offence against this section.
- (5) Before proceedings are commenced against the owner of a vehicle for an offence against this section, the informant must send the owner a notice—
- (a) setting out particulars of the alleged principal offence; and
  - (b) inviting the owner, if he or she was not the alleged principal offender or the owner of the vehicle at the time of the alleged principal offence, to provide the informant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subsection (3)(a) and (b).

- (6) Subsection (5) does not apply to—
- (a) proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or
  - (b) proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the alleged principal offender.
- (7) Subject to subsection (8), in proceedings against the owner of a vehicle for an offence against this section, it is a defence to prove—
- (a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of commission of the alleged principal offence; or
  - (b) that the owner provided the informant with a statutory declaration in accordance with an invitation under this section.
- (8) The defence in subsection (7)(b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.
- (9) If—
- (a) an expiation notice is given to a person named as the alleged principal offender in a statutory declaration under this section; or
  - (b) proceedings are commenced against such a person,
- the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged principal offender.
- (10) The particulars of the statutory declaration provided to the alleged principal offender must not include the address of the person who provided the statutory declaration.
- (11) In proceedings against a person named in a statutory declaration under this section for the offence to which the declaration relates, it will be presumed, in the absence of proof to the contrary, that the person was present in or at the vehicle at the time at which the alleged principal offence was committed.
- (12) In proceedings against the owner of a vehicle or the alleged principal offender for an offence against this Act, an allegation in the information that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.



- (13) For the purposes of this section, an activity consisting of the disposal of waste or other matter to the environment will be presumed, in the absence of proof to the contrary, to have been carried on in connection with the use of a vehicle if the waste or matter has been disposed of to the environment and the vehicle was seen arriving at the place of disposal before the disposal or leaving that place after the disposal.
- (14) This section does not apply in relation to the disposal of waste or other matter by a passenger of a taxi or a train, tram, bus, ferry, passenger ship, or other public transport vehicle, that was being used for a public purpose at the time.
- (15) In this section—
- owner* of a vehicle—
- (a) in the case of a vessel within the meaning of the *Harbors and Navigation Act 1993*, has the same meaning as in section 4(1) of that Act, and includes the operator of the vessel within the meaning of that Act;
  - (b) in the case of a vehicle within the meaning of the *Road Traffic Act 1961*, has the same meaning as in section 5(1) of that Act, and includes the operator of the vehicle within the meaning of that Act;
- principal offence* means—
- (a) an offence against section 34 (contravening a mandatory provision of an environment protection policy); or
  - (b) an offence against—
    - (i) Part 8 Division 2; or
    - (ii) Part 9; or
  - (c) an offence prescribed by regulation.

## 9—Repeal of section 5A

Section 5A—delete the section

## 10—Amendment of section 10—Objects of Act

- (1) Section 10(1)—after paragraph (a) insert:
- (ab) 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
- (2) Section 10(1)(b)—delete "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 substitute:
- in particular, to ensure that, as far as is reasonably practicable, the following measures are taken:

- (3) Section 10(1)(b)(i)(A)—delete subparagraph (A) and substitute:
- (A) by programs to encourage and assist action by industry, public authorities and the community aimed at pollution prevention, clean production and technologies and resource recovery; and
  - (AB) by programs to encourage and assist industry, public authorities and the community to apply the waste management hierarchy; and
- (4) Section 10(1)(b)(i)(B), second dot-point—delete "transportation, treatment and disposal of waste; and" and substitute:
- handling, storage, treatment, transfer, transportation, receipt or disposal of waste and other pollutants;
- (5) Section 10(1)(b)—after subparagraph (i) insert:
- (iaa) to promote the circulation of materials through the waste management process and to support a strong market for recovered resources—
    - (A) by programs to encourage and assist industry, public authorities and the community to engage in resource recovery; and
    - (B) by regulating resource recovery; and
    - (C) by regulating the handling, storage, treatment, transfer, transportation, receipt or disposal of waste or other matter; and
    - (D) by preventing the unauthorised stockpiling of waste or other matter;
- (6) Section 10(1)(b)(ia) to (viii) (inclusive)—delete "; and" wherever occurring and substitute in each case:

;

## **11—Amendment of section 13—Functions of Authority**

Section 13(1)(f)—after "licences" insert:  
or other authorisations

## **12—Amendment of section 27—Nature and contents of environment protection policies**

- (1) Section 27(1)—delete "in accordance with this Division" and substitute:  
as contemplated by this Act or
- (2) Section 27(4)(c)—after "modification, a" insert:  
code,
- (3) Section 27(4)(d)—delete "or another administering agency" and substitute:  
, another administering agency, an authorised officer or a prescribed person or body;

- (4) Section 27—after subsection (4) insert:
- (5) If an environment protection policy refers to a code, standard or other document, the code, standard or other document has effect as if it formed part of the policy.
  - (6) Copies of each environment protection policy and of each code, standard or other document referred to in an environment protection policy must be kept available for inspection by the public, without charge and during ordinary office hours, at an office or offices specified in the regulations.
  - (7) In any legal proceedings, evidence of the contents of an environment protection policy or of a code, 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, code, standard or other document.

### **13—Amendment of section 28—Normal procedure for making policies**

Section 28(8)—delete "subsection (3)" and substitute:

subsection (6)

### **14—Amendment of section 32—Certain amendments may be made by Gazette notice only**

Section 32(1)—after paragraph (b) insert:

- (ba) if the Minister considers it necessary to amend the policy in consequence of—
  - (i) an amendment to this Act or the making, variation or revocation of regulations under this Act or the making, amendment or revocation of another environment protection policy; or
  - (ii) the commencement or amendment of a prescribed Act; or

### **15—Repeal of section 33**

Section 33—delete the section

### **16—Amendment of section 42—Time limit for determination of applications**

Section 42—after subsection (2) insert:

- (3) If an application for an authorisation involves an activity for which a financial assurance under section 51 is required and the financial assurance 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 the Authority receives the prescribed details in relation to the financial assurance.

## 17—Amendment of section 45—Conditions

- (1) Section 45(3)(b)—after subparagraph (ii) insert:
  - (iia) if, in the case of a condition imposing a maximum allowable stockpile limit, the Authority considers it necessary to impose or vary the condition in order to promote the circulation of materials through the waste management process; or
- (2) Section 45(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

  - (a) in the case of a body corporate—\$120 000;
  - (b) in the case of a natural person—\$60 000.

Expiation fee:

  - (a) for a prescribed condition—the corresponding prescribed expiation fee;
  - (b) for any other condition (other than a reporting-deadline condition)—\$1 000.
- (3) Section 45—after subsection (5) insert:
  - (6) Where the holder of an authorisation (including the holder of an authorisation that has been suspended) fails to comply with a reporting-deadline condition, the Authority may, by notice in writing, require the holder to make good the default and, in addition, to pay the Authority the amount prescribed as a penalty for default.
  - (7) A penalty for default payable under subsection (6) is recoverable by the Authority as a debt due to the Authority.
  - (8) If a requirement under a provision of this Act relates to activities carried on under an environmental authorisation, the requirement will, subject to the terms of the provision—
    - (a) apply in relation to such activities, whether the environmental authorisation authorising the activities was granted before or after the commencement of the provision; and
    - (b) prevail over conditions of such an environmental authorisation to the extent of any inconsistency.
  - (9) In this section—

*reporting-deadline condition* means a condition of a kind referred to in section 52(1)(a) requiring a specified report on the results of tests or monitoring to be made to the Authority before a specified date.

## 18—Amendment of section 47—Criteria for grant and conditions of environmental authorisations

- (1) Section 47(2)—before "(3) and (4)" insert:
  - (2b),

(2) Section 47—after subsection (2a) insert:

- (2b) If an application for an environmental authorisation involves an activity for which a financial assurance under section 51 is required, the following provisions apply:
- (a) the Authority must defer its determination of the application under this Act until the applicant provides the Authority with the prescribed details in relation to the financial assurance; and
  - (b) if those details are not provided to the Authority as required, the Authority must, subject to the regulations, refuse the application for environmental authorisation under this Act.

## 19—Substitution of section 51

Section 51—delete the section and substitute:

### 51—Conditions requiring financial assurance

- (1) Subject to this section, the Authority may, by conditions of an environmental authorisation, require the holder of the authorisation to provide the Authority with a financial assurance in the form of any 1 or more of the following:
- (a) a bond;
  - (b) a specified pecuniary sum;
  - (c) a policy of insurance;
  - (d) a letter of credit or a guarantee given by a bank;
  - (e) any other form of security approved by the Authority, to be used, realised or claimed against by the Authority for costs or expenses, or for loss or damage, incurred or suffered by the Authority or any other person in the event of—
    - (f) the holder of the authorisation contravening a requirement imposed by or under this Act; or
    - (g) a failure by the holder of the authorisation to take specified action within a specified period to achieve compliance with this Act.
- (2) The Authority may impose or vary a condition under this section at any time.
- (3) The Authority must, in determining whether to impose or vary a condition under this section or the nature, term or any other particulars of, a financial assurance, have regard to the following:
- (a) if there is a risk of—
    - (i) environmental harm; or
    - (ii) unauthorised stockpiling or abandonment of waste or other matter,

- associated with the activity authorised under the environmental authorisation or any activity previously undertaken at the place to which the authorisation relates—the degree of that risk;
- (b) the likelihood of action being required to make good any resulting environmental damage, to decommission, dismantle or remove stockpiled or abandoned plant or equipment or to deal with any other stockpiled or abandoned waste or other matter;
  - (c) the nature and cost of such action and the length of time such action is likely to take (including following cessation of the activity so authorised);
  - (d) whether the holder of the authorisation has previously contravened this Act (whether or not in connection with the activity authorised under the environmental authorisation) and if so, the nature, number and frequency of the contraventions;
  - (e) the Authority's reasonable estimate of the total of the likely amounts involved in satisfaction of the purposes for which the financial assurance is required;
  - (f) the depreciation of the value of the financial assurance over time;
  - (g) any other matters considered relevant by the Authority or prescribed by regulation.
- (4) The Authority may (without limitation) require a financial assurance to extend to such time as it is satisfied that no clean up or remediation will be required as a result of the activity undertaken under the environmental authorisation (including following cessation of the activity).
- (5) The following provisions apply in relation to a condition requiring a financial assurance in the form of a bond or pecuniary sum:
- (a) the Authority may not require the lodgement of a bond or pecuniary sum representing an amount greater than the Authority's reasonable estimate of the total of the likely costs, expenses, loss and damage that might be incurred or suffered by the Authority or other 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;
  - (b) a pecuniary sum lodged with the Authority 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;

- (c) if the holder of an authorisation fails to satisfy the conditions of discharge or repayment of the bond or pecuniary sum, the Authority—
  - (i) may determine that the whole or part of the amount of the bond or pecuniary sum is forfeited to the Environment Protection Fund;
  - (ii) 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;
  - (iii) 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.
- (6) The following provisions apply in relation to a condition requiring a financial assurance in the form of a policy of insurance:
  - (a) the Authority may require that it be a joint insured or a beneficiary of the insurance;
  - (b) the Authority will be taken to have an insurable interest in the subject matter covered by the insurance policy.

## **20—Amendment of section 52A—Conditions requiring closure and post-closure plans**

- (1) Section 52A(2)—delete subsection (2) and substitute:
  - (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—
    - (a) preventing or minimising environmental harm; or
    - (b) dealing with stockpiled or abandoned waste or other matter, that may result from the activity undertaken pursuant to the authorisation after the activity has ceased.
- (2) Section 52A(4)(c)—after "environmental harm" insert:

or dealing with stockpiled or abandoned waste or other matter

## **21—Amendment of section 65—Interpretation**

Section 65, definition of *spiritous liquor*—delete "*spiritous liquor*" and substitute:  
*spirituous liquor*

**22—Amendment of section 66—Division not to apply to certain containers**

Section 66—delete "spiritous liquor" and substitute:

spirituous liquor

**23—Amendment of section 72—Certain containers prohibited**

Section 72(2)—delete "recovery, recycling, reprocessing or reuse" and substitute:

resource recovery

**24—Insertion of section 85A**

After section 85 insert:

**85A—Senior authorised officers**

- (1) An authorised officer holding appointment under section 85(1) may be appointed by the Authority as a senior authorised officer for the purposes of section 88A by endorsement to that effect in the officer's instrument of appointment.
- (2) The endorsement may be subject to such conditions as the Authority thinks fit and specifies in the endorsement.
- (3) The Authority may, at any time, revoke the endorsement, or vary or revoke a condition specified in the endorsement or impose a further such condition.

**25—Amendment of section 87—Powers of authorised officers**

(1) Section 87(2)—after paragraph (c) insert:

- (d) construction, demolition, excavation or other earthworks, or any activity carried out in preparation for construction, demolition, excavation or other earthworks, is being or has been carried on at the premises and—
  - (i) the works or activity has or may have disturbed, uncovered or produced waste or pollutants of a kind prescribed by regulation; or
  - (ii) a potentially contaminating activity of a kind prescribed by regulation has previously taken place there.

(2) Section 87—after subsection (9) insert:

(10) In this section—

*construction* includes alteration or refurbishment.

**26—Amendment of section 88—Warrants other than special powers warrants**

(1) Section 88—delete "justice" wherever occurring and substitute:

magistrate

(2) Section 88—after subsection (8) insert:

- (9) This section does not apply in relation to a special powers warrant issued under section 88A.



## 27—Insertion of section 88A

After section 88 insert:

### **88A—Powers of senior authorised officers to investigate illegal dumping etc**

- (1) A senior authorised officer appointed under section 85A may apply to a judge of the Supreme Court for a warrant authorising the exercise of powers under this section (a *special powers warrant*).
- (2) Subject to subsection (8), the application must be made by the senior authorised officer appearing personally before the judge following the lodging of a written application.
- (3) The grounds of the application must be verified by affidavit.
- (4) The judge may require further information to be given in relation to the application.
- (5) The judge may issue a special powers warrant if satisfied that—
  - (a) there are reasonable grounds to believe that—
    - (i) a contravention of this Act has been, is being, or is about to be, committed in or in relation to premises or a vehicle; or
    - (ii) something may be found in premises or in or on a vehicle that constitutes or may constitute, or will or may give rise to, evidence of a contravention of this Act,  
(whether or not committed at the premises or in connection with the vehicle) in relation to the handling, storage, treatment, transfer, transportation, receipt or disposal of waste or other matter; and
  - (b) it is reasonable to do so, taking into account—
    - (i) the extent to which the privacy of a person would be likely to be interfered with by the use of powers under the warrant; and
    - (ii) the gravity of the criminal conduct to which the investigation relates; and
    - (iii) the significance to the investigation of the information sought to be obtained; and
    - (iv) the likely effectiveness of the use of the powers authorised by the warrant in obtaining the information sought; and
    - (v) the availability of alternative means of obtaining the information; and
    - (vi) any other warrants under this Act applied for or issued in relation to the same matter; and

- (vii) any other matter that the judge considers relevant.
- (6) A special powers warrant—
  - (a) must specify the name of the senior authorised officer on whom the powers under the warrant are conferred (or, if the judge considers that specifying the name may endanger the officer's safety, a code name allocated to the officer by the judge); and
  - (b) may authorise the exercise of any 1 or more of the following powers (as specified in the warrant):
    - (i) the power to mark waste or other matter found in specified premises or in or on a specified vehicle or class of vehicle by—
      - (A) spraying or brushing paint or any other identifying substance onto the waste or matter; or
      - (B) spraying, brushing or placing microdots or similar identifying objects onto or with the waste or matter; or
      - (C) placing any other identifying objects with the waste or matter,  
  
(to enable the subsequent identification of the waste or matter at another place following its movement there); or
    - (ii) the power to install a camera in, on or in relation to, specified premises or a specified vehicle or class of vehicle or thing and use or maintain it or cause it to be used or maintained as so installed for a specified period; or
    - (iii) the power to install a GPS device in, on or in relation to a specified vehicle or class of vehicle or specified waste or matter or a specified class of waste or matter and use or maintain it or cause it to be used or maintained as so installed for a specified period; or
    - (iv) the power to retrieve a substance, object or equipment placed or installed, or any waste or matter marked, under a previous subparagraph; and
  - (c) must specify the period for which the warrant will be in force (being a period not longer than 90 days); and
  - (d) may specify such other conditions, limitations or matters as the judge thinks fit; and

- (e) may, on application by a senior authorised officer, be varied or renewed (and this section will apply in relation to such an application in the same way as if it were an application for the issue of the warrant).
- (7) Subject to any conditions or limitations specified in a special powers warrant—
- (a) the warrant will be taken to authorise the senior authorised officer to enter or interfere with any premises, vehicle or thing as reasonably required to exercise the powers specified in the warrant; and
  - (b) the authority under the warrant to enter or interfere with any premises, vehicle or thing will be taken to include the authority—
    - (i) to use reasonable force or subterfuge for that purpose; and
    - (ii) to take any action reasonably required in respect of the premises, vehicle or thing for the purpose of placing, installing, using, maintaining or retrieving a substance, object or equipment to which the warrant relates; and
    - (iii) to extract and use electricity for taking that action or for the use of the substance, object or equipment; and
  - (c) the authority under the warrant to enter specified premises will be taken to include the authority—
    - (i) to exercise any of the powers in sections 87(1)(c) to (m) (inclusive) and 87(6) in relation to the premises, vehicle or thing (subject to the requirement in section 87(7)); and
    - (ii) to exercise non-forcible passage through adjoining or nearby premises (but not through the interior of any building or structure) as reasonably required for the purpose of gaining entry to those specified premises; and
  - (d) the powers conferred by the warrant may be exercised by the senior authorised officer at any time and with such assistants as the officer considers necessary.
- (8) If, in the opinion of the applicant, a special powers warrant is urgently required and it is impracticable in the circumstances to make the application personally, the application may be made—
- (a) by telephone in accordance with subsection (9); or
  - (b) by fax, email or other electronic means in accordance with subsection (10).

- (9) If an application is made by telephone, the following provisions apply:
- (a) the applicant must inform the judge of—
    - (i) the applicant's name and position in the Authority (and the judge, on receiving that information, is entitled to assume its accuracy without further inquiry); and
    - (ii) the nature of the powers proposed to be exercised under the warrant (including details of any substance, object or equipment proposed to be used); and
    - (iii) the proposed duration of the warrant; and
    - (iv) the circumstances giving rise to the necessity for the application to be made by telephone; and
    - (v) the grounds on which the warrant, or variation or renewal of the warrant, is sought;
  - (b) the judge may, on being satisfied as to the circumstances giving rise to the necessity for the application being made by telephone and the grounds for the issue of a special powers warrant, and on the applicant giving an undertaking to make an affidavit verifying the application, make out and sign the warrant;
  - (c) the warrant is to be taken to have been issued, and comes into force, when signed by the judge;
  - (d) the judge must inform the applicant of the terms of the warrant;
  - (e) the applicant must fill out and sign a warrant form (a ***duplicate warrant***) that—
    - (i) sets out the name of the judge who issued the original warrant and the terms of the warrant; and
    - (ii) complies with any other requirements prescribed by regulation;
  - (f) the applicant must, as soon as practicable after the issue of the warrant, forward to the judge an affidavit verifying the application and a copy of the duplicate warrant.
- (10) If an application is made by fax, email or other electronic means, the following provisions apply:
- (a) the application must specify—
    - (i) the applicant's name and position in the Authority; and

- (ii) the nature of the powers proposed to be exercised under the warrant (including details of any substance, object or equipment proposed to be used); and
  - (iii) the proposed duration of the warrant; and
  - (iv) the circumstances giving rise to the necessity for the application to be made by the particular means; and
  - (v) the grounds on which the warrant, or variation or renewal of the warrant, is sought;
- (b) the application must be accompanied (through fax, email or other electronic means) by an affidavit made by the applicant verifying the application;
  - (c) the applicant must be available to speak to the judge by telephone;
  - (d) the judge is entitled to assume, without further inquiry, that a person who identifies himself or herself as the applicant during a telephone conversation with the judge is indeed the applicant;
  - (e) the judge may, on being satisfied as to the circumstances giving rise to the necessity for the application being made by fax, email or other electronic means and the grounds for the issue of a special powers warrant, make out and sign the warrant;
  - (f) the warrant is to be taken to have been issued, and comes into force, when signed by the judge;
  - (g) the judge must forward the warrant to the applicant by fax, email or other electronic means.

(11) In this section—

*microdots* means identification tags etched, coded or marked with unique identifiers (including identifiers that are discernible only on viewing under magnification).

## 28—Amendment of section 93—Environment protection orders

Section 93—after subsection (8) insert:

(8aa) If—

- (a) in the case of an offence under subsection (8) of failing to comply with an environment protection order imposing a requirement for the purpose of securing compliance with a condition of an environmental authorisation—the alleged offender has expiated the offence; and
- (b) the act or omission the subject of the requirement continues after that expiation,

a continuing default penalty is payable by the person for each day on which the act or omission continues of an amount equal to one-fifth of the expiation fee applying in respect of the offence.

- (8ab) For the purposes of the continuing default penalty under subsection (8aa), an obligation to do something is to be regarded as continuing regardless of the fact that any period within which, or time before which, the act is required to be done has expired or passed.
- (8ac) A continuing default penalty under this section is recoverable by the Authority as a debt due to the Authority.

### **29—Amendment of section 93A—Environment protection orders relating to cessation of activity**

- (1) Section 93A(1)—delete subsection (1) and substitute:
- (1) The Authority may issue an environment protection order for the purpose of—
- (a) preventing or minimising environmental harm; or
  - (b) dealing with stockpiled or abandoned waste or other matter, that may result from a prescribed activity of environmental significance after the activity has ceased.
- (2) Section 93A(3)—after "minimising" insert:
- or the waste or other matter that it is directed towards dealing with (as the case may be)

### **30—Amendment of section 119—False or misleading information**

Section 119, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading—
- (i) in the case of a body corporate—\$120 000;
  - (ii) in the case of a natural person—\$60 000 or imprisonment for 2 years;
- (b) in any other case—
- (i) in the case of a body corporate—\$60 000;
  - (ii) in the case of a natural person—\$30 000.

### **31—Amendment of section 139—Evidentiary**

- (1) Section 139—after subsection (3) insert:
- (3a) An allegation in an information that specified matter was waste or other matter constitutes proof, in the absence of proof to the contrary, of the matters so alleged.

(2) Section 139—after subsection (4) insert:

- (4a) In any proceedings for an offence against this Act, a certificate of an authorised officer certifying that, at a specified time—
- (a) a specified vehicle was stopped or parked in a specified place; or
  - (b) a specified person was the owner of a specified vehicle,
- constitutes proof, in the absence of proof to the contrary, of those matters.

### **32—Amendment of section 140—Regulations**

(1) Section 140(2)(a)—delete paragraph (a) and substitute:

- (a) amend Schedule 1 by—
  - (i) inserting a provision into, substituting a provision in, or deleting a provision from, the Schedule; or
  - (ii) inserting material into, substituting material in, or deleting material from, a provision of the Schedule;
- (ab) provide for the manner in which Acts or instruments may refer to a prescribed activity of environmental significance (eg by way of an item number or an activity (or both));

(2) Section 140(2)—after paragraph (d) insert:

- (da) provide for matters relating to the identification or tracking of waste or other matter or the handling, storage, treatment, transfer, transportation, receipt or disposal of waste or other matter at depots, facilities, works or any other place including—
  - (i) the weighing, calculation and certification of mass or volume of the waste or matter; and
  - (ii) the monitoring of the handling, storage, treatment, transfer, transportation, receipt or disposal of the waste or matter; and
  - (iii) the installation, use or maintenance of cameras at depots, facilities or works; and
  - (iv) the installation, use or maintenance of GPS devices in or in relation to vehicles of a prescribed class (including, but not limited to, vehicles used in the course of a prescribed activity of environmental significance); and
  - (v) the prevention of tampering with such cameras or GPS devices; and
  - (vi) the access, use or retention by the Authority or another administering agency of information collected by such cameras or GPS devices;
- (db) provide for the furnishing to the Authority, another administering agency or an authorised officer, of any other reports, statements, documents or other forms of information;

- (3) Section 140(2)—delete paragraph (f) and substitute:
- (f) include evidentiary provisions to facilitate proof of contraventions of this Act for the purposes of proceedings for offences;
  - (g) prescribe fines (not exceeding \$10 000) for offences against the regulations;
  - (h) prescribe expiation fees (not exceeding \$1 000) for alleged offences against the regulations.
- (4) Section 140(3)—after paragraph (b) insert:
- (ba) refer to, or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed person or body, as in force from time to time or as in force at a specified time; and
- (5) Section 140(3)(c)—after "Authority" insert:
- , another administering agency, an authorised officer or a prescribed person or body
- (6) Section 140—after subsection (3) insert:
- (3a) If the regulations refer to a code, standard or other document—
    - (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
    - (b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister or the Authority or another administering agency as a true copy of the code, standard or other document; and
    - (c) the code, standard or other document has effect as if it were a regulation made under this Act.

## **Schedule 1—Related amendments**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendment of *Motor Vehicles Act 1959***

#### **2—Amendment of section 139D—Confidentiality**

Section 139D(1)(ea)—after subparagraph (ii) insert:

- (iii) section 5D of the *Environment Protection Act 1993*; or



## Schedule 2—Further amendment of *Environment Protection Act 1993*—penalty provisions

Penalty provision amended	How amended
Section 34(1)	<p>Delete the penalty provision and substitute:</p> <p style="padding-left: 40px;">Maximum penalty:</p> <p style="padding-left: 80px;">(a) for a category A offence—</p> <p style="padding-left: 120px;">(i) in the case of a body corporate—\$250 000;</p> <p style="padding-left: 120px;">(ii) in the case of a natural person—\$120 000 or imprisonment for 2 years, or both;</p> <p style="padding-left: 80px;">(b) for a category B, C, D or E offence—\$30 000.</p>
Section 34(2)	<p>Delete the penalty provision and substitute:</p> <p style="padding-left: 40px;">Maximum penalty:</p> <p style="padding-left: 80px;">(a) for a category A offence—</p> <p style="padding-left: 120px;">(i) in the case of a body corporate—\$150 000;</p> <p style="padding-left: 120px;">(ii) in the case of a natural person—\$60 000;</p> <p style="padding-left: 80px;">(b) for a category B offence—\$4 000;</p> <p style="padding-left: 80px;">(c) for a category C offence—\$2 000;</p> <p style="padding-left: 80px;">(d) for a category D offence—\$500;</p> <p style="padding-left: 80px;">(e) for a category E offence—\$100.</p> <p style="padding-left: 40px;">Expiation fee:</p> <p style="padding-left: 80px;">(a) for a category B offence—\$300;</p> <p style="padding-left: 80px;">(b) for a category C offence—\$200;</p> <p style="padding-left: 80px;">(c) for a category D offence—\$100;</p> <p style="padding-left: 80px;">(d) for a category E offence—\$50.</p>
Section 35(1)	<p>Delete the penalty provision and substitute:</p> <p style="padding-left: 40px;">Maximum penalty:</p> <p style="padding-left: 80px;">(a) in the case of a body corporate—\$120 000;</p> <p style="padding-left: 80px;">(b) in the case of a natural person—\$60 000.</p>
Section 36(1)	<p>Delete the penalty provision and substitute:</p> <p style="padding-left: 40px;">Maximum penalty:</p> <p style="padding-left: 80px;">(a) in the case of a body corporate—\$120 000;</p> <p style="padding-left: 80px;">(b) in the case of a natural person—\$60 000.</p>
Section 57A	<p>Delete the penalty provision and substitute:</p> <p style="padding-left: 40px;">Maximum penalty: \$40 000.</p>
Section 58(5)	<p>Delete the penalty provision and substitute:</p> <p style="padding-left: 40px;">Maximum penalty: \$40 000.</p>

**Environment Protection (Waste Reform) Amendment Act 2017—No 45 of 2017**  
 Schedule 2—Further amendment of *Environment Protection Act 1993*—penalty provisions

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<b>Penalty provision amended</b>	<b>How amended</b>
Section 60(4)	Delete the penalty provision and substitute: Maximum penalty: \$4 000.
Section 69(1)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$60 000; (b) in the case of a natural person—\$30 000.
Section 69B(1)	Delete the penalty provision and substitute: Maximum penalty: \$4 000. Expiation fee: \$300.
Section 69B(2)	Delete the penalty provision and substitute: Maximum penalty: \$4 000. Expiation fee: \$300.
Section 69B(3)	Delete the penalty provision and substitute: Maximum penalty: \$4 000.
Section 69C(1)	Delete the penalty provision and substitute: Maximum penalty: \$30 000.
Section 69C(3)	Delete the penalty provision and substitute: Maximum penalty: \$4 000. Expiation fee: \$300.
Section 69C(4)	Delete the penalty provision and substitute: Maximum penalty: \$4 000. Expiation fee: \$300.
Section 69D	Delete the penalty provision and substitute: Maximum penalty: \$4 000. Expiation fee: \$300.
Section 70(1)	Delete the penalty provision and substitute: Maximum penalty: \$4 000. Expiation fee: \$300
Section 71(1)	Delete the penalty provision and substitute: Maximum penalty: \$4 000. Expiation fee: \$300
Section 71A	Delete the penalty provision and substitute: Maximum penalty: \$4 000. Expiation fee: \$300
Section 72(3)	Delete the penalty provision and substitute: Maximum penalty: \$4 000. Expiation fee: \$300

<b>Penalty provision amended</b>	<b>How amended</b>
Section 72(4)	Delete the penalty provision and substitute: Maximum penalty: \$4 000. Expiation fee: \$300
Section 79(1)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$2 000 000; (b) in the case of a natural person—\$500 000 or imprisonment for 4 years, or both.
Section 79(2)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$500 000; (b) in the case of a natural person—\$250 000.
Section 80(1)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$500 000; (b) in the case of a natural person—\$250 000 or imprisonment for 2 years, or both.
Section 80(2)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$250 000; (b) in the case of a natural person—\$150 000.
Section 82(1)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$60 000; (b) in the case of a natural person—\$30 000.
Section 82(2)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$15 000; (b) in the case of a natural person—\$4 000. Expiation fee: \$300.
Section 83(1)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$250 000; (b) in the case of a natural person—\$150 000.
Section 83A(2)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$120 000; (b) in the case of a natural person—\$60 000.

**Environment Protection (Waste Reform) Amendment Act 2017—No 45 of 2017**  
 Schedule 2—Further amendment of *Environment Protection Act 1993*—penalty provisions

<b>Penalty provision amended</b>	<b>How amended</b>
Section 89(2)	Delete the penalty provision and substitute: Maximum penalty: \$4 000.
Section 90(1)	Delete the penalty provision and substitute: Maximum penalty: \$15 000.
Section 90(2)	Delete the penalty provision and substitute: Maximum penalty: \$15 000 or imprisonment for 2 years, or both.
Section 92	Delete the penalty provision and substitute: Maximum penalty: \$4 000.
Section 93(8)	Delete the penalty provision and substitute: Maximum penalty: <ul style="list-style-type: none"> <li>(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;</li> <li>(b) if the order was issued in relation to a domestic activity for the purpose of securing compliance with the general environmental duty—\$500;</li> <li>(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—\$500;</li> <li>(d) in any other case—\$4 000.</li> </ul> Expiation fee: <ul style="list-style-type: none"> <li>(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;</li> <li>(b) if the order was issued in relation to a domestic activity for the purpose of securing compliance with the general environmental duty—\$100;</li> <li>(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—\$100;</li> <li>(d) in any other case—\$300.</li> </ul>
Section 93(9)	Delete the penalty provision and substitute: Maximum penalty: \$4 000.
Section 93A(5)	Delete the penalty provision and substitute: Maximum penalty: <ul style="list-style-type: none"> <li>(a) in the case of a body corporate—\$120 000;</li> <li>(b) in the case of a natural person—\$60 000.</li> </ul>
Section 93A(8)	Delete the penalty provision and substitute: Maximum penalty: \$4 000.

**No 45 of 2017—Environment Protection (Waste Reform) Amendment Act 2017**  
Further amendment of *Environment Protection Act 1993*—penalty provisions—Schedule 2

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<b>Penalty provision amended</b>	<b>How amended</b>
Section 94(5)	Delete the penalty provision and substitute: Maximum penalty: \$4 000.
Section 96(5)	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 99(8)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$120 000; (b) in the case of a natural person—\$60 000.
Section 101(6)	Delete the penalty provision and substitute: Maximum penalty: \$4 000.
Section 103H(6)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$120 000; (b) in the case of a natural person—\$60 000.
Section 103J(11)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$120 000; (b) in the case of a natural person—\$60 000.
Section 103O(6)	Delete the penalty provision and substitute: Maximum penalty: \$4 000.
Section 103S(3)	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 103U	Delete the penalty provision and substitute: Maximum penalty: \$15 000.
Section 103W(1)	Delete the penalty provision and substitute: Maximum penalty: \$15 000.
Section 103W(2)	Delete the penalty provision and substitute: Maximum penalty: \$15 000.
Section 103X(2)	Delete the penalty provision and substitute: Maximum penalty: \$4 000 or imprisonment for 1 year.
Section 103X(3)	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$60 000; (b) in the case of a natural person—\$30 000 or imprisonment for 1 year.
Section 103Y(1)	Delete the penalty provision and substitute: Maximum penalty: \$8 000.

**Environment Protection (Waste Reform) Amendment Act 2017—No 45 of 2017**  
 Schedule 2—Further amendment of *Environment Protection Act 1993*—penalty provisions

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<b>Penalty provision amended</b>	<b>How amended</b>
Section 103Y(3)	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 103Z(1)	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 103Z(2)	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 103Z(4)	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 103ZA	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 103ZB	Delete the penalty provision and substitute: Maximum penalty: (a) in the case of a body corporate—\$60 000; (b) in the case of a natural person—\$30 000.
Section 120A(1)	Delete the penalty provision and substitute: Maximum penalty: \$15 000.
Section 121	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 135(4)	Delete the penalty provision and substitute: Maximum penalty: \$1 000. Expiation fee: \$500.