



Western Australia

# **Environmental Protection Amendment Act 2024**

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# Environmental Protection Amendment Act 2024

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Western Australia

# **Environmental Protection Amendment Act 2024**

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**No. 36 of 2024**

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**An Act to amend the *Environmental Protection Act 1986* and the *Environmental Protection Regulations 1987*.**

[Assented to 22 October 2024]

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Environmental Protection Amendment Act 2024*.

### **2. Commencement**

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 4 Division 1 Subdivision 1 — on a day fixed by proclamation;
- (c) Part 4 Division 1 Subdivision 2 —
  - (i) if Part 4 Division 1 Subdivision 1 comes into operation under paragraph (b) on or before the day on which the *Environmental Protection Amendment Act 2020* section 60 comes into operation — immediately after the *Environmental Protection Amendment Act 2020* section 60 comes into operation; or
  - (ii) otherwise — on the day on which Part 4 Division 1 Subdivision 1 comes into operation;
- (d) Part 4 Division 4 — on a day fixed by proclamation;
- (e) the rest of the Act — on the day after assent day.

(2) If Part 4 Division 1 Subdivision 1 does not come into operation under subsection (1)(b) before the *Environmental Protection Amendment Act 2020* section 60 comes into operation, sections 20, 21, 22, 23 and 24 —

- (a) do not come into operation; and
- (b) are deleted when the *Environmental Protection Amendment Act 2020* section 60 comes into operation.

## Part 2 — Environmental Protection Authority

### 3. Act amended

This Part amends the *Environmental Protection Act 1986*.

### 4. Section 7 amended

- (1) Delete section 7(2) and insert:
  - (2) The Authority consists of 5 to 9 members appointed by the Governor on the recommendation of the Minister.
  - (2A) The Minister can recommend a person under subsection (2) only if the Minister is satisfied that the person has —
    - (a) a suitable level of interest in, and experience of, matters affecting the environment generally;  
and
    - (b) a suitable level of knowledge, skills, experience or qualifications in 1 or more of the following fields —
      - (i) environmental science;
      - (ii) natural resource and biodiversity management;
      - (iii) waste management and pollution control;
      - (iv) industry, commerce or economic development;
      - (v) public administration, governance, regulation or law;
      - (vi) regional areas and issues.

- (2) In section 7(6) delete “5” and insert:

3

**5. Section 7A inserted**

After section 7 insert:

**7A. Authority member unable to act**

- (1) Subsection (2) applies if —
  - (a) the Minister is satisfied that the Chair or Deputy Chair is unable to act by reason of illness, absence or other cause; or
  - (b) the office of Chair or Deputy Chair is vacant.
- (2) The Governor may, on the Minister’s recommendation, appoint an Authority member to act temporarily as the Chair or Deputy Chair (as the case requires).
- (3) Subsection (4) applies if the Minister is satisfied that an Authority member, other than the Chair or Deputy Chair, is unable to act by reason of illness, absence or other cause.
- (4) The Governor may, on the Minister’s recommendation, appoint a person as an alternate Authority member to act temporarily in the Authority member’s place.
- (5) The Minister can recommend a person under subsection (4) only if the Minister is satisfied in relation to the person as set out in section 7(2A).
- (6) The Governor’s power to appoint a person under subsection (4) is subject to section 7(5).

- (7) The remuneration, travelling and other allowances and other terms and conditions of appointment of an alternate Authority member are those that the Minister, on the recommendation of the Public Sector Commissioner, determines for the alternate Authority member.
- (8) While acting in accordance with their appointment under subsection (4), an alternate Authority member is taken to be an Authority member (subject to subsection (7) which applies instead of section 9).
- (9) An act or omission of a person acting in an office under this section cannot be questioned on the ground that the occasion to act in the office had not arisen or had ceased.

**6. Section 11 amended**

In section 11(2)(c) delete “subject to section 12(5)(b),”.

**7. Section 12 amended**

- (1) Delete section 12(1) and insert:
  - (1) If an Authority member has a direct or indirect pecuniary interest in a matter that is, or is to be, before a meeting of the Authority, the Authority member must disclose the nature of the interest.
  - (1A) The disclosure must —
    - (a) be made as soon as possible after the relevant facts have come to the Authority member’s knowledge; and
    - (b) be made to the Authority prior to the meeting or, if that is not possible, be made to the Authority members who are at the meeting; and

**s. 7**

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- (c) be recorded in the minutes of the proceedings of the meeting.
- (2) Delete section 12(5) and insert:
- (5) If an Authority member discloses an interest in a matter under subsection (1), or is determined under subsection (3) to have an interest in a matter, the Authority member cannot be present at the meeting for any consideration or discussion of, or vote on, the matter.

## Part 3 — Ministerial statement of expectation

### 8. Act amended

This Part amends the *Environmental Protection Act 1986*.

### 9. Section 21 amended

After section 21(a) insert:

- (aa) how the Authority, during that financial year, has had regard to the expectation statement (as defined in section 21A) as required under section 21B(5); and

### 10. Part II Division 1A inserted

After section 21 insert:

## Division 1A — Ministerial statement of expectation

### 21A. Terms used

In this Division —

*effective day* means the day on which the expectation statement takes effect under section 21B(4);

*expectation statement* means the ministerial statement of expectation required under section 21B(1), as it may from time to time be reissued under section 21C(1)(b).

### 21B. Minister to issue ministerial statement of expectation

- (1) The Minister must issue a ministerial statement of expectation to the Authority.

- (2) The purpose of the expectation statement is to set out the Minister's objectives on matters relating to the Authority's functions.
- (3) It is for the Minister to determine which matters are to be covered by the expectation statement.
- (4) The expectation statement takes effect on the day after the day on which it is issued under subsection (1).
- (5) In performing its functions, the Authority must have regard to the expectation statement.

**21C. Review and reissue of expectation statement**

- (1) The Minister may do either of the following at any time —
  - (a) review the expectation statement;
  - (b) reissue the expectation statement to the Authority, either as an amended statement or a new statement.
- (2) Subsection (3) applies if, after the effective day, there is any 4-year period during which the Minister does not review the expectation statement under subsection (1)(a).
- (3) The Minister must review the expectation statement under subsection (1)(a) as soon as practicable after the end of the 4-year period.
- (4) A reissue of the expectation statement under subsection (1)(b) takes effect on the day after the day on which it is reissued or on a later day specified in the reissued expectation statement.

**21D. Expectation statement to be laid before Parliament**

- (1) The Minister must cause a copy of the expectation statement to be laid before each House of Parliament within 9 sitting days of that House after the day on which the expectation statement is issued under section 21B(1).
- (2) If the expectation statement is reissued under section 21C(1)(b), the Minister must cause a copy of the reissued expectation statement to be laid before each House of Parliament within 9 sitting days of that House after the day on which the expectation statement is reissued.

**21E. Expectation statement to be published**

The Authority must cause the expectation statement to be published.

## **Part 4 — Environmental impact assessment**

### **Division 1 — Parallel decision-making**

#### **Subdivision 1 — Amendments to current provisions of *Environmental Protection Act 1986***

**11. Act amended**

This Subdivision amends the *Environmental Protection Act 1986*.

**12. Section 3 amended**

In section 3(1) insert in alphabetical order:

*minor or preliminary work* includes any work prescribed as minor or preliminary work under section 41A(4);

**13. Section 41 amended**

(1) Before section 41(2) insert:

(1A) In this section —

*restricted decision* means a decision of a prescribed class.

(2) In section 41(2) and (3) delete “any decision” and insert:

any restricted decision

- (3) In section 41(4) and (5) delete “a decision” and insert:

a restricted decision

- (4) After section 41(5) insert:

- (6) Regulations made for the purposes of the definition of ***restricted decision*** in subsection (1A) may (without limitation) describe a class of decision by reference to any of the following —

- (a) the written law, or the provision of a written law, under which the decision is made;
- (b) the agreement to which the State is a party and which is ratified or approved by an Act, or the provision of such an agreement, under which the decision is made;
- (c) the public authority which has the power or duty to make the decision;
- (d) any characteristic of, or other circumstance or matter relating to, the proposal in relation to which the decision is made.

- (5) At the end of section 41 insert:

Note for this section:

Section 41A makes it an offence for a person to do anything to implement a proposal in the circumstances set out in that section. The offence applies even if the person is acting under a decision of a decision-making authority that this section did not preclude the decision-making authority from making.

Note: The heading to amended section 41 is to read:

**Restrictions on decisions by decision-making authorities**

**14. Section 41A amended**

After section 41A(3) insert:

- (4) Regulations may prescribe work that is *minor or preliminary work* for the purposes of this Act.

**15. Part IV Division 2A heading amended**

In the heading to Part IV Division 2A delete “**Payments**” and insert:

**Supplementary provisions**

**16. Section 48AB inserted**

At the end of Part IV Division 2A insert:

**48AB. Reporting on matters relating to proposals**

- (1) Regulations may require the Authority to report to decision-making authorities on matters relating to the referral, assessment or implementation of a proposal under Division 1 or 2.
- (2) Regulations may require a decision-making authority to report to the Authority or other decision-making authorities (or both) on matters relating to the decision-making authority’s decisions or other activities in respect of a proposal that has been referred or is required to be referred, or that is being assessed or implemented, under Division 1 or 2.

- (3) Regulations may make provision about the timing, form or content of reports under this section.

**17. Section 51F amended**

- (1) Delete section 51F(2) and insert:
- (2) For the purposes of this section, proposed clearing is related to a proposal if the clearing —
- (a) is part of the proposal; or
  - (b) is otherwise connected or associated with the proposal in such a way that the clearing would not need to be done if the implementation of the proposal did not proceed.
- (2) Delete section 51F(4).
- (3) Delete section 51F(5) and insert:
- (5) If a Ministerial statement is in effect in respect of a referred proposal, the CEO must not make a clearing decision concerning proposed clearing that is related to the referred proposal if the decision is contrary to, or otherwise than in accordance with, the Ministerial statement.
- (4) In section 51F(6) delete “Subsections (4) and (5) do” and insert:
- Subsection (5) does

Note: The heading to amended section 51F is to read:

**Decisions about clearing related to proposals**

**18. Section 51K amended**

After section 51K(1)(g) insert:

- (ga) amending the clearing permit to ensure that it is not contrary to, and that it otherwise accords with, a Ministerial statement; or

**19. Section 51KB amended**

(1) Delete section 51KB(1) and insert:

- (1) For the purposes of this section, an amendment of a clearing permit (a *proposed amendment*) is related to a proposal if the proposed amendment —
  - (a) concerns clearing, or proposed clearing, that is part of the proposal; or
  - (b) is otherwise connected or associated with the proposal in such a way that the proposed amendment would not need to be made if the implementation of the proposal did not proceed.

(2) Delete section 51KB(2).

(3) Delete section 51KB(3) and insert:

- (3) If a Ministerial statement is in effect in respect of a referred proposal, the CEO must not make a proposed amendment that is related to the referred proposal if the proposed amendment is contrary to, or otherwise than in accordance with, the Ministerial statement.

(3A) Subsection (3) does not apply if the proposed amendment is for the purpose of doing minor or preliminary work to which the Authority has consented under section 41A(3).

(4) In section 51KB(4) delete “referred”.

Note: The heading to amended section 51KB is to read:

**Amendments to clearing permits related to proposals**

**20. Section 54 amended**

(1) Delete section 54(4) and insert:

(3B) Subsection (4) applies, subject to subsection (5A), if —

- (a) an application for a works approval made under subsection (1) is related to a referred proposal; and
- (b) a Ministerial statement is in effect in respect of the referred proposal.

(4) The CEO must not perform any duty imposed under subsection (3) contrary to, or otherwise than in accordance with, the Ministerial statement.

(2) After section 54(5) insert:

(6) For the purposes of this section, an application for a works approval made under subsection (1) is related to a proposal if the works approval —

- (a) would concern an activity, or proposed activity, that is part of the proposal; or

- (b) would otherwise be connected or associated with the proposal in such a way that the works approval would not be needed if the implementation of the proposal did not proceed.

**21. Section 57 amended**

- (1) Delete section 57(4) and insert:

- (3B) Subsection (4) applies, subject to subsection (4AA), if —

- (a) an application for a licence made under subsection (1) is related to a referred proposal; and
- (b) a Ministerial statement is in effect in respect of the referred proposal.

- (4) The CEO must not perform any duty imposed under subsection (3) contrary to, or otherwise than in accordance with, the Ministerial statement.

- (2) After section 57(5) insert:

- (6) For the purposes of this section, an application for a licence made under subsection (1) is related to a proposal if the licence —
  - (a) would concern an activity, or proposed activity, that is part of the proposal; or
  - (b) would otherwise be connected or associated with the proposal in such a way that the licence would not be needed if the implementation of the proposal did not proceed.

**22. Section 59 amended**

After section 59(1)(i) insert:

- (ia) amending the works approval or licence to ensure that it is not contrary to, and that it otherwise accords with, a Ministerial statement; or

**23. Section 59B amended**

(1) Delete section 59B(7) and insert:

(6A) Subsection (7) applies if —

- (a) a proposed amendment, revocation or suspension is related to a referred proposal; and
- (b) a Ministerial statement is in effect in respect of the referred proposal.

(7) The CEO must not amend, revoke or suspend contrary to, or otherwise than in accordance with, the Ministerial statement.

(2) After section 59B(10) insert:

(11) For the purposes of this section, a proposed amendment, revocation or suspension is related to a proposal if the works approval or licence (or, if relevant, the proposed amendment to the works approval or licence) —

- (a) concerns an activity, or proposed activity, that is part of the proposal; or

- (b) is otherwise connected or associated with the proposal in such a way that the works approval or licence (or, if relevant, the proposed amendment) would not be needed if the implementation of the proposal did not proceed.

**24. Section 105 amended**

In section 105:

- (a) in paragraph (aa) delete “(g)” and insert:

(g), (ga)

- (b) in paragraph (b) delete “(i)” and insert:

(i), (ia)

**Subdivision 2 — Amendments to provisions of *Environmental Protection Act 1986* to be inserted by *Environmental Protection Amendment Act 2020***

**25. Act amended**

This Subdivision amends the *Environmental Protection Act 1986*.

**26. Section 55 amended**

After section 55(3)(i) insert:

- (ia) amending the licence to ensure that it is not contrary to, and that it otherwise accords with, a Ministerial statement; or



- (4) In section 60A(4) delete “Subsections (2) and (3) do” and insert:

Subsection (3) does

- (5) In section 60A(5) delete “referred”.

Note: The heading to amended section 60A is to read:

**Decisions about licences related to proposals**

**28. Section 105 amended**

In section 105:

- (a) in paragraph (b) delete “(g)” and insert:

(g), (ga)

- (b) in paragraph (c) delete “(i)” and insert:

(i), (ia)

**Division 2 — Assessment reports**

**29. Act amended**

This Division amends the *Environmental Protection Act 1986*.

**30. Section 44 amended**

After section 44(3) insert:

- (4) If a direction is given under subsection (2c), the Minister must cause copies of the reasons for giving the direction to be —
- (a) given to the Authority; and



**Environmental Protection Amendment Act 2024**

**Part 4** Environmental impact assessment

**Division 4** Offence if proposal implemented before assessment completed

**s. 35**

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**35. Section 100 amended**

Delete section 100(1)(a), (1a) and (3a)(a).

**36. Section 101 amended**

(1) Delete section 101(1)(b) and (c).

(2) Delete section 101(2) and insert:

(2) If the Minister remits under subsection (1)(d) a proposal to the Authority for assessment, further assessment or reassessment and makes a direction under section 43 —

(a) such portions of the procedure laid down by sections 40 to 48 as are appropriate apply to the proposal; and

(b) those portions must be completed within the period specified by the Minister in the remittal.

(3) Delete section 101(3)(a).

**Division 4 — Offence if proposal implemented before assessment completed**

**37. Act amended**

This Division amends the *Environmental Protection Act 1986*.

**38. Section 99AA amended**

In section 99AA in the definition of *prescribed offence* in the Table insert in numerical order:

s. 41A(1)

**39. Schedule 1 amended**

(1) After Schedule 1 Part 1 Division 1 item 1 insert:

1A	41A(1)	\$125 000	\$25 000
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(2) After Schedule 1 Part 1 Division 2 item 1 insert:

1A	41A(1)	\$250 000	\$50 000
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(3) Delete Schedule 1 Part 2 Division 1 item 1.

(4) Delete Schedule 1 Part 2 Division 2 item 1.

## **Part 5 — Transitional provisions**

**40. Act amended**

This Part amends the *Environmental Protection Act 1986*.

**41. Section 133E amended**

In section 133E in the definition of *existing Act* after “by” insert:

section 60 of

**42. Part IX Division 5 inserted**

At the end of Part IX insert:

### **Division 5 — Transitional provisions for *Environmental Protection Amendment Act 2024***

#### **Subdivision 1 — Preliminary**

**133Q. Terms used**

In this Division —

*amending Act* means the *Environmental Protection Amendment Act 2024*;

*transitional regulations* means regulations made for the purposes of section 133S(2).

**133R. Application of *Interpretation Act 1984***

The *Interpretation Act 1984* Part V applies in relation to amendments made by the amending Act subject to this Division and transitional regulations.

**Subdivision 2 — Main provisions**

**133S. Transitional regulations**

- (1) In this section —  
*publication day*, for transitional regulations, means the day on which the regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a);  
*specified* means specified or described in transitional regulations;  
*transitional matter* means a matter or issue of a transitional, savings or application nature.
- (2) Regulations may prescribe anything required, necessary or convenient to be prescribed in relation to a transitional matter in connection with the enactment of, or any amendment made by, the amending Act.
- (3) Without limiting subsection (2), transitional regulations may provide for specified provisions of this Act or another written law —
  - (a) not to apply to, or in relation to, a specified matter or thing; or
  - (b) to apply with specified modifications to, or in relation to, a specified matter or thing.
- (4) Without limiting subsection (2), if sections 20, 21, 22, 23 and 24 of the amending Act do not come into operation under section 2(2) of the amending Act, transitional regulations may, for the purposes of Division 4 Subdivision 3, provide for the former provisions (as defined in section 133E) to be taken to be amended in accordance with sections 20, 21, 22, 23 and 24 of the amending Act.

- (5) If transitional regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than publication day but not earlier than the day on which Part 5 of the amending Act comes into operation, the transitional regulations have effect according to their terms.
- (6) If transitional regulations contain a provision referred to in subsection (5), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before publication day; or
  - (b) to impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day.

**133T. Existing Authority members**

- (1) In this section —

*amendment day* means the day on which section 4 of the amending Act comes into operation;

*existing Authority member* means a person who is an Authority member immediately before amendment day.
- (2) Despite the amendments made to section 7 by section 4 of the amending Act, on and after amendment day, an existing Authority member continues to hold office —
  - (a) for a term equal to the unfinished part of their term of office as specified in their instrument of appointment; and

- (b) otherwise in accordance with their instrument of appointment.
- (3) Subsection (2) does not affect the application of section 7(7) or (8) to an existing Authority member.

**133U. Parallel decision-making: section 41**

- (1) In this section —  
*amendment day* means the day on which section 13 of the amending Act comes into operation.
- (2) Subsection (3) applies to a decision that, immediately before amendment day, a decision-making authority is precluded from making by section 41.
- (3) On and after amendment day, the decision-making authority is not precluded by section 41 from making the decision unless the decision is a restricted decision under the definition of that term in section 41(1A) as inserted by section 13(1) of the amending Act.

**133V. Parallel decision-making: Part V**

- (1) In this section —  
*amendment day*, in relation to amendments made by a provision of the amending Act, means the day on which that provision comes into operation.
- (2) The amendments made to section 51F by section 17 of the amending Act apply in relation to a referral under section 51DA(2) or an application for a clearing permit that —
  - (a) is made before amendment day; and
  - (b) is still in progress immediately before amendment day.

- (3) The amendments made to section 51KB by section 19 of the amending Act apply in relation to either of the following that is made or arises before amendment day and is still in progress immediately before amendment day —
- (a) an application for an amendment to a clearing permit;
  - (b) an initiative of the CEO to amend a clearing permit.
- (4) The amendments made to section 54 by section 20 of the amending Act apply in relation to an application for a works approval that —
- (a) is made under section 54(1) before amendment day; and
  - (b) is still in progress immediately before amendment day.

Note for this subsection:

Section 2(2) of the amending Act provides for a situation in which section 20 of the amending Act does not come into operation.

- (5) The amendments made to section 57 by section 21 of the amending Act apply in relation to an application for a licence that —
- (a) is made under section 57(1) before amendment day; and
  - (b) is still in progress immediately before amendment day.

Note for this subsection:

Section 2(2) of the amending Act provides for a situation in which section 21 of the amending Act does not come into operation.

- (6) The amendments made to section 59B by section 23 of the amending Act apply in relation to any of the

following that is made or arises before amendment day and is still in progress immediately before amendment day —

- (a) an application for an amendment to a works approval or licence;
- (b) an initiative of the CEO to amend a works approval or licence;
- (c) an application to surrender a works approval or licence;
- (d) an initiative of the CEO to revoke or suspend a works approval or licence.

Note for this subsection:

Section 2(2) of the amending Act provides for a situation in which section 23 of the amending Act does not come into operation.

**133W. Existing appeals against Authority’s decision not to assess proposal**

- (1) In this section —  
*amendment day* means the day on which Part 4 Division 3 of the amending Act comes into operation;  
*existing appeal* means an appeal under section 100(1)(a), as in force before amendment day, that is lodged with the Minister before amendment day.
- (2) On and after amendment day, this Act continues to apply in relation to an existing appeal as if Part 4 Division 3 of the amending Act had not come into operation.
- (3) Without limiting subsection (2), the amendment made to section 41 by section 33 of the amending Act does not apply in a case where an appeal against the decision that the proposal not be assessed is lodged before amendment day.

- (4) The amendments made by Part 4 Division 3 of the amending Act apply in relation to a decision made before amendment day that a proposal is not to be assessed if —
- (a) there is no existing appeal in respect of the decision; and
  - (b) the period for lodging an appeal in respect of the decision under section 100(1)(a), as in force before amendment day, does not expire before amendment day.

**133X. Exemption order**

- (1) In the *Environmental Protection (Darling Range Bauxite Mining Proposals) Exemption Order 2023*, a reference to this Act, or a provision of this Act, includes a reference to this Act, or the provision, as it may be amended by the amending Act.
- (2) This section does not limit or otherwise affect any power to amend, revoke or replace the *Environmental Protection (Darling Range Bauxite Mining Proposals) Exemption Order 2023*.

**133Y. Amendment to *Environmental Protection Regulations 1987* r. 5DA**

The *Environmental Protection Regulations 1987* may be amended or repealed by regulations as if the amendment made to regulation 5DA by section 49 of the amending Act had been made by regulations.

## **Part 6 — Validation**

### **Division 1 — *Environmental Protection Act 1986* amended**

**43. Act amended**

This Division amends the *Environmental Protection Act 1986*.

**44. Section 59A amended**

After section 59A(2) insert:

- (3) In addition to the grounds set out in subsection (2) and without limiting Schedule 2 items 2 and 2A, regulations may provide for a ground for revocation or suspension of a works approval or licence in the case of non-payment, or late payment, of a fee or charge in respect of the works approval or licence.

**45. Part X Division 1 heading inserted**

At the beginning of Part X insert:

### **Division 1 — Provisions relating to *The Wilderness Society v Minister for Environment***

**46. Section 134 amended**

- (1) In section 134(1) delete “Part —” and insert:

Division —

- (2) In section 134(2) delete “Part,” and insert:

Division,

**47. Part X Division 2 inserted**

At the end of Part X insert:

**Division 2 — Provisions relating to licences that ceased to have effect due to non-payment of licence fee**

**138. Terms used**

In this Division —

*licence* means a licence granted under Part V Division 3 before validation day;

*regulation 5DA(3)* means the *Environmental Protection Regulations 1987* regulation 5DA(3) as inserted on 22 June 2004 by the *Environmental Protection Amendment Regulations 2004* regulation 6;

*regulation 5DA(5)* means the *Environmental Protection Regulations 1987* regulation 5DA(5) as inserted on 22 June 2004 by the *Environmental Protection Amendment Regulations 2004* regulation 6;

*validation day* means the day on which the *Environmental Protection Amendment Act 2024* Part 6 comes into operation.

**139. Validation**

- (1) Regulation 5DA(5) is taken to have had no effect before validation day.

- (2) Subsections (3) to (8) —
  - (a) supplement subsection (1); and
  - (b) are not to be construed as limiting the effect of subsection (1) or each other.
- (3) A licence —
  - (a) is taken to have been, at all times before validation day, as lawful, valid and effective as it would have been if regulation 5DA(5) had had no effect before validation day; and
  - (b) if relevant — is taken to be, at all times on and after validation day, as lawful, valid and effective as it would be if regulation 5DA(5) had had no effect before validation day.
- (4) Any written law (including this Act) in force at any time on or after 22 June 2004 is taken to have, or to have had, the same effect at that time as if regulation 5DA(5) had had no effect before validation day.
- (5) Anything done, or purportedly done, on or after 22 June 2004 is taken to be, and to have always been, as lawful, valid and effective as it would be, or would have been, if regulation 5DA(5) had had no effect before validation day.
- (6) In subsection (5), a reference to the doing of anything includes a reference to an omission to do anything.
- (7) The functions, rights, obligations and liabilities of the State, and of all persons and bodies, are taken to be, and to have always been, the same as if regulation 5DA(5) had had no effect before validation day.

- (8) An act or omission done or made on or after 22 June 2004 is taken to be, and to have always been —
- (a) an offence, or other contravention of a written law (including this Act), if it would be, or would have been, an offence or other contravention if regulation 5DA(5) had had no effect before validation day; and
  - (b) subject to the same punishment or other penalty or consequences, whether criminal or civil, as it would be, or would have been, if regulation 5DA(5) had had no effect before validation day.
- (9) This section has effect despite *The Criminal Code* section 11.
- (10) Without limiting the effect of this section —
- (a) if a person was convicted of an offence before validation day — this section has effect for the purposes of any appeal proceedings in respect of the conviction that —
    - (i) are commenced on or after validation day; or
    - (ii) were commenced, but not completed, before validation day;and
  - (b) this section has effect for the purposes of any proceedings against a person for an offence that were commenced, but not completed, before validation day; and
  - (c) proceedings may be commenced on or after validation day against a person for an offence on the basis that the person is taken by virtue of

this section to have committed the offence on or after 22 June 2004; and

- (d) to the extent not covered by paragraphs (a) to (c), this section has effect for the purposes of any criminal or civil proceedings in or before a court (including appeal proceedings) that relate to an act or omission occurring, or other matter arising, on or after 22 June 2004 and that —
  - (i) are commenced on or after validation day; or
  - (ii) were commenced, but not completed, before validation day.

(11) This section is subject to sections 140 and 141.

**140. CEO notified holder of licence that licence had ceased to have effect**

- (1) In this section (to avoid doubt) —
  - (a) references to a licence include a licence that, apart from this section, would be taken by virtue of section 139 to have been in effect before validation day; and
  - (b) references to a fee payable for a period under regulation 5DA(3) include a fee that, apart from this section, would be taken by virtue of section 139 to have been so payable before validation day.
- (2) Subsection (3) applies (subject to subsection (4)) if, before validation day, the CEO gave written notice to the holder of a licence to the effect that the licence had ceased to have effect under regulation 5DA(5) because of the non-payment of a fee payable for a period under regulation 5DA(3).

- (3) The licence is taken to have ceased to have effect under regulation 5DA(5) as notified by the CEO.
- (4) Subsection (3) does not apply if, before validation day —
  - (a) the CEO issued to the holder of the licence an invoice setting out the amount of the fee as calculated by the CEO and the holder paid that amount to the CEO; or
  - (b) the holder of the licence otherwise paid an amount to the CEO and the CEO accepted the payment as payment of the fee; or
  - (c) there was a dispute between the holder of the licence and the CEO as to the amount of the fee and the holder paid the CEO the amount of the fee to the extent undisputed.

**141. Licence replaced by new licence before validation day**

- (1) Subsection (2) applies to a licence (the *relevant licence*) if —
  - (a) apart from subsection (2), the relevant licence would be taken by virtue of section 139 to have been in effect in respect of any premises (the *relevant premises*) at a time (the *relevant time*) before validation day; and
  - (b) at the relevant time, a new licence was granted in respect of the relevant premises or in respect of premises that were substantially the same as the relevant premises.
- (2) The relevant licence is taken to have been revoked under section 59A at the relevant time on the application of the holder of the relevant licence under section 59A(2)(e).

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**Division 2 — *Environmental Protection Regulations 1987*  
amended**

**48. Regulations amended**

This Division amends the *Environmental Protection Regulations 1987*.

**49. Regulation 5DA amended**

Delete regulation 5DA(4) and (5) and insert:

- (4) If the licence holder does not pay a fee under subregulation (3) on time, the licence holder must pay, in addition to the fee under subregulation (3) —
  - (a) if the licence holder pays the fee under subregulation (3) before the end of the period of 30 days after the anniversary before which the fee should have been paid — a late payment fee of 10 units; or
  - (b) otherwise — a late payment fee of 20 units.
- (5) For the purposes of section 59A(1) of the Act, each of the following is a ground for revocation or suspension of a licence —
  - (a) the licence holder does not pay a fee under subregulation (3) before the end of the period of 60 days after the anniversary before which the fee should have been paid;
  - (b) the licence holder does not pay a late payment fee under subregulation (4)(a) or (b) before the end of the period of 60 days after the anniversary before which the fee under subregulation (3) should have been paid.

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- (6) Subregulations (4) and (5) apply only if the anniversary before which the fee under subregulation (3) should have been paid is after validation day.
- (7) On and after validation day, subregulation (4) (but not subregulation (5)), as deleted by the *Environmental Protection Amendment Act 2024* section 49, continues to apply as if that subregulation (4) were still in force for cases where —
- (a) a licence holder does not pay a fee under subregulation (3) on time; and
  - (b) the anniversary before which the fee should have been paid is on or before validation day.
- (8) In subregulations (6) and (7) —  
**validation day** has the meaning given in section 138 of the Act.

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