

South Australia

**Environment Protection (Commissioner for the Environment) Amendment Bill 2007**

A BILL FOR

An Act to amend the *Environment Protection Act 1993*.

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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 (Commissioner for the Environment) Amendment Act 2007*.

#### 5 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.

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

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

Section 3(1)—after the definition of *coastal waters of the State* insert:

**Commissioner** means the Commissioner for the Environment appointed under Part 3A (and includes a person acting in that office from time to time);

## 5—Insertion of Part 3A

After Part 3 insert:

### Part 3A—Commissioner for the Environment

#### 24A—Commissioner for the Environment

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- (1) There will be a Commissioner for the Environment.
- (2) The Commissioner will be appointed by the Governor.
- (3) The Commissioner will be appointed—
- (a) for a term of 5 years; and
- (b) on terms and conditions determined by the Governor.
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- (4) At the expiration of a term of office, the Commissioner will be eligible for re-appointment.
- (5) The Commissioner is not a Public Service employee.
- (6) The Commissioner must inform the Minister in writing of—
- 15
- (a) any direct or indirect pecuniary interest that the Commissioner has or acquires in any business, or in any body corporate carrying on a business, in Australia or elsewhere; and
- (b) any other direct or indirect interest that the Commissioner has or acquires that conflicts, or may conflict, with the Commissioner's duties.
- 20
- (7) The Commissioner must not, without the consent of the Minister, engage in any other remunerated employment.
- (8) The Governor may remove the Commissioner from office on the presentation of an address from both Houses of Parliament seeking the Commissioner's removal.
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- (9) The Governor may suspend the Commissioner from office on the ground of incompetence or misbehaviour and, in that event—
- 30
- (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
- (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the Commissioner's removal has not been presented to the Governor, the Commissioner must be restored to office.
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- (10) The office of Commissioner becomes vacant if the Commissioner—
- (a) dies; or
- (b) resigns by written notice given to the Minister; or
- (c) completes a term of office and is not reappointed; or

- (d) is removed from office by the Governor under subsection (8); or
- (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
- (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- (g) becomes, in the opinion of the Governor, physically or mentally incapable of carrying out satisfactorily the duties of office; or
- (h) contravenes or fails to comply with subsection (6) or (7).

(11) Except as provided by this section, the Commissioner may not be removed or suspended from office, nor will the office of the Commissioner become vacant.

#### **24B—Acting Commissioner**

- (1) If the Commissioner is temporarily absent, or the Commissioner's position is temporarily vacant, the Governor may assign a suitable person to act in the Commissioner's position during the temporary absence or vacancy.
- (2) The terms and conditions on which a person is assigned to act in the Commissioner's position will be determined by the Governor.

#### **24C—Staff**

- (1) The Commissioner may appoint such staff as are necessary to perform the Commissioner's functions under this Act.
- (2) The terms and conditions of employment of a person appointed under subsection (1) will be determined by the Governor and such a person will not be a Public Service employee.
- (3) The Commissioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

#### **24D—Consultants**

The Commissioner may engage consultants on terms and conditions considered appropriate by the Commissioner.

#### **24E—Functions**

- (1) The Commissioner has the following functions:
  - (a) to investigate the effectiveness of environmental planning and environmental management carried out by the Authority and other public authorities and advise them on any remedial action the Commissioner considers desirable;
  - (b) to—

- 5
- (i) investigate any matter that, in the Commissioner's opinion, has adversely affected the environment;; and
- (ii) advise the appropriate public authority or any other person or body the Commissioner considers appropriate of the preventative measures or remedial action the Commissioner considers necessary; and
- 10 (iii) report the results of the investigation to the Minister;
- (c) at the request of either House of Parliament or of a select committee of the Parliament, to report on any Bill, petition or other matter before the Parliament or the select committee the subject matter of which may have a significant effect on the environment;
- 15 (d) on the Commissioner's own motion or at the request of the Minister, to inquire into and report on any matter that has had or may have a substantial and damaging effect on the environment;
- 20 (e) to undertake and encourage the collection and dissemination of information relating to the environment;
- (f) to encourage preventive measures and remedial actions for the protection of the environment.
- (2) In the performance of the Commissioner's functions, the Commissioner must have regard to the principles of ecologically sustainable development.
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#### **24F—Powers**

30 The Commissioner 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.

#### **24G—Independence**

- 35 (1) In performing and exercising his or her functions and powers under this Act, the Commissioner must act independently, impartially and in the public interest.
- (2) The Minister cannot control how the Commissioner is to exercise the Commissioner's statutory functions and powers.
- (3) This section does not derogate from any express power of the Minister under this Act.

#### **24H—Investigations and inquiries**

- 40 (1) An investigation or inquiry is to be conducted in such manner as the Commissioner considers appropriate.

(2) If the Commissioner reasonably believes that a person is capable of providing information or producing a document relevant to an investigation or inquiry the Commissioner may, by notice in writing, require the person to do one or more of the following:

- 5                   (a) to provide that information to the Commissioner in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate; or
- (b) to produce that document to the Commissioner; or
- 10                   (c) to attend before a person specified in the notice and answer questions and or produce documents relevant to the investigation or inquiry.

(3) A notice under subsection (2) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.

15                   (4) A notice under subsection (2) must provide a period of time for compliance with a requirement under that subsection that has been determined by the Commissioner to be reasonable in the circumstances.

20                   (5) A person must comply with a requirement undersubsection (2).  
Maximum penalty: Division 5 fine.

(6) If a document is produced in accordance with a requirement under this section, the Commissioner or other appropriate person may take possession of, make copies of, or take extracts from, the document.

25                   (7) The Commissioner, or a person who is to receive information under subsection (2)(c), may administer an oath or affirmation to a person required to attend before him or her under this section and may examine the person on oath or affirmation.

(8) The Commissioner may require a person to verify by statutory declaration—

- 30                   (a) any information or document produced under this section; or
- (b) a statement that the person has no relevant information or documents or no further relevant information or documents.

(9) A person must comply with a requirement under subsection (8).  
Maximum penalty: Division 5 fine.

35                   (10) A person is not obliged to answer a question or to provide or produce, or provide a copy of, any information or document under this section if to do so—

- 40                   (a) would tend to incriminate the person of an offence; or
- (b) the person would commit a breach of legal professional privilege.

## 24I—Reimbursement of expenses

A person required to attend before the Commissioner or another person under this Part is entitled to be paid the expenses and allowances that the Commissioner may allow.

## 24J—Delegation

- (1) The Commissioner may delegate a power or function vested in or conferred on the Commissioner under this Part—
  - (a) to a particular person or body; or
  - (b) to the person for the time being occupying a particular office or 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 delegator to act in a matter; and
  - (c) is revocable at will by the delegator.
- (4) In any legal proceedings an apparently genuine certificate, purportedly signed by the Commissioner, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

## 24K—Annual report by Commissioner

- (1) The Commissioner must, on or before 30 September in every year, forward a report to the Minister on the work of the Commissioner under this Part during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## 24L—Other reports

- (1) The Commissioner may, at any time, prepare a report to the Minister on any matter arising out of the exercise of the Commissioner's functions under this Act.
- (2) Subject to subsection (3), the Minister must, within 2 weeks after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

(3) If the Minister cannot comply with subsection (2) because Parliament is not sitting, the Minister must deliver copies of the report to the President and the Speaker and the President and the Speaker must then—

- 5                   (a) immediately cause the report to be published; and  
                     (b) lay the report before their respective Houses at the earliest opportunity.

10               (4) A report will, when published under subsection (3)(a), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.

#### **24M—Offences relating to obstruction etc**

15               A person must not, without reasonable excuse, obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or improperly influence, the Commissioner or any other person in the performance or exercise of a function or power under this Part.

Maximum penalty: Division 4 fine.

#### **24N—Offences relating to the provision of information**

20               A person must not—

- 25                   (a) provide to the Commissioner or any other person who is performing or exercising a function or power under this Act information that the person knows is false or misleading in a material particular; or  
                     (b) refuse or fail to include in information provided to a person who is performing or exercising a function or power under this Act other information without which the information provided is, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty: Division 4 fine.