

# House of Assembly

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South Australia

## Environment Protection (Miscellaneous) Amendment Bill 2005

A BILL FOR

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

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## Environment Protection (Miscellaneous) Amendment Bill 2005

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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 (Miscellaneous) Amendment Act 2005*.

#### 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 long title

Long title—delete "to repeal the *Beverage Container Act 1975*, the *Clean Air Act 1984*, the *Environmental Protection Council Act 1972*, the *Marine Environment Protection Act 1990*, the *Noise Control Act 1977*, and the *Waste Management Act 1987*; to amend the *Water Resources Act 1990*, the *Environment, Resources and Development Court Act 1993* and the *Development Act 1993*;"

### 5—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *activity* insert:

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

- (2) Section 3(1), definition of *council*—delete the definition and substitute:

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

- (3) Section 3(1), definition of *environmental nuisance*, (a)(i)—delete subparagraph (i) and substitute:

(i) is caused by pollution; and

- (4) Section 3(1), definition of *environmental nuisance*, (b)—delete "waste" and substitute:

pollution

- (5) Section 3(1), definition of *occupier*—delete the definition and substitute:

*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;

- (6) Section 3(1), definition of *pollutant*, (d)—delete paragraph (d) and substitute:

(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;

- (7) Section 3(1)—after the definition of *the prescribed national scheme laws* insert:

*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;

- (8) Section 3(1), definition of *related body corporate*—delete "*Corporations Law*" and substitute:

*Corporations Act 2001* of the Commonwealth

- (9) Section 3(1)—after the definition of *spouse* insert:

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

- (10) Section 3(1), definition of *waste*—delete the definition and substitute:

*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;

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

Section 5(1)—delete subsection (1) and substitute:

- (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.

## **7—Insertion of section 5A**

After section 5 insert:

### **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.

## **8—Amendment of section 7—Interaction with other Acts**

Section 7(4)—delete "*Petroleum Act 1940*" wherever occurring and substitute in each case:

*Petroleum Act 2000*

## **9—Amendment of section 9—Territorial and extra-territorial application of Act**

Section 9(2)—delete subsection (2) and substitute:

- (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.

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

Section 10(2)—delete "bodies" and substitute:

administering agencies

## **11—Substitution of heading to Part 3**

Heading to Part 3—delete the heading and substitute:

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

## **12—Amendment of section 14A—Chief Executive**

Section 14A(5)(b)—before "has," insert:

subject to this Act

## **13—Amendment of section 14B—Board of Authority**

Section 14B(7)—delete subsection (7)

## **14—Amendment of section 15—Terms and conditions of office**

Section 15(2)—delete "two" and substitute:

three

## **15—Amendment of section 16—Proceedings of Board**

- (1) Section 16(2)—after "Board" insert:

at which the Chief Executive is present

- (2) Section 16—after subsection (2) insert:

(2a) The Governor may appoint a member of the Board to be the deputy presiding member and, in the absence of the Chief Executive, the deputy presiding member will preside at meetings of the Board.

## **16—Amendment of section 17—Board may establish committees and subcommittees**

Section 17(2)—after "subsection (1)" insert:

will consist of such persons as the Board thinks fit and

## **17—Insertion of Part 3 Division 1A**

After Part 3 Division 1 insert:

### **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.

## **18—Amendment of section 24—Environment Protection Fund**

Section 24(3)—after paragraph (b) insert:

- (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;

## **19—Amendment of section 25—General environmental duty**

- (1) Section 25(4)(b)—after "duty" insert:  
; and
- (2) Section 25(4)—after paragraph (b) insert:
  - (c) failure to comply with the duty will be taken to be a contravention of this Act for the purposes of section 135.



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

- (1) Section 27(2)(a)(iii)—delete subparagraph (iii)
- (2) Section 27(2)(b) and (c)—delete paragraphs (b) and (c) and substitute:
  - (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) Section 27(3)(a)—delete "category A, category B or category C offence" and substitute:

category A, B, C, D or E offence
- (4) Section 27(4)(d)—after "Authority" insert:

or another administering agency

## 21—Amendment of section 28—Normal procedure for making policies

- (1) Section 28(3)—delete subsection (3) and substitute:
  - (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.
- (2) Section 28(6)(d)—delete paragraph (d) and substitute:
  - (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.
- (3) Section 28(7)—delete subsection (7)
- (4) Section 28(8)—delete "subsection (4)" and substitute:

subsection (3)

(5) Section 28(9) and (10)—delete subsections (9) and (10) and substitute:

- (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).

## **22—Repeal of section 28A**

Section 28A—delete the section

## **23—Amendment of section 29—Simplified procedure for making certain policies**

Section 29(1a) and (1b)—delete subsections (1a) and (1b) and substitute:

- (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.

## **24—Amendment of section 34—Offence to contravene mandatory provisions of policy**

(1) Section 34(1), penalty provision, paragraph (b)—delete "B or C" and substitute:

B, C, D or E

(2) Section 34(2), penalty provision—delete the penalty provision and substitute:

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) Section 34(3)—delete "category A offence, category B offence or category C offence" and substitute:
- category A, B, C, D or E offence

## **25—Amendment of section 36—Requirement for licence**

Section 36—after its present contents (now to be designated as subsection (1)) insert:

- (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).

## **26—Amendment of section 37—Exemptions**

Section 37—delete "this Part and the regulations" and substitute:

this Act

## 27—Amendment of section 39—Notice and submissions in respect of applications for environmental authorisations

- (1) Section 39(1)—delete subsection (1) and substitute:
- (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).
- (2) Section 39(3)—delete "No public notice is required in respect of" and substitute:  
Subsection (1) does not apply in relation to
- (3) Section 39(3)—before paragraph (a) insert:
- (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
- (4) Section 39—after subsection (3) insert:
- (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.

## **28—Amendment of section 43—Term and renewal of environmental authorisations**

- (1) Section 43—after subsection (4) insert:
  - (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.
- (2) Section 43(5)—after "section" first occurring insert:

and to the applicant complying with any notice under subsection (4a)
- (3) Section 43(6)—delete subsection (6) and substitute:
  - (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).

## **29—Amendment of section 45—Conditions**

Section 45(3)—after paragraph (a) insert:

- (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

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

- (1) Section 46(1)—after paragraph (b) insert:
  - (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).
- (2) Section 46—after subsection (4) insert:
  - (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.
- (3) Section 46—after subsection (5) insert:
  - (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.
- (4) Section 46—after subsection (6) insert:
  - (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.

**31—Amendment of section 47—Criteria for grant and conditions of environmental authorisations**

Section 47(1)(h)—delete paragraph (h) and substitute:

- (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

**32—Amendment of section 48—Annual fees and returns**

Section 48—after subsection (2) insert:

- (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.

**33—Amendment of section 51—Conditions requiring financial assurance to secure compliance with Act**

(1) Section 51(1)—delete "a guarantee, insurance policy or other"

(2) Section 51(2)(a)—after "authorisation" insert:

, or activities previously undertaken at the place to which the authorisation relates,

**34—Amendment of section 52—Conditions requiring tests, monitoring or audits**

Section 52(1)(a)—after "authorisation" insert:

, or activities previously undertaken at the place to which the authorisation relates,

**35—Insertion of section 52A**

After section 52 insert:

**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.

**36—Amendment of section 53—Conditions requiring preparation and publication of plan to deal with emergencies**

Section 53(a)—delete paragraph (a) and substitute:

- (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

**37—Amendment of section 54—Conditions requiring environment improvement program**

(1) Section 54(1)(a)—delete "to the satisfaction of the Authority" and substitute:

, in accordance with specified requirements and to the satisfaction of the Authority,



(2) Section 54(1)—after paragraph (a) insert:

- (ab) to undertake public consultation, in accordance with specified requirements, in the course of developing the proposed environment improvement program; and

### **38—Insertion of sections 54A and 54B**

After section 54 insert:

#### **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).

### **39—Amendment of section 82—Causing environmental nuisance**

(1) Section 82—delete the penalty provision and substitute:

Penalty:

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

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

- (2) Section 82—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (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.

#### **40—Amendment of section 83—Notification where serious or material environmental harm caused or threatened**

- (1) Section 83(1)—delete "Where an incident occurs so that" and substitute:

If

- (2) Section 83(1)—delete "incident, notify the Authority of the incident" and substitute:

harm or threatened harm, notify the Authority of the harm or threatened harm

- (3) Section 83(2)(a)—delete "such an incident if the person has reason to believe that the incident" and substitute:

harm or threatened harm if the person has reason to believe that the harm or threatened harm

- (4) Section 83(2)(b)—delete "such an incident" and substitute:

harm or threatened harm

#### **41—Amendment of section 85—Appointment of authorised officers**

- (1) Section 85(1)—delete ", with the approval of the Minister,"

- (2) Section 85(3)—delete ", after consultation with the Authority,"

#### **42—Amendment of section 86—Identification of authorised officers**

Section 86(1)—delete "in a form approved by the Authority"

#### **43—Amendment of section 87—Powers of authorised officers**

- (1) Section 87(1)(d)—after "take" insert:

and remove

- (2) Section 87(1)(h)—delete "for the purpose of determining whether a provision of this Act is being or has been complied with" and substitute:

as reasonably required in connection with the administration or enforcement of this Act

- (3) Section 87(1)(i)—after paragraph (i) insert:
- (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;
- (4) Section 87(1)(k)—after "those matters" insert:
- , to state the person's full name and usual place of residence and to produce evidence of the person's identity
- (5) Section 87(3)—after "inspect" insert:
- , or to seize,
- (6) Section 87—after subsection (7) insert:
- (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.

#### **44—Amendment of section 90—Offence to hinder etc authorised officers**

- (1) Section 90(1)(e)—after "officer" insert:
- or other person with powers under this Act
- (2) Section 90(1), penalty provision—delete the penalty provision and substitute:
- Penalty: Division 4 fine.
- (3) Section 90(2), penalty provision—delete the penalty provision and substitute:
- Penalty: Division 4 fine or division 5 imprisonment, or both.

#### **45—Amendment of section 91—Self-incrimination**

Section 91(2)—after "compliance by a" insert:

prescribed

#### **46—Amendment of section 93—Environment protection orders**

- (1) Section 93(1)—after "Authority" insert:
- or another administering agency
- (2) Section 93(2)(c)(i)—after "Authority" insert:
- or other administering agency

- (3) Section 93(2)(c)(iii)—after "period" insert:  
or at specified times or in specified circumstances
- (4) Section 93(2)(c)—after subparagraph (iii) insert:
- (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;
- (5) Section 93—after subsection (2) insert:
- (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.
- (6) Section 93(2a)—after "Authority" insert:  
or other administering agency
- (7) Section 93(5)—after "Authority" insert:  
or another administering agency
- (8) Section 93(6)—after "Authority" insert:  
, another administering agency
- (9) Section 93(6)—delete "criminal liability" and substitute:  
liability to a penalty
- (10) Section 93(7)—delete subsection (7) and substitute:
- (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.
- (11) Section 93(8), penalty provision—delete the penalty provision and substitute:  
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.

(12) Section 93—after subsection (8) insert:

- (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).

#### **47—Insertion of section 93A**

After section 93 insert:

#### **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.

**48—Amendment of section 94—Registration of environment protection orders in relation to land**

- (1) Section 94(1)—after "Authority" insert:  
or, if the order was issued by another administering agency, that administering agency
- (2) Section 94(1)(a)—after "land" insert:  
or an activity previously carried on on land
- (3) Section 94(1)(b)—delete "owned by the" and substitute:  
owned by a
- (4) Section 94(2)(b)(i)—after "land" insert:  
or each owner from time to time of the land (as the case may require)
- (5) Section 94(2)(b)(ii)—after "Authority" insert:  
or other administering agency
- (6) Section 94(3)(a)—after "Authority" insert:  
or another administering agency
- (7) Section 94(4)(a)—after "land" insert:  
or an activity previously carried on on land
- (8) Section 94(4)(c) and (d)—delete paragraphs (c) and (d) and substitute:
  - (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.
- (9) Section 94—after subsection (4) insert:
  - (4a) If an environment protection order is registered under this section in relation to land, the Authority 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.
- (10) Section 94(5)—delete "An owner or occupier" and substitute:

A person
- (11) Section 94(6)—after "Authority" insert:

or, if the order was issued by another administering agency, that administering agency
- (12) Section 94(7)—delete subsection (7) and substitute:
  - (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.



**49—Amendment of section 95—Action on non-compliance with environment protection order**

- (1) Section 95(1)—after "Authority" insert:

or, if the order was issued by another administering agency, that administering agency
- (2) Section 95(2)—delete subsection (2) and substitute:
  - (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) Section 95(3)(a)—after "Authority" insert:

or other administering agency
- (4) Section 95(4)—after "Authority" first occurring insert:

or another administering agency
- (5) Section 95(4)—after "Authority" second occurring insert:

or other administering agency (as the case may be)
- (6) Section 95—after subsection (4) insert:
  - (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.
- (7) Section 95(5)—after "Authority" first occurring insert:

or another administering agency
- (8) Section 95(5)(a) and (b)—after "Authority" wherever occurring insert:

or other administering agency

**50—Amendment of section 96—Information discovery orders**

- (1) Section 96(1)—after "Authority" first occurring insert:

or another administering agency

- (2) Section 96(1)—after "Authority" second occurring insert:
  - or other administering agency (as the case may be)
- (3) Section 96(2)—after "Authority" wherever occurring insert:
  - or other administering agency
- (4) Section 96(3)(c)—after "Authority" insert:
  - or other administering agency
- (5) Section 96(4)—delete subsection (4) and substitute:
  - (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.

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

- (1) Section 97(1)—after "Authority" insert:
  - or, in the case of an information discovery order issued by another administering agency, that administering agency
- (2) Section 97(2)—delete subsection (2) and substitute:
  - (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) Section 97(3)(a)—after "Authority" insert:
  - or other administering agency
- (4) Section 97(4)—after "Authority" first occurring insert:
  - or another administering agency
- (5) Section 97(4)—after "Authority" second occurring insert:
  - or other administering agency (as the case may be)

**52—Amendment of section 98—Admissibility in evidence of information**

- Section 98(2)—after "compliance by a" insert:
  - prescribed

**53—Amendment of section 99—Clean-up orders**

- (1) Section 99(1)—after "Authority" first occurring insert:
  - or another administering agency
- (2) Section 99(1)—after "Authority" second occurring insert:
  - or other administering agency

- (3) Section 99(2)—after paragraph (c) insert:
- (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;
- (4) Section 99(2)(e)—delete paragraph (e) and substitute:
- (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.
- (5) Section 99(2a)—after "Authority" insert:
- or other administering agency
- (6) Section 99(5)—after "Authority" insert:
- or another administering agency
- (7) Section 99(6)—after "Authority" insert:
- , another administering agency
- (8) Section 99(6)—delete "criminal liability" and substitute:
- liability to a penalty
- (9) Section 99(7)—delete subsection (7) and substitute:
- (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.
- (10) Section 99—after subsection (8) insert:
- (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).

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

- (1) Section 101(1)(b)—delete "owned by the" and substitute:

owned by a

- (2) Section 101—after subsection (5) insert:

(5a) If a clean-up order is registered under this section in relation to land, the Authority 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.

**55—Amendment of section 103—Recovery of costs and expenses incurred by the Authority**

Section 103—after subsection (2) insert:

(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 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 under subsection (2a) in relation to a clean-up order or clean-up authorisation that has been revoked.

**56—Substitution of heading to Part 11**

Heading to Part 11—delete the heading to Part 11 and substitute:

**Part 11—Civil remedies and penalties**

### **57—Amendment of section 104—Civil remedies**

- (1) Section 104(7)(a)—after "Authority" insert:

or another administering agency
- (2) Section 104—after subsection (22) insert:
  - (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.

### **58—Insertion of section 104A**

After section 104 insert:

#### **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.

### **59—Amendment of section 105—Emergency authorisations**

- (1) Section 105(2)—delete subsection (2) and substitute:
  - (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.
- (2) Section 105(3)—delete "criminal liability" and substitute:  
liability to a penalty under this Act
- (3) Section 105(4)—delete "be guilty of an offence of contravening" and substitute:  
have contravened
- (4) Section 105(4)(a)—delete paragraph (a) and substitute:
  - (a) any proceedings under section 104 in respect of the contravention;

**60—Amendment of section 106—Appeals to Court**

- (1) Section 106(1)—after paragraph (c) insert:
  - (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;
- (2) Section 106(1)(d)—delete "by the Authority or an authorised officer"

**61—Amendment of section 108—Powers of Court on determination of appeals**

Section 108—after its present contents (now to be designated as subsection (1)) insert:

- (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.

**62—Amendment of section 109—Public register**

- (1) Section 109(3)—before paragraph (a) insert:
  - (aa) details of any exemptions granted by the Authority under section 36(2);
- (2) Section 109(3)(h)—delete paragraph (h) and substitute:
  - (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;
- (3) Section 109(3)(i)—after "Authority" insert:

or another administering agency
- (4) Section 109(3)—after paragraph (k) insert:
  - (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;
- (5) Section 109—after subsection (3) insert:
  - (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.
- (6) Section 109—after subsection (6) insert:
  - (7) The Governor may, by regulation, provide for the removal by the Authority of information recorded in the register under this section.



**63—Amendment of section 111—Annual reports by Authority**

Section 111—after subsection (3) insert:

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

**64—Amendment of section 112—State of environment reports**

Section 112—after subsection (4) insert:

- (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.

**65—Amendment of section 116—Waiver or refund of fees and levies and payment by instalments**

- (1) Section 116—after "The Authority" insert:

or another administering agency

- (2) Section 116(a)—after "the Authority" insert:

or other administering agency

- (3) Section 116(a) and (b)—after "fee" wherever occurring insert:

or levy

**66—Amendment of section 118—Service**

- (1) Section 118(1)—delete "the Authority or the Minister" and substitute:

the Minister, the Authority, another administering agency

- (2) Section 118(2)(b)—delete paragraph (b) and substitute:

- (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.

**67—Amendment of section 119—False or misleading information**

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

Penalty:

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

## **68—Substitution of sections 120 and 120A**

Sections 120 and 120A—delete the sections and substitute:

### **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.

## **69—Amendment of section 122—Immunity from personal liability**

- (1) Section 122(1)—after "Board," insert:

a member of an administering agency other than the Authority,
- (2) Section 122(3)—delete "an authorised officer who is" and substitute:

a member of a council or

## **70—Amendment of section 124—General defence**

- (1) Section 124(1)—delete subsection (1) and substitute:
  - (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) Section 124(2)—delete "offence" and substitute:  
contravention
- (3) Section 124(4)—delete "be guilty of an offence of contravening" and substitute:  
have contravened
- (4) Section 124(4)(a)—delete paragraph (a) and substitute:
  - (a) any proceedings under section 104 in respect of the contravention;

### **71—Substitution of section 125**

Section 125—delete the section and substitute:

#### **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.

### **72—Amendment of section 126—Proof of intention etc**

Section 126—delete "the commission of an offence against this Act" and substitute:  
a contravention of this Act

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

Section 127(1)—after "for an offence against this Act" insert:

or proceedings for the payment of an amount as a civil penalty in respect of an alleged contravention of this Act

**74—Amendment of section 128—Statement of officer evidence against body corporate**

Section 128(1)—after "by a body corporate" insert:

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

**75—Substitution of sections 129 and 130**

Sections 129 and 130—delete the sections and substitute:

**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.

### **76—Amendment of section 133—Orders in respect of contraventions**

- (1) Section 133(1)—delete "for an offence against this Act, the court finds the defendant guilty of a contravention of this Act that" and substitute:

under this Act, the court finds that the defendant contravened this Act and the contravention has
- (2) Section 133(1a)—delete "is convicted of an offence against this Act, the court may, in addition to any penalty it may impose, order the convicted" and substitute:

is found by a court to have contravened this Act, the court may, in addition to any penalty it may impose, order the
- (3) Section 133(1a)—delete "commission of the offence" and substitute:

contravention
- (4) Section 133(1b)—delete "commission of an offence if commission of the offence" and substitute:

a contravention if the contravention

### **77—Substitution of section 135**

Section 135—delete the section and substitute:

#### **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.  
Maximum 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.

**78—Amendment of section 136—Assessment of reasonable costs and expenses**

Section 136—after "the Authority" insert:

, another administering agency

**79—Insertion of section 137A**

After section 137 insert:

**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).

**80—Amendment of section 138—Enforcement of charge on land**

Section 138(1)—delete "the Authority or the Minister, the Authority or the Minister" and substitute:

the Minister, the Authority or another administering agency, the Minister, the Authority or the other administering agency

**81—Amendment of section 139—Evidentiary provisions**

(1) Section 139(1)—delete "the Authority or the Minister" first occurring and substitute:

the Minister, the Authority or another administering agency

(2) Section 139(1)(d), (e) and (f)—delete "the Authority or the Minister" wherever occurring and substitute in each case:

the Minister, the Authority or the other administering agency

(3) Section 139(2)—delete "the Authority" first occurring and substitute:

the Minister, the Authority, another administering agency

(4) Section 139(2)—delete "the Authority" second occurring and substitute:

the Minister, the Authority, the other administering agency

(5) Section 139(4)—delete subsection (4) and substitute:

(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.

- (6) Section 139(6)(a)—delete "the Authority or the Minister" and substitute:  
the Minister, the Authority, another administering agency

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

Section 140(2)—before paragraph (a) insert:

- (aa) make provisions implementing a national environment protection measure;

## **83—Amendment of Schedule 1—Prescribed activities of environmental significance**

- (1) Schedule 1, clause 3(4)(w)—delete "*Petroleum Act 1940*" and substitute:  
*Petroleum Act 2000*
- (2) Schedule 1, clause 8(3)(d)—delete "*Petroleum Act 1940*" and substitute:  
*Petroleum Act 2000*

## **84—Repeal of Schedule 2**

Schedule 2—delete the Schedule

# **Schedule 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.