

Western Australia

## **Environmental Protection Amendment Act 2003**

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No. 54 of 2003

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## Environmental Protection Amendment Act 2003

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section 3(1)**

Western Australia

## **Environmental Protection Amendment Act 2003**

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**No. 54 of 2003**

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**An Act to amend the *Environmental Protection Act 1986*; and for consequential and related purposes.**

*[Assented to 20 October 2003]*

The Parliament of Western Australia enacts as follows:

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Environmental Protection Amendment Act 2003*.

### 2. Commencement

- (1) This Act comes into operation on a day to be fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.
- (3) The day fixed under subsection (1) for Part 9 or a provision in Part 9 is not to be earlier than the earliest day on which regulations made for the purposes of section 51C(c) of the *Environmental Protection Act 1986* as inserted by section 110 are laid before the Legislative Assembly under section 42(1) of the *Interpretation Act 1984*.

### 3. The Act amended

The amendments in this Act are to the *Environmental Protection Act 1986*\* unless otherwise indicated.

[\* Reprinted as at 11 January 2002.  
For subsequent amendments see Act No. 25 of 2001.]

## Part 2 — Assessment and implementation of proposals

### 4. Section 3 amended

(1) Section 3(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical positions the following definitions —

“

**“implementation agreement or decision”** means an agreement or decision under section 45 (or under section 45 as applied by section 46(8)) as to whether or not a proposal to which a report published under section 44(3) relates may be implemented and, if that proposal may be implemented, as to what conditions and procedures, if any, that implementation is subject;

**“implementation conditions”** means the conditions and procedures, if any, agreed or decided in relation to a proposal under section 45 (or under section 45 as applied by section 46(8));

**“person”** includes a public authority;

”;

- (b) in the definition of “proponent” by deleting “nominated under section 38 as being”.

(2) After section 3(2a) the following subsection is inserted —

“

- (2b) If a person is for the time being nominated under section 38(6) as being responsible for a proposal that person is to be regarded, for the purposes of the definition of “proponent” in subsection (1), as the person responsible for the proposal.

”.

**s. 5**

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(3) After section 3(3) the following subsection is inserted —

“

- (3a) A reference in this Act to the changing of implementation conditions is a reference to —
- (a) varying, removing or adding implementation conditions; or
  - (b) inserting implementation conditions where none existed.

”.

**5. Section 37B inserted**

Before section 38 the following section is inserted in Part IV Division 1 —

“

**37B. Definitions**

(1) In this Division —

“**significant proposal**” means a proposal likely, if implemented, to have a significant effect on the environment;

“**strategic proposal**” has the meaning given by subsection (2).

(2) A proposal is a “**strategic proposal**” if and to the extent to which it identifies —

- (a) a future proposal that will be a significant proposal; or
- (b) future proposals likely, if implemented in combination with each other, to have a significant effect on the environment.

”.

**6. Section 38 amended**

- (1) Section 38(1) to (5) are repealed and the following subsections are inserted instead —

“

- (1) Subject to subsections (2) and (5j), any person may refer a significant proposal to the Authority.
- (2) In the case of a proposal under an assessed scheme, only the proponent can refer the proposal to the Authority under subsection (1).
- (3) Subject to subsection (5j), the proponent of a strategic proposal may refer the proposal to the Authority.
- (4) If it appears to the Minister that there is public concern about the likely effect of a proposal, if implemented, on the environment, the Minister may refer the proposal to the Authority.
- (5) Subject to subsection (5j), as soon as a decision-making authority has notice of a proposal that appears to it to be —
  - (a) a significant proposal; or
  - (b) a proposal of a prescribed class,the decision-making authority is to refer the proposal to the Authority.
- (5a) Subsection (5) does not apply if the proposal has been referred to the Authority under subsection (1) or (4).
- (5b) In the case of a proposal under an assessed scheme, the application of subsection (5)(a) is subject to section 48I.
- (5c) If the Authority considers that a proposal that is —
  - (a) a significant proposal; or

- (b) a proposal of a prescribed class,  
has not been referred to it under subsection (1), (4) or (5), the Authority is to require the proponent or a decision-making authority to refer the proposal to the Authority.
- (5d) A requirement under subsection (5c) is to be in writing and is to specify the period within which it has to be complied with.
- (5e) In the case of a proposal under an assessed scheme, the Authority can only require the referral of the proposal under subsection (5c) if it did not, when it assessed the assessed scheme under Division 3, have sufficient scientific or technical information to enable it to assess the environmental issues raised by the proposal.
- (5f) A requirement under subsection (5c) has effect despite section 48I(2).
- (5g) In subsections (5)(b) and (5c)(b), a reference to a proposal of a prescribed class includes a reference to a proposal of a prescribed class under an assessed scheme.
- (5h) A proponent or decision-making authority that has to refer a proposal to the Authority under a requirement under subsection (5c) is to do so within the period specified in the requirement.
- (5i) A referral under this section is to be in writing.
- (5j) Subject to section 46B(2), a proposal cannot be referred to the Authority under this section more than once unless assessment of it has been terminated under section 40A.

”.



- (2) After section 38(6) the following subsection is inserted —
- “
- (6a) If the person nominated under subsection (6) ceases to have responsibility for a proposal, that person is to give the Authority written notice advising the name of the person to whom or which responsibility for the proposal will pass or has passed.
- ”.
- (3) Section 38(7) is amended by deleting “, unless the proposal concerned is no longer referred or required to be referred, or no longer ought to be referred, under this section,”.
- (4) After section 38(7) the following subsection is inserted —
- “
- (7a) Subsections (6a) and (7) apply even if a report on the proposal has been published under section 44(3) but do not apply if the assessment of the proposal has been terminated under section 40A.
- ”.
- (5) After section 38(8) the following subsection is inserted —
- “
- (9) For the purposes of subsections (6a) and (7) and section 3(2b), a person that has been notified under section 39A(3)(a) that the Authority is going to assess a proposal is to be regarded as having been nominated under subsection (6) as being responsible for the proposal whether or not such a nomination has been made.
- ”.

**s. 7**

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**7. Section 38A inserted**

After section 38 the following section is inserted —

“

**38A. Request for further information**

- (1) If the Authority considers that it does not have enough information about a proposal referred to it under section 38 to enable it to decide —
  - (a) whether or not to assess the proposal;
  - (b) whether or not to agree to a request made under section 39B(1); or
  - (c) on the level of assessment if the proposal is going to be assessed,it may, by written notice, request any person to provide it with additional information about the proposal.
- (2) The 28 day period set by section 39A(3) is not to be regarded as having begun in relation to a proposal until each notice issued under subsection (1) in relation to the proposal has been complied with or, in the case of a notice sent to a person other than the person who referred the proposal, the period specified in the notice for complying with that notice has expired.

”.

**8. Sections 39A and 39B inserted**

After section 39 the following sections are inserted —

“

**39A. Authority must decide whether to assess proposals referred**

- (1) When a proposal is referred to the Authority under section 38, the Authority is to decide whether or not to assess the proposal.

- (2) The Authority's decision under subsection (1) is to be based on information —
  - (a) submitted in or with the referral or under section 38A; or
  - (b) derived from the Authority's own investigations and inquiries.
- (3) Within 28 days after the referral of the proposal the Authority is to give written notice of whether or not it is going to assess the proposal to —
  - (a) the proponent;
  - (b) if the proposal was not referred by the proponent, the person that referred it; and
  - (c) any relevant decision-making authority.
- (4) If, for any reason, a relevant decision-making authority is not given notice as required by subsection (3)(c) that a proposal is going to be assessed, the Authority may give written notice to the decision-making authority under this subsection.
- (5) Notice under subsection (4) may be given by the Authority of its own motion or at the request of the decision-making authority, and may be given at any time before a report on the proposal is given to the Minister under section 44.
- (6) If the Authority decides to assess a proposal, it is to begin the assessment as soon as practicable after the notices are given under subsection (3).
- (7) If the Authority decides not to assess a proposal, it may nevertheless give advice and make recommendations on the environmental aspects of the proposal to the proponent or any other relevant person or authority.
- (8) This section does not apply if the proposal is declared under section 39B to be a derived proposal.

**39B. Derived proposals**

- (1) If a proposal (the “**referred proposal**”) is referred to the Authority under section 38 the proponent may request the Authority in writing to declare the referred proposal to be a derived proposal.
- (2) If the proposal is referred by the proponent, a request under subsection (1) may be made in the referral.
- (3) If a request under subsection (1) is made, the Authority is to declare the referred proposal to be a derived proposal if it considers that —
  - (a) the referred proposal was identified in a strategic proposal that has been assessed under this Part (the “**strategic proposal**”); and
  - (b) after a report on the strategic proposal was published under section 44(3), it was agreed or decided under section 45 that the referred proposal could be implemented, or could be implemented subject to conditions and procedures agreed or decided under that section.
- (4) Despite subsection (3), the Authority may refuse to declare the referred proposal to be a derived proposal if it considers that —
  - (a) environmental issues raised by the proposal were not adequately assessed when the strategic proposal was assessed;
  - (b) there is significant new or additional information that justifies the reassessment of the issues raised by the proposal; or
  - (c) there has been a significant change in the relevant environmental factors since the strategic proposal was assessed.

- (5) If the Authority declares the referred proposal to be a derived proposal, it is to —
  - (a) record the declaration in the public record kept under section 39(1); and
  - (b) give written notice of the declaration to the Minister.
- (6) If the Authority declares the referred proposal to be a derived proposal, it is not to assess the proposal except for the purposes of conducting an inquiry under section 46(4).
- (7) If the Authority refuses to declare the referred proposal to be a derived proposal it is to give written notice of the refusal to the proponent.
- (8) The notice may be included in the notice given under section 39A(3)(a).

”.

**9. Section 40 amended**

- (1) Section 40(1) is repealed and the following subsection is inserted instead —

“

- (1) This section and section 40A apply if the Authority assesses a proposal.

”.

- (2) Section 40(2) is amended as follows:
  - (a) by deleting “under subsection (1)(b)”;
  - (b) by deleting the comma after paragraph (c) and inserting a full stop;
  - (c) by deleting the portion of the subsection after paragraph (c).

(3) After section 40(2) the following subsection is inserted —

“

(2a) As well as taking one or more of the courses of action set out in subsection (2)(a) to (c), the Authority may make such other investigations and inquiries as it thinks fit.

”.

(4) Section 40(6) is repealed and the following subsection is inserted instead —

“

(6) When the Authority causes any information or report to be made available for public review under subsection (4) —

(a) the proponent must —

- (i) at the proponent's own expense and to the satisfaction of the Authority, make copies of that information or report and advertise its availability for public review;
- (ii) provide copies of that information or report free of charge to such public authorities and persons, at such places and times as the Authority determines; and
- (iii) provide copies of that information or report to members of the public at such places and times, and at a price not exceeding such maximum price, as the Authority determines;

and

(b) the Authority may require the proponent to respond to any submissions made to the Authority in respect of that information or report in such manner as the Authority thinks fit.

”.

(5) After section 40(8) the following subsection is inserted —

“

- (9) A proponent or other person upon whom a requirement is imposed under subsection (2)(a) or (b) or (6)(b) has to comply with that requirement.

”.

**10. Sections 40A and 40B inserted**

After section 40 the following sections are inserted —

“

**40A. Termination of assessment**

(1) The Authority may terminate the assessment of a proposal if —

- (a) the proponent agrees with the termination;
- (b) the proponent has failed to comply with —
  - (i) a requirement made under section 40(2)(a) or (b);
  - (ii) section 40(6)(a); or
  - (iii) a requirement made under section 40(6)(b),

within such period as the Authority considers to be reasonable in the circumstances; or

- (c) a decision-making authority has refused to approve the proposal.

(2) Subsection (1)(c) does not authorise the termination of the assessment if the refusal by the decision-making authority —

- (a) is being appealed against or reviewed under an enactment; or
- (b) is capable of being appealed against or reviewed under an enactment.

**40B. Assessment of a strategic proposal: application of sections 41, 41A, 44 and 45**

- (1) Sections 41, 41A and 45(7) do not apply in relation to a strategic proposal.
- (2) Section 44 and section 45 (other than subsection (7)) apply in relation to a strategic proposal as if references in them to implementation were references to the implementation of a future proposal identified in the strategic proposal in the event of that future proposal being declared under section 39B to be a derived proposal.
- (3) This section does not affect the application of sections 41, 41A, 44 and 45 in relation to a strategic proposal to the extent to which the strategic proposal is itself a significant proposal.

”.

**11. Section 41 amended**

- (1) Section 41(1) is repealed.
- (2) Section 41(2)(a) is amended by deleting “or has been notified under subsection (1) that a proposal has been referred to the Authority under that section”.
- (3) Section 41(2)(c) is amended by deleting “40(1)(a) that the Authority considers that the proposal should not be assessed by the Authority under this Part” and inserting instead —

“

39A(3)(b) that the Authority is not going to assess the proposal

”.



(4) After section 41(2) the following subsection is inserted —

“

- (3) Without limiting subsection (2), a decision-making authority that has been given notice under section 39A(3)(c) or (4) that a proposal is going to be or is being assessed is not to make any decision that could have the effect of causing or allowing the proposal to be implemented without having had an authority under section 45(7) served on it.

”.

**12. Section 41A inserted**

After section 41 the following section is inserted —

“

**41A. Implementation to await authorisation**

- (1) If a decision of the Authority that a proposal is to be assessed has been set out in the public record under section 39, a person who does anything to implement the proposal before a statement is published under section 45(5)(b) or a notification is given under section 45(8) commits an offence.
- (2) Subsection (1) applies even if the assessment of the proposal has been terminated under section 40A and applies as if the references to section 45(5)(b) and (8) were references to the application of those provisions to any revised or further proposal referred to the Authority under section 38 in place of the terminated proposal.
- (3) Subsection (1) does not apply to minor or preliminary work done with the Authority’s consent.

”.

**s. 13**

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**13. Section 43 amended**

- (1) Section 43(2) is amended by deleting “40(1)(b),” and inserting instead —

“ 39, 39A(3), 40 ”.

- (2) After section 43(2) the following subsections are inserted —

“

- (3) A direction cannot be given under subsection (1) if a statement has been served under section 45(5) or a notification has been given under section 45(8).

- (4) The Minister is to cause copies of the reasons for giving a direction under subsection (1) to be —

- (a) given to the Authority; and  
(b) published as soon as practicable after the direction is given.

”.

**14. Section 43A inserted**

After section 43 the following section is inserted —

“

**43A. Changes to proposals before report**

While a proposal is being assessed, the Authority may consent to the proponent changing the proposal without a revised proposal being referred to the Authority under this Part if the Authority considers that the change is unlikely to significantly increase any impact that the proposal may have on the environment.

”.

**15. Section 44 amended**

- (1) Section 44(1) and (2) are repealed and the following subsections are inserted instead —

“

- (1) If the Authority assesses a proposal, it is to prepare a report on the outcome of its assessment of the proposal and give that report (the “**assessment report**”) to the Minister.
- (2) The assessment report must set out —
  - (a) what the Authority considers to be the key environmental factors identified in the course of the assessment; and
  - (b) the Authority’s recommendations as to whether or not the proposal may be implemented and, if it recommends that implementation be allowed, as to the conditions and procedures, if any, to which implementation should be subject.
- (2a) The Authority may, if it thinks fit, include other information, advice and recommendations in the assessment report.
- (2b) Subject to subsection (2d), the assessment report may be given to the Minister at any time but, so far as is practicable, it must be given not later than 6 weeks after the Authority completes its assessment or reassessment of the proposal.
- (2c) The Minister may, after consulting the Authority, direct the Authority to prepare the assessment report and give it to the Minister —
  - (a) within a specified period after the day on which —
    - (i) the proposal was referred to the Authority under section 38; or

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---

- (ii) a direction was given to the Authority under section 43(1),  
as the case requires; or
  - (b) before a specified date.
- (2d) If a direction is given under subsection (2c) the Authority must give the assessment report to the Minister within the specified period or before the specified date.

”.

(2) Section 44(3) is amended as follows:

- (a) by deleting “a report given to him under subsection (1)” and inserting instead —  
“ the assessment report ”;
- (b) in paragraph (b)(ii) by deleting “notified under section 41(1) that that proposal had been referred to the Authority” and inserting instead —

“

given notice under section 39A(3)(c) or (4) in relation to the proposal

”.

**16. Section 45 amended**

(1) Section 45(5) is repealed and the following subsection is inserted instead —

“

- (5) If the implementation agreement or decision is that the proposal may be implemented, or may be implemented subject to implementation conditions, the Minister is to —
  - (a) cause copies of a statement setting out the implementation agreement or decision to be served on —
    - (i) the Authority;

- (ii) each decision-making authority that was consulted under subsection (1);
- (iii) the proponent of the proposal; and
- (iv) the person who referred the proposal (if it was not referred by a person referred to in subparagraph (ii) or (iii));

and

- (b) cause the statement to be published as soon as is practicable after it is served under paragraph (a).

”.

- (2) Section 45(6)(a) is amended by deleting “100(2)” and inserting instead —

“ 100(1)(d) ”.

- (3) Section 45(8) is amended by deleting “an agreement is reached or a decision is made under this section that a” and inserting instead —

“ the implementation agreement or decision is that the ”.

#### **17. Sections 45A, 45B and 45C inserted**

After section 45 the following sections are inserted —

“

##### **45A. Implementation of derived proposal**

- (1) In this section —

“**section 39B declaration**” means a declaration under section 39B that a proposal is a derived proposal.

- (2) Subject to subsection (3), when a section 39B declaration is final, the implementation agreement or decision previously made in relation to the derived proposal takes effect and the Minister is to cause

written notice of the taking effect of the agreement or decision to be served on —

- (a) the Authority;
  - (b) each decision-making authority that was notified of the agreement or decision under section 45(5)(a)(ii);
  - (c) the proponent of the derived proposal; and
  - (d) the person who referred the derived proposal (if it was not referred by a person referred to in paragraph (b) or (c)).
- (3) If the implementation agreement or decision previously made in relation to the derived proposal included implementation conditions relating generally to 2 or more future proposals, the Minister may, in the notice under subsection (2), specify which of those implementation conditions apply to the derived proposal and, subject to sections 46 to 46C, the conditions and procedures so specified are the implementation conditions relating to the derived proposal.
- (4) For the purposes of subsection (2), a section 39B declaration is final when —
- (a) an appeal under section 100(1)(f) against the decision to make the declaration can no longer be lodged; and
  - (b) no appeal was so lodged or any appeal so lodged was dismissed.

**45B. Implementation conditions apply to revised proposals**

If a proposal is revised after implementation conditions have been agreed or decided, each of those

implementation conditions continues to apply in relation to the revised proposal subject to —

- (a) it being changed under section 46; or
- (b) revised conditions or procedures being agreed or decided under section 45 in relation to the revised proposal after the revised proposal has been referred to the Authority and assessed.

**45C. Changes to proposals after assessment**

- (1) After a statement has been issued under section 45(5) in relation to a proposal, the Minister may approve of the proponent changing the proposal without a revised proposal being referred to the Authority under this Part.
- (2) The Minister must not give approval under subsection (1) if the Minister considers the change or changes to the proposal might have a significant detrimental effect on the environment in addition to, or different from, the effect of the original proposal.

”.

**18. Section 46 replaced by sections 46 to 46C**

Section 46 is repealed and the following sections are inserted instead —

“

**46. Amendment of implementation conditions by inquiry**

- (1) If the Minister considers that the implementation conditions relating to a proposal, or any of them, should be changed (whether because of changes to the proposal authorised under section 45C or for any other reason), the Minister may request the Authority to inquire into and report on the matter within such period as is specified in the request.

- (2) The Authority is to record any request made under subsection (1) in the public record kept under section 39.
- (3) The Authority is to carry out an inquiry in accordance with a request made under subsection (1).
- (4) Without limiting subsection (1), if a proposal is declared under section 39B to be a derived proposal, the Authority may inquire into whether or not the implementation conditions relating to the proposal, or any of them, should be changed.
- (5) For the purposes of an inquiry under subsection (3) or (4) the Authority has all the powers conferred on it by Division 1 in relation to a proposal.
- (6) On completing an inquiry under subsection (3) or (4), the Authority is to prepare and give to the Minister a report that includes —
  - (a) a recommendation on whether or not the implementation conditions to which the inquiry relates, or any of them, should be changed; and
  - (b) any other recommendations that it thinks appropriate.
- (7) As soon as the Minister is reasonably able to do so after receiving copies of a report under subsection (6), the Minister is to simultaneously cause that report to be published, and copies of that report to be given, as if that report were a report referred to in section 44(3).
- (8) After causing a report to be published under subsection (7), the Minister is to deal with the question of whether or not the implementation conditions to which the report relates, or any of them, should be changed as if that question were the question of to what conditions and procedures, if any, the implementation



of a proposal should be subjected, and section 45 applies to the first-mentioned question accordingly.

- (9) A statement under section 45(5) as applied by subsection (8) may change any of the implementation conditions to which the report under subsection (6) relates.
- (10) A reference in this Division to a statement under section 45(5) includes a reference to a statement under section 45(5) as applied by subsection (8).

**46A. Interim conditions and procedures**

- (1) Having made a request under section 46(1) the Minister may, subject to subsection (3) and with the consent of the proponent, issue interim conditions and procedures to have effect instead of the implementation conditions until a statement is published under section 45(5) as applied by section 46(8).
- (2) The Minister is to cause notice of interim conditions and procedures issued under subsection (1) —
  - (a) to be given in writing to —
    - (i) the Authority;
    - (ii) each decision-making authority that was notified of the original implementation agreement or decision under section 45(5)(a)(ii); and
    - (iii) the proponent of the proposal;
  - and
  - (b) to be published.
- (3) The Minister is not to issue interim conditions and procedures under subsection (1) if the Minister considers that implementation of the proposal under those interim conditions and procedures might have a significant detrimental effect on the environment in

addition to, or different from, the effect the proposal might have if implemented under the implementation conditions.

**46B. Amendment of implementation conditions by assessment**

- (1) Section 46 does not prevent any of the implementation conditions relating to a proposal from being inquired into or reported on by the Authority when it is assessing a revised or further proposal.
- (2) Despite anything in section 46, if the Minister and any decision-making authority that was consulted under this Act in relation to the implementation conditions agree that a proposed change to the implementation conditions is a major change, that decision-making authority is to refer the proposed change to the Authority under section 38(5) as a new proposal.

**46C. Minor changes to implementation conditions**

- (1) The Minister may change the implementation conditions without making a request under section 46(1) if the Minister considers that the change is of a minor nature and is necessary or desirable in order to —
  - (a) standardise the implementation conditions applying to different proposals;
  - (b) correct in the implementation conditions —
    - (i) a clerical mistake or unintentional error or omission;
    - (ii) a figure that has been miscalculated; or
    - (iii) a misdescription of any person, thing or property;

or

- (c) make an administrative change to the format of the implementation conditions that does not alter the obligations of the proponent.
- (2) The Minister is to cause notice of changes made under subsection (1) —
  - (a) to be given in writing to —
    - (i) the Authority;
    - (ii) each decision-making authority that was consulted under this Act in relation to the implementation conditions; and
    - (iii) the proponent of the proposal;
  - and
  - (b) to be published.

”.

**19. Section 47 replaced**

Section 47 is repealed and the following section is inserted instead —

“

**47. Duties of proponents after service of statement or notification**

- (1) If a statement has been served under section 45(5) and the proponent does not ensure that any implementation of the proposal to which the statement relates is carried out in accordance with the implementation conditions, the proponent commits an offence.
- (2) If a statement has been served under section 45(5)(a), the proponent is to give the CEO such reports and information about —
  - (a) the implementation of the proposal to which the statement relates; and

- (b) compliance with the implementation conditions,

as are required by written notice given to the proponent by the CEO.

- (3) If, without reasonable excuse, the proponent refuses or fails to comply with a requirement made under subsection (2), the proponent commits an offence.
- (4) If a notification has been given under section 45(8) and the proponent does anything to implement the proposal to which the notification relates, the proponent commits an offence.

”.

**20. Section 48 amended**

- (1) Section 48(1) and (2) are repealed and the following subsections are inserted instead —

“

- (1) The CEO may monitor the implementation of a proposal, or cause it to be monitored, for the purpose of determining whether the implementation conditions relating to the proposal are being complied with.
- (1a) If the CEO finds that any of the implementation conditions is not being complied with, the CEO —
  - (a) may exercise any power in respect of the non-compliance that is exercisable by the CEO under a written law; and
  - (b) in any event, is to report the non-compliance to the Minister.
- (2) If implementation conditions relating to a proposal subject the implementation of the proposal to requirements made by a decision-making authority, the decision-making authority may monitor that

implementation, or cause it to be monitored, for the purpose of determining whether the implementation conditions of that kind are being complied with.

- (2a) If the decision-making authority finds that any of the implementation conditions of that kind is not being complied with, the decision-making authority —
- (a) may exercise any power in respect of the non-compliance that is exercisable by it under a written law or otherwise; and
  - (b) in any event, is to report the non-compliance to the Minister.

”.

- (2) Section 48(3) is amended as follows:
- (a) by deleting paragraph (a);
  - (b) in paragraph (b) by deleting “(2)(d)” and inserting instead —  
“ (1a)(b) or (2a)(b) ”;
  - (c) in paragraph (c) by deleting “subsection (2)” and inserting instead —  
“ this section ”.

## **21. Section 48F amended**

Section 48F(3) is amended as follows:

- (a) in paragraph (a) by deleting “(2)(b)” and inserting instead —  
“ (3a)(d) ”;
- (b) in paragraph (b) by deleting “(2)(b)” and inserting instead —  
“ (1)(e) ”.

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**22. Section 89 amended**

Section 89(1)(f)(ii) is amended by deleting “section 45 or 48F” and inserting instead —

“ Part IV ”.

**23. Section 100 amended**

(1) Section 100(1), (2) and (3) are repealed and the following subsections are inserted instead —

“

(1) Any decision-making authority, responsible authority, proponent or other person that disagrees with —

- (a) a recorded decision of the Authority that a proposal is not to be assessed;
- (b) the recorded level of assessment of a proposal;
- (c) the content of any instructions set out in a public record under section 48B(1);
- (d) the content of, or any recommendation in, the report prepared under section 44 in respect of a proposal;
- (e) the content of, or any recommendation in, the report prepared under section 48D in respect of a scheme; or
- (f) a recorded declaration under section 39B,

may lodge with the Minister an appeal in writing setting out the grounds of the appeal.

(1a) In subsection (1) —

“**recorded**” means set out in a public record under section 39(1).

(2) Any proponent that disagrees with a decision of the Authority to refuse a request made under

section 39B(1) in relation to a proposal may lodge with the Minister an appeal in writing setting out the grounds of the appeal.

- (3) Any proponent that disagrees with any conditions or procedures agreed under section 45(1) (or under section 45(1) as applied by section 46(8)) may lodge with the Minister an appeal in writing setting out the grounds of that appeal.
- (3a) An appeal may be lodged —
- (a) under subsection (1)(a), (b), (c) or (f), within 14 days of the making available of the public record;
  - (b) under subsection (1)(d), within 14 days of the publication of the report under section 44(3)(a);
  - (c) under subsection (1)(e), within 14 days of the publication of the report under section 48D(3)(a);
  - (d) under subsection (2), within 14 days after the person is notified of the refusal; or
  - (e) under subsection (3), within 14 days after the publication of the statement under section 45(5) (or under section 45(5) as applied by section 46(8)) of the statement setting out the agreement.

”.

- (2) Section 100(4)(a) is amended by deleting “section 48(4)(a) or (b)” and inserting instead —

“ section 48(4)(b) ”.

**24. Section 101 amended**

- (1) Section 101(1) is amended by deleting “Subject to subsections (2a), (2b), (2c), (2d) and (2e), when an appeal is lodged under section 100” and inserting instead —

“

When an appeal is lodged under section 100(1), (2) or (4)

”.

- (2) Section 101(1)(b), (c) and (d) are deleted and the following paragraphs are inserted instead —

“

- (b) in the case of an appeal referred to in section 100(1)(a) or (b), remit the proposal to the Authority for the making of a decision, or fresh decision, as to whether or not the proposal is to be assessed, or as to the level of assessment, or both;
- (c) in the case of an appeal referred to in section 100(1)(a), (b) or (f), remit the proposal to the Authority for assessment, further assessment or reassessment, as the case requires, and for that purpose make a direction under section 43;
- (d) in the case of an appeal referred to in section 100(1)(d) —
  - (i) remit the proposal to the Authority for assessment, further assessment or reassessment, as the case requires, and for that purpose make a direction under section 43; or
  - (ii) vary the Authority’s recommendations by changing the implementation conditions;



- (da) in the case of an appeal referred to in section 100(1)(c), deal with that appeal under subsections (2a) to (2c);
- (db) in the case of an appeal referred to in section 100(1)(e), deal with that appeal under subsections (2d) and (2e);
- (dc) in the case of an appeal referred to in section 100(1)(f) or (2), remit the proposal to the Authority for the making of a fresh decision as to the request made under section 39B(1);

”.

- (3) After section 101(1) the following subsection is inserted —

“

- (1a) When an appeal is lodged under section 100(3), sections 106, 109 and 110 apply to and in relation to the appeal as if the appeal were an appeal from a decision of the Minister.

”.

- (4) Section 101(2) is amended by inserting after “(1)(b)” —

“ , (c), (d) or (dc) ”.

- (5) Section 101(2d) is amended by deleting “(2)(b)” and inserting instead —

“ (1)(e) ”.

- (6) Section 101(3)(a) is amended by deleting “100(1) does not affect the relevant decision referred to in section 100(1)(a)” and inserting instead —

“

100(1)(a), (b) or (c) or (2) does not affect the relevant decision

”.

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(7) Section 101(3)(b) is amended by deleting “(2)” and inserting instead —

“ (1)(d) or (e) ”.

(8) Section 101(3)(c) is amended by inserting after “implementation” —

“ , or continued implementation, ”.

(9) Section 101(3)(d) is deleted.

**25. Schedule 1 amended**

(1) Schedule 1 Part 1 Divisions 1 and 2 are each amended in item 2 column 2 by inserting after “(1)” —

“ or (4) ”.

(2) Schedule 1 Part 2 Division 1 is amended by redesignating item 1 as item “1B” and inserting before that item the following item —

“

1	41A(1)	\$62 500	\$12 500
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”.

(3) Schedule 1 Part 2 Division 2 is amended by redesignating item 1 as item “1B” and inserting before that item the following item —

“

1	41A(1)	\$125 000	\$25 000
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”.

**26. Schedule 2 amended**

After Schedule 2 item 35 the following item is inserted —

“

35A. Requiring things to be done or information to be provided under this Act in a prescribed manner or prescribed form.

”.

## **Part 3 — Environmental regulation**

### **Division 1 — Amendments to *Environmental Protection Act 1986***

**27. Long title amended**

The long title is amended by deleting “environmental pollution” and inserting instead —

“ **pollution and environmental harm** ”.

**28. Section 3 amended**

- (1) Section 3(1) is amended by deleting the definition of “pollution” and inserting the following definition instead —

“ **“pollution”** has the meaning given by section 3A; ”.

- (2) Section 3(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

**“ecosystem health condition”** means a condition of the ecosystem which is —

- (a) relevant to the maintenance of ecological structure, ecological function or ecological process and which requires protection from the effects of emissions or of activities referred to in paragraph (a) or (b) of the definition of “environmental harm” in section 3A(2); or
- (b) identified and declared under section 35(2) to be an ecosystem health condition to be protected under an approved policy;

**“emission”** means —

- (a) discharge of waste;
- (b) emission of noise, odour or electromagnetic radiation; or
- (c) transmission of electromagnetic radiation;

**“environmental harm”** has the meaning given by section 3A;

**“environmental protection notice”** has the meaning given by section 65;

**“environmental value”** means —

- (a) a beneficial use; or
- (b) an ecosystem health condition;

**“material environmental harm”** has the meaning given by section 3A;

**“native vegetation”** means indigenous aquatic or terrestrial vegetation, and includes dead vegetation unless that dead vegetation is of a class declared by regulation to be excluded from this definition but does not include vegetation in a plantation;

**“plantation”** means one or more groups of trees, shrubs or plants intentionally sown, planted or propagated with a view to commercial exploitation;

**“prevention notice”** has the meaning given by section 73A(1);

**“serious environmental harm”** has the meaning given by section 3A;

”.

(3) Section 3(1) is amended by deleting the definition of “pollution abatement notice”.

(4) Section 3(1) is amended in the definition of “beneficial use” by deleting “discharges of wastes or of emissions of noise, odour or electromagnetic radiation” and inserting instead —

“

emissions or of activities referred to in paragraph (a) or (b) of the definition of “environmental harm” in section 3A(2)

”.

(5) Section 3(1) is amended in the definition of “industrial plant” by deleting “discharging waste or emitting noise, odour or electromagnetic radiation” and inserting instead —  
“ an emission ”.

(6) Section 3(1) is amended in the definition of “trade” by deleting “the discharge of waste or the emission of noise, odour or electromagnetic radiation” and inserting instead —  
“ an emission ”.

**29. Section 3A inserted**

After section 3 the following section is inserted —

“

**3A. Pollution and environmental harm**

(1) In this Act —

“**pollution**” means direct or indirect alteration of the environment —

- (a) to its detriment or degradation;
- (b) to the detriment of an environmental value;  
or
- (c) of a prescribed kind,  
that involves an emission.

(2) In this Act —

“**environmental harm**” means direct or indirect —

- (a) harm to the environment involving removal or destruction of, or damage to —
  - (i) native vegetation; or
  - (ii) the habitat of native vegetation or indigenous aquatic or terrestrial animals;

- (b) alteration of the environment to its detriment or degradation or potential detriment or degradation;
- (c) alteration of the environment to the detriment or potential detriment of an environmental value; or
- (d) alteration of the environment of a prescribed kind;

**“material environmental harm”** means environmental harm that —

- (a) is neither trivial nor negligible; or
- (b) results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding the threshold amount;

**“serious environmental harm”** means environmental harm that —

- (a) is irreversible, of a high impact or on a wide scale;
- (b) is significant or in an area of high conservation value or special significance; or
- (c) results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding 5 times the threshold amount.

(3) For the purposes of subsection (2) —

**“damage costs”** means the reasonable costs and expenses that are or would be incurred in taking all reasonable and practicable measures to prevent, control or abate the environmental harm and to make good resulting environmental damage;

**“threshold amount”** means \$20 000, or if a greater amount is prescribed by regulation, that amount.

”.

**30. Section 15 amended**

Section 15(b) is amended by inserting after “pollution” —  
“ and environmental harm ”.

**31. Section 16 amended**

- (1) Section 16(b), (c) and (d) are amended by inserting after “pollution” in each place where it occurs —  
“ and environmental harm ”.
- (2) Section 16(n) is amended by deleting “or pollution” and inserting instead —  
“ , pollution and environmental harm ”.

**32. Section 26 amended**

Section 26(b) and (d)(ii) are amended by inserting after “pollution” in each place where it occurs —  
“ or environmental harm ”.

**33. Section 35 amended**

- (1) Section 35(1) is amended as follows:
  - (a) in paragraph (a)(ii) by inserting after “pollution of” —  
“ , and environmental harm to, ”;
  - (b) in paragraph (b) by deleting “the discharge of waste, the emission of noise, odour or electromagnetic radiation” and inserting instead —  
“ an emission ”.

- (2) Section 35(2) is amended as follows:
- (a) in paragraph (c) by deleting “beneficial uses” and inserting instead —  
“ environmental values ”;
  - (b) in paragraph (f)(iv) by inserting after “pollution” —  
“ or environmental harm ”;
  - (c) in paragraph (f)(vi) by deleting “beneficial uses” and inserting instead —  
“ environmental values ”.

**34. Section 48 amended**

Section 48(4)(b) and (d) are each amended by inserting after “pollution” in both places where it occurs —

“ or environmental harm ”.

**35. Heading to Part V replaced**

The heading to Part V is repealed and the following headings are inserted instead —

“

**Part V — Environmental regulation**

**Division 1 — Pollution and environmental  
harm offences**

”.

**36. Section 49 amended**

Section 49(1) is amended in the definition of “unreasonable emission” by inserting after “emission” —

“ or transmission ”.



**37. Sections 50A, 50B, 50C and 50D inserted**

After section 50 the following sections are inserted —

“

**50A. Causing serious environmental harm**

- (1) A person who, intentionally or with criminal negligence —
  - (a) causes serious environmental harm; or
  - (b) allows serious environmental harm to be caused,commits an offence.
- (2) A person who —
  - (a) causes serious environmental harm; or
  - (b) allows serious environmental harm to be caused,commits an offence.
- (3) A person charged with committing an offence against subsection (1) may be convicted of an offence against subsection (2) which is established by the evidence.

**50B. Causing material environmental harm**

- (1) A person who intentionally or with criminal negligence —
  - (a) causes material environmental harm; or
  - (b) allows material environmental harm to be caused,commits an offence.
- (2) A person who —
  - (a) causes material environmental harm; or

- (b) allows material environmental harm to be caused,

commits an offence.

- (3) A person charged with committing an offence against subsection (1) may be convicted of an offence against subsection (2) which is established by the evidence.

**50C. Court may find defendant guilty of alternative offences if charged with causing serious environmental harm**

A person charged with committing an offence against section 50A may be convicted of an offence against section 50B(1) or (2) or 51C which is established by the evidence.

**50D. Regulations may require authorisation for conduct that might cause pollution or environmental harm**

- (1) In this section —

**“authorisation”** means a licence, permit, approval or exemption granted, issued or given under the regulations;

**“conduct affecting the environment”** means —

- (a) causing or allowing anything to be discharged, emitted or transmitted;
- (b) causing or allowing the nature or volume of anything discharged, emitted or transmitted to be changed;
- (c) conduct, or an operation or activity, that is a potential cause of pollution or environmental harm; or
- (d) causing or allowing conduct, or an operation or activity, that is a potential cause of pollution or environmental harm.

- (2) If the regulations require an authorisation to be held for conduct affecting the environment, a person who contravenes the regulations by —
- (a) engaging in that conduct without there being an authorisation in force in relation to it; or
  - (b) engaging in that conduct in contravention of a condition to which an authorisation is subject,
- commits an offence.
- (3) Subsection (2) does not apply if a penalty for that contravention of the regulations is provided in the regulations.

”.

**38. Section 51 amended**

Section 51 is amended as follows:

- (a) in paragraph (a) by deleting “the discharge of waste or the emission of noise, odour or electromagnetic radiation” and inserting instead —  
“ an emission ”;
- (b) in paragraph (b) by deleting “the discharge of waste and the emission of noise, odour or electromagnetic radiation” and inserting instead —  
“ emissions ”.

**39. Part V Division 3 heading inserted**

Before section 52 the following Division heading is inserted —

“

**Division 3 — Prescribed premises, works  
approvals and licences**

”.

**40. Section 53 amended**

(1) Section 53(1) is amended as follows:

- (a) by deleting “or increase the discharge of waste or the emission of noise, odour or electromagnetic radiation, or alter the nature of the waste discharged or noise, odour or electromagnetic radiation emitted” and inserting instead —

“

an emission, or alter the nature or volume of the waste, noise, odour or electromagnetic radiation emitted

”;

- (b) in paragraph (b)(ii) by inserting after “, the emission” the following —

“ or transmission ”;

- (c) in paragraph (f)(iii) by deleting “a pollution abatement notice” and inserting instead —

“ an environmental protection notice ”.

(2) Section 53(2) is amended as follows:

- (a) in paragraph (a) by deleting “, alter or increase the discharge of waste or the emission of noise, odour or electromagnetic radiation” and inserting instead —

“

an emission, or alter the nature or volume of the waste, noise, odour or electromagnetic radiation emitted,

”;

- (b) in paragraph (c)(iii) by deleting “a pollution abatement notice” and inserting instead —

“ an environmental protection notice ”.

**41. Section 56 amended**

Section 56 is amended as follows:

- (a) in paragraph (a) by deleting “the discharge of waste or the emission of noise, odour or electromagnetic radiation” and inserting instead —

“ an emission ”;

- (b) in paragraph (b) by deleting “the waste discharged or noise, odour or electromagnetic radiation emitted” and inserting instead —

“

the waste, noise, odour or electromagnetic radiation emitted

”.

**42. Section 60 amended**

Section 60(2) is amended by deleting “discharge of waste or emission of noise, odour or electromagnetic radiation” and inserting instead —

“ emission ”.

**43. Section 63A inserted**

After section 63 the following section is inserted —

“

**63A. Particulars of works approvals and licences to be recorded**

- (1) The CEO is to keep a record of such particulars of —
- (a) works approvals and licences;
  - (b) applications for works approvals and licences;
  - (c) applications for renewal of works approvals and licences; and

(d) transfers of works approvals and licences,  
as are prescribed.

- (2) The CEO is to publish from time to time in a prescribed manner prescribed particulars of the record.

”.

**44. Part V Division 4 heading and section 64A inserted**

After section 64 the following Division heading and section are inserted —

“

**Division 4 — Notices, orders and directions**

**64A. Record of notices**

- (1) The CEO is to keep a record of such particulars of notices given under this Division as are prescribed.
- (2) The CEO is to publish from time to time in a prescribed manner prescribed particulars of the record.

”.

**45. Section 65 amended and transitional**

- (1) Section 65(1) and (2) are repealed and the following subsections are inserted instead —

“

- (1) If the CEO suspects on reasonable grounds that —
- (a) there is, or is likely to be, an emission from any premises, and the emission —
- (i) does not comply with or would not if it were emitted comply with a standard required by or under an approved policy or a prescribed standard; or

- (ii) has caused or is likely to cause pollution;
- (b) a person is doing, or is likely to do, an act in contravention of section 50A or 50B on any premises; or
- (c) an activity on premises does not comply with a standard required by or under an approved policy or a prescribed standard,

the CEO may cause to be given to the owner or the occupier, or both the owner and the occupier, of the premises a notice (“**an environmental protection notice**”) in respect of the premises.

- (1a) An environmental protection notice may require a person bound by it to do any one or more of the following —
  - (a) investigate the extent and nature of —
    - (i) the emission and its consequences;
    - (ii) the pollution and its consequences; or
    - (iii) the environmental harm and its consequences;
  - (b) prepare and implement a plan for the prevention, control or abatement of —
    - (i) the emission;
    - (ii) the pollution; or
    - (iii) the environmental harm;
  - (c) take such measures as the CEO considers necessary to —
    - (i) prevent, control or abate the emission;
    - (ii) prevent, control or abate the pollution;

- (iii) prevent, control or abate the environmental harm; or
    - (iv) comply with the standard;
  - (d) ensure that the amount of waste, noise, odour or electromagnetic radiation emitted from the premises, or the concentration of that waste, noise, odour or electromagnetic radiation when measured at a point specified in the environmental protection notice, does not exceed the limit specified in the notice;
  - (e) monitor the effectiveness of actions taken under paragraph (a), (b), (c) or (d);
  - (f) report to the CEO on any action taken under paragraph (a), (b), (c), (d) or (e) and its outcome.
- (1b) An environmental protection notice may require a person bound by it to do the matters referred to in subsection (1a) in accordance with an approval, direction or requirement of a type specified in the notice by a person specified in the notice.
- (2) An environmental protection notice —
  - (a) is to specify —
    - (i) the name and address of the person on whom it is served;
    - (ii) the reason for which it is served;
    - (iii) a description of the relevant premises and the location of the premises sufficient to identify both;
    - (iv) the period within which the investigation is to be completed, the plan is to be prepared and the measures are to be taken; and



(v) the frequency of information to be reported to the CEO;

and

(b) is to describe —

(i) the form of the investigation to be undertaken;

(ii) the form of the plan to be prepared and implemented;

(iii) the measures to be taken;

(iv) the form of the monitoring to be undertaken; and

(v) the content and form of information to be reported to the CEO.

”.

(2) Section 65(3) is amended as follows:

(a) by deleting “A pollution abatement notice” and inserting instead —

“ An environmental protection notice ”;

(b) in paragraph (a) by deleting “on whom it is served” and inserting instead —

“ to whom it is given ”.

(3) Section 65(5) is amended by deleting “the pollution abatement notice” and inserting instead —

“ the notice ”.

(4) A pollution abatement notice served before the coming into operation of this section is taken to be an environmental protection notice within the meaning of the *Environmental Protection Act 1986* as amended by this Act.

**46. Various references to “pollution abatement notice” amended**

- (1) In each place listed in the Table to this section “the pollution abatement notice” is deleted and the following is inserted instead —

“ the environmental protection notice ”.

**Table**

s. 65(3)(b)	s. 67 (3 times)
s. 65(4) (3 times)	s. 68
s. 65(4a)(b)	s. 69(1)(c)
s. 65(8)	s. 69(2)(a)
s. 66(2)	

- (2) In each place listed in the Table to this section “a pollution abatement notice” is deleted and the following is inserted instead —

“ an environmental protection notice ”.

**Table**

s. 65(4)	s. 66(2)
s. 65(4a)(a)	s. 66(3)
s. 65(5)	s. 67
s. 66(1) (in the second and third places where it occurs)	s. 68 s. 69(1)(a) s. 72(1)(b)

**47. Section 66 amended**

- (1) Section 66(1) is amended as follows:

- (a) by deleting “a pollution abatement notice is served” and inserting instead —

“ an environmental protection notice is given ”;

(b) by deleting “the pollution abatement notice” and inserting instead —  
“ the notice ”.

(2) Section 66(2) is amended by deleting “that pollution abatement notice” and inserting instead —  
“ that notice ”.

(3) Section 66(4) is amended by deleting “pollution abatement notice” and inserting instead —  
“ environmental protection notice ”.

**48. Section 69 amended**

Section 69(1)(a) is amended by deleting “the pollution abatement notice” and inserting instead —  
“ the notice ”.

**49. Section 71 amended**

Section 71(1)(a) is amended by inserting after “pollution” —  
“  
, material environmental harm or serious environmental harm  
”.

**50. Section 72 amended**

Section 72(1) is amended as follows:

(a) by inserting after “cause pollution” —  
“  
, material environmental harm or serious environmental harm  
”;

- (b) by deleting “notify the Chief Executive Officer” and inserting instead —

“

give the CEO oral or electronic notification followed by written notification

”.

**51. Section 73 amended and transitional**

- (1) Section 73(1) is repealed and the following subsections are inserted instead —

“

- (1) If an inspector or authorised person reasonably suspects that —
- (a) any waste has been or is being discharged from any premises otherwise than in accordance with a works approval, licence or requirement contained in a closure notice or an environmental protection notice;
  - (b) a condition of pollution is likely to arise or has arisen; or
  - (c) a person has done, is doing, or is likely to do, an act in contravention of section 50A or 50B,

the inspector or authorised person may, with the approval of the CEO, take the action referred to in subsection (1a).

- (1a) The inspector or authorised person may, with such assistance as the inspector or authorised person considers appropriate —
- (a) remove, disperse, destroy, dispose of or otherwise deal with the waste which has been or is being discharged;
  - (b) prevent the condition of pollution from arising or control or abate that condition if it arises; or

- (c) prevent the act referred to in subsection (1)(c) or control or abate the environmental harm if it arises,

as the case requires.

”.

(2) Section 73(2) is repealed.

(3) Section 73(3) is amended as follows:

- (a) by deleting “subsection (1)(b) or the Chief Executive Officer has reimbursed any cost under subsection (2)” and inserting instead —

“ subsection (1) ”;

- (b) by deleting paragraph (b) and inserting the following paragraph instead —

“

(b) caused or allowed to be caused —

- (i) the discharge referred to in paragraph (a);
- (ii) the likelihood of the relevant condition referred to in subsection (1)(b) arising or the arising of that condition; or
- (iii) the likelihood of the relevant act referred to in subsection (1)(c) occurring or the occurrence of that act,

”.

(4) Section 73(4) is repealed and the following subsections are inserted instead —

“

(4) If —

- (a) any waste has been or is being discharged from any premises otherwise than in accordance with a works approval, licence or requirement

contained in a closure notice or an environmental protection notice;

- (b) a condition of pollution is likely to arise or has arisen; or
- (c) a person has done, is doing, or is likely to do, an act in contravention of section 50A or 50B,

the CEO may cause —

- (d) the waste to be removed, dispersed, destroyed, disposed of or otherwise dealt with;
- (e) the condition of pollution to be prevented from arising or, if that condition arises, that condition to be controlled or abated; or
- (f) the act to be prevented from occurring or, if the environmental harm arises, that environmental harm to be controlled or abated.

(4a) The CEO may recover the cost of the removal, dispersal, destruction, disposal or other dealing, or of the prevention, control or abatement, as the case requires, referred to in subsection (4) from the person who —

- (a) was the occupier of the premises at the time of the discharge referred to in subsection (4)(a); or
- (b) caused or allowed to be caused —
  - (i) that discharge;
  - (ii) the likelihood of the relevant condition referred to in subsection (4)(b) arising or the arising of that condition; or
  - (iii) the likelihood of the relevant act referred to in subsection (4)(c) occurring or the occurrence of that act,

by action in a court of competent jurisdiction as a debt due to the Crown.

(4b) Any cost recovered under subsection (4a) is to be paid into the Consolidated Fund.

”.

(5) Section 73(5), (6) and (7) are repealed.

(6) A direction given under section 73 before the coming into operation of this section is taken to be a prevention notice within the meaning of the *Environmental Protection Act 1986* as amended by this Act.

**52. Sections 73A and 73B inserted**

After section 73 the following sections are inserted —

“

**73A. Prevention notices**

- (1) If an inspector or authorised person reasonably suspects that —
- (a) any waste has been or is being discharged from any premises otherwise than in accordance with a works approval, licence or requirement contained in a closure notice or an environmental protection notice;
  - (b) a condition of pollution is likely to arise or has arisen; or
  - (c) a person has done, is doing, or is likely to do, an act in contravention of section 50A or 50B,

the inspector or authorised person may, with the approval of the CEO, give a notice (“**a prevention notice**”) to such person as the inspector or authorised person considers appropriate.

- (2) A prevention notice may require the person to whom the notice is given —
- (a) to remove, disperse, destroy, dispose of or otherwise deal with the waste which has been or is being discharged;
  - (b) to prevent the condition of pollution from arising or control or abate that condition if it arises; or
  - (c) to prevent the act referred to in subsection (1)(c) or control or abate the environmental harm if it arises,

as the case requires and is to describe the action the inspector or authorised person considers appropriate to achieve that result.

- (3) When a person has complied with any requirements contained in a prevention notice given to the person under subsection (1), the CEO is to, if the person was not —
- (a) the occupier of the premises from which the relevant waste was discharged at the time of that discharge; or
  - (b) the person who caused or allowed to be caused —
    - (i) the discharge referred to in paragraph (a);
    - (ii) the likelihood of the relevant condition referred to in subsection (1)(b) arising or the arising of that condition; or
    - (iii) the likelihood of the relevant act referred to in subsection (1)(c) occurring or the occurrence of that act,

as the case requires, reimburse the person any cost incurred by the person in complying with those requirements.



- (4) When the CEO has reimbursed any cost under subsection (3), the CEO may recover that cost from the person who —
- (a) was the occupier of the premises from which the relevant waste was discharged at the time of that discharge; or
  - (b) caused or allowed to be caused —
    - (i) the discharge referred to in paragraph (a);
    - (ii) the likelihood of the relevant condition referred to in subsection (1)(b) arising or the arising of that condition; or
    - (iii) the likelihood of the relevant act referred to in subsection (1)(c) occurring or the occurrence of that act,
- as the case requires, by action in a court of competent jurisdiction as a debt due to the Crown.
- (5) Any cost recovered under subsection (4) is to be paid into the Consolidated Fund.
- (6) A person who intentionally or with criminal negligence does not comply with a requirement contained in a prevention notice given to that person, without reasonable excuse for that contravention, commits an offence.
- (7) A person who does not comply with a requirement contained in a prevention notice given to that person, without reasonable excuse for that contravention, commits an offence.
- (8) A person charged with committing an offence against subsection (6) may be convicted of an offence against subsection (7) which is established by the evidence.

**73B. Damages for breach of notice**

(1) In this section —

“**notice**” means —

- (a) an environmental protection notice;
- (b) a vegetation conservation notice; or
- (c) a prevention notice.

(2) If —

- (a) a person bound by a notice fails to comply with it;
- (b) damage is caused to property not owned or occupied by the person; and
- (c) that damage would not have been caused if the notice had been complied with,

then, by reason of the person’s failure to comply, the owner or occupier of the damaged property has a right of action in tort against the person in respect of the damage.

”.

**53. Part V Division 5 heading inserted**

Before section 74 the following Division heading is inserted —

“ **Division 5 — Miscellaneous** ”.

**54. Section 74 amended**

(1) Section 74(1) is amended as follows:

- (a) by deleting “the discharge of waste or the emission of noise, odour or electromagnetic radiation” and inserting instead —

“ an emission or an act causing environmental harm ”;

- (b) in paragraphs (a) and (b) by deleting “discharge or emission” in each place where it occurs and inserting instead —  
“ emission or act ”.

(2) Section 74(3) is repealed.

**55. Sections 74A and 74B inserted**

After section 74 the following sections are inserted —

“

**74A. Defences to proceedings for pollution or environmental harm: authority of this Act**

It is a defence to proceedings under this Part for causing pollution, in respect of an emission, or for causing serious environmental harm or material environmental harm, if the person charged with that offence proves that the pollution, emission or environmental harm occurred —

- (a) in the implementation of a proposal in accordance with an implementation agreement or decision;
- (b) in accordance with —
- (i) a prescribed standard;
  - (ii) a clearing permit;
  - (iii) a works approval;
  - (iv) a licence;
  - (v) a requirement contained in a closure notice, an environmental protection notice, a vegetation conservation notice or a prevention notice;
  - (vi) an approved policy;
  - (vii) a declaration under section 6;

- (viii) an exemption under section 75; or
- (ix) a licence, permit, approval or exemption granted, issued or given under the regulations;

or

- (c) in the exercise of any power conferred under this Act.

**74B. Other defences to environmental harm offences**

- (1) It is a defence to proceedings under this Part for causing serious environmental harm or material environmental harm if the person charged with that offence proves that the environmental harm was, or resulted from, an authorised act which did not contravene any other written law.
- (2) For the purposes of subsection (1) an act was authorised if it was —
  - (a) done in accordance with an authorisation, approval, requirement or exemption given in the exercise of a power under another written law;
  - (b) done in the exercise by a public authority, or a member, officer or employee of a public authority, of a function conferred under another written law;
  - (c) done as an agricultural practice within the meaning of the *Agricultural Practices (Disputes) Act 1995* in respect of which an order has been made under section 12 of that Act and —
    - (i) in accordance with the order as to the carrying out or management of that agricultural practice; or

- (ii) in the carrying out or management of a normal farm practice, as specified in the order;
- (d) done —
  - (i) as an agricultural practice within the meaning of the *Agricultural Practices (Disputes) Act 1995*; or
  - (ii) in the management or harvesting of a plantation,  
and in compliance with a code of practice relating to an act of that kind issued under section 122A or made or approved under any other written law;
- (e) without limiting section 74A and paragraphs (a) to (d) of this subsection, clearing of a kind set out in Schedule 6; or
- (f) an act of a kind prescribed for the purposes of section 51C that was not done in an environmentally sensitive area within the meaning of section 51A.

”.

**56. Section 75 amended**

Section 75(1) is amended by deleting “waste is being or is about to be discharged, or noise, odour or electromagnetic radiation is being or is about to be emitted,” and inserting instead —  
“ there is, or is about to be, an emission ”.

**57. Section 89 amended**

(1) Section 89(1) is amended as follows:

- (a) by deleting paragraphs (b), (c) and (ca) and the “or” following paragraph (c) and inserting the following paragraphs instead —

“

- (b) at any time, premises at or from which the inspector has reasonable grounds to believe that

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an offence against this Act has been, is being or is likely to be committed; or

(c) at any reasonable time, any other premises,

”;

(b) in paragraph (f)(ii) by inserting before “works” —  
“ clearing permit, ”;

(c) in paragraph (f)(ii) by deleting “a pollution abatement notice, direction given under section 73(1)(a)” and inserting instead —

“

a closure notice, environmental  
protection notice, vegetation  
conservation notice, prevention notice

”.

(2) Section 89(2) is repealed and the following subsection is inserted instead —

“

(2) Despite subsection (1), an inspector is not entitled to enter a private dwelling-house or on land used in connection with a private dwelling-house unless the inspector —

(a) reasonably believes that waste is being, or has recently been, discharged from that house or land into the environment;

(b) finds that unreasonable noise is being, or believes that unreasonable noise has recently been, emitted from the house or land into the environment; or

(c) reasonably believes that the house or land has been adversely affected by an emission.

”.

**58. Section 90 amended**

Section 90(1) is amended as follows:

- (a) by deleting paragraph (a) and inserting the following paragraph instead —

“

- (a) the occupier of any premises from which there has been, is, or is likely to be, an emission to produce to the inspector —

- (i) any books or other sources of information relating to that emission or to any manufacturing, industrial or trade processes carried on at those premises; or

- (ii) any data from any monitoring equipment or monitoring programme in respect of that emission;

”;

- (b) by deleting paragraph (b)(i) and the “or” following and inserting the following subparagraph instead —

“ (i) any emission; or ”.

**59. Section 92 amended**

Section 92(1)(a) is deleted and the following paragraph is inserted instead —

“

- (a) on or from which there has been, is, or is likely to be, an emission;

”.

**60. Section 92B amended**

Section 92B(1) is amended by inserting after “pollution” —

“ or environmental harm ”.

**61. Section 95 amended**

Section 95(1)(b) is amended by deleting “discharged or”.

**62. Section 96 amended**

Section 96(1)(b) is amended as follows:

- (a) by deleting “the discharge of waste or the emission of noise, odour or electromagnetic radiation” and inserting instead —  
“ any emission ”;
- (b) in subparagraphs (i) and (ii) by deleting “discharge or” in both places where it occurs.

**63. Section 103 amended**

Section 103(1) is repealed and the following subsection is inserted instead —

“

- (1) Subject to section 105, a person who is aggrieved by —
  - (a) a requirement contained in a closure notice, environmental protection notice, vegetation conservation notice or prevention notice given to that person; or
  - (b) an amendment contained in a notice given to that person under section 65(4) or under section 65(4) as applied by section 68A(10) or 70(8),

may within 21 days of being given that notice lodge with the Minister an appeal in writing setting out the grounds of that appeal.

”.



**64. Section 111 amended**

Section 111 is amended by inserting after “pollution” —  
“ or environmental harm ”.

**65. Section 122A inserted**

After section 122 the following section is inserted —

“

**122A. Codes of practice**

- (1) The CEO, on the recommendation of the Authority, may issue codes of practice in relation to activities that involve an emission or environmental harm.
- (2) The CEO must not issue a code of practice unless the code of practice was developed by the CEO after consultation with and, by written notice, seeking submissions from —
  - (a) the Authority;
  - (b) such State authorities as the CEO considers appropriate;
  - (c) such industry groups as the CEO considers appropriate; and
  - (d) such environmental and other groups as the CEO considers appropriate.
- (3) The CEO may seek submissions from the public on a proposed code of practice.
- (4) A code of practice issued under this section is subsidiary legislation within the meaning of the *Interpretation Act 1984*.

”.

**66. Schedule 1 amended**

- (1) After Schedule 1 Part 1 Division 1 item 8 the following items are inserted —

“

8A	50A(1)	\$500 000 or 5 years imprisonment or both	\$100 000
8B	50A(2)	\$250 000 or 3 years imprisonment or both	\$50 000
8C	50B(1)	\$250 000 or 3 years imprisonment or both	\$50 000

”.

- (2) Schedule 1 Part 1 Division 1 item 12 is amended by deleting “73(5)” and inserting instead —

“ 73A(6) ”.

- (3) After Schedule 1 Part 1 Division 2 item 8 the following items are inserted —

“

8A	50A(1)	\$1 000 000	\$200 000
8B	50A(2)	\$500 000	\$100 000
8C	50B(1)	\$500 000	\$100 000

”.

- (4) Schedule 1 Part 1 Division 2 item 12 is amended by deleting “73(5)” and inserting instead —

“ 73A(6) ”.

- (5) Before Schedule 1 Part 2 Division 1 item 2 the following items are inserted —

“

1C	50B(2)	\$125 000	\$25 000
1D	50D	\$50 000	\$10 000

”.

- (6) Schedule 1 Part 2 Division 1 item 10 is amended by deleting “75(2)” and inserting instead —

“ 73A(7) ”.

- (7) Schedule 1 Part 2 Division 1 item 11 is amended by deleting “73(6)” and inserting instead —

“ 75(2) ”.

- (8) Before Schedule 1 Part 2 Division 2 item 2 the following items are inserted —

“

1C	50B(2)	\$250 000	\$50 000
1D	50D	\$100 000	\$20 000

”.

- (9) Schedule 1 Part 2 Division 2 item 10 is amended by deleting “73(6)” and inserting instead —

“ 73A(7) ”.

**67. Schedule 2 amended**

- (1) Schedule 2 item 4 is amended by deleting “the discharge of waste or emission of noise, odour or electromagnetic radiation” and inserting instead —

“ an emission ”.

- (2) Schedule 2 item 7 is amended by deleting “the discharge of waste or the emission of noise, odour or electromagnetic radiation” and inserting instead —  
“ an emission ”.
- (3) Schedule 2 item 10 is amended by deleting “the discharge of any waste or the emission of any noise, odour or electromagnetic radiation” and inserting instead —  
“ an emission ”.
- (4) Schedule 2 items 14, 15, 30 and 31 are each amended by inserting after “emission” —  
“ or transmission ”.
- (5) Schedule 2 items 16, 19, 20 (twice) and 28 are each amended by inserting after “pollution” —  
“ or environmental harm ”.

### **Division 2 — Consequential amendments to other Acts**

#### **68. Consequential amendments**

- (1) Section 53(5)(b) of the *Armadale Redevelopment Act 2001*\* is amended by inserting after “pollution” —  
“ or environmental harm ”.  
[\* *Act No. 25 of 2001.*]
- (2) Section 47A(5)(b) of the *East Perth Redevelopment Act 1991*\* is amended by inserting after “pollution” —  
“ or environmental harm ”.  
[\* *Reprinted as at 27 August 1999.*]

- (3) Section 32(5)(b) of the *Hope Valley-Wattleup Redevelopment Act 2000*\* is amended by inserting after “pollution” —

“ or environmental harm ”.

[\* *Act No. 77 of 2000.*]

- (4) Section 33(2)(c) of the *Litter Act 1979*\* is amended by deleting “the pollution of the environment within the meaning of the *Environmental Protection Act 1971*” and inserting instead —

“

pollution or environmental harm within the  
meaning of the *Environmental Protection  
Act 1986*

”.

[\* *Reprinted as at 4 January 1999.*

*For subsequent amendments see 2001 Index to Legislation of  
Western Australia, Table 1, p. 212.*]

- (5) Section 43B(5)(b) of the *Metropolitan Region Town Planning Scheme Act 1959*\* is amended by inserting after “pollution” —

“ or environmental harm ”.

[\* *Reprinted as at 7 September 2001.*

*For subsequent amendments see 2001 Index to Legislation  
of Western Australia, Table 1, p. 236 and Act No. 25 of 2001.*]

- (6) Section 55(5)(b) of the *Midland Redevelopment Act 1999*\* is amended by inserting after “pollution” —

“ or environmental harm ”.

[\* *Act No. 38 of 1999.*]

- (7) Section 54A(5)(b) of the *Subiaco Redevelopment Act 1994*\* is amended by inserting after “pollution” —

“ or environmental harm ”.

[\* *Reprinted as at 25 February 2000.*]

- (8) Section 7(1)(c) of the *Swan River Trust Act 1988*\* is amended by inserting after “pollution” —

“ and environmental harm ”.

[\* Reprinted as at 1 December 2000.]

- (9) Section 10A(4)(b) of the *Town Planning and Development Act 1928*\* is amended by inserting after “pollution” —

“ or environmental harm ”.

[\* Reprinted as at 3 November 2000.

*For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 382 and Act No. 25 of 2001.]*

- (10) Section 37L(5)(b) of the *Western Australian Planning Commission Act 1985*\* is amended by inserting after “pollution” —

“ or environmental harm ”.

[\* Reprinted as at 16 March 2001.

*For subsequent amendments see Act No. 7 of 2002.]*

## **Part 4 — Licensing and works approvals**

### **69. Section 3 amended**

(1) Section 3(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical position the following definition —

“

“**closure notice**” has the meaning given by section 68A;

”;

- (b) in the definitions of “licence” and “works approval” by inserting after “Part V” —

“ Division 3 ”.

(2) After section 3(2) the following subsection is inserted —

“

(2aa) A reference in this Act to the discharge, emission or transmission of anything (whether accompanied by the expression “into the environment” or not) —

- (a) is a reference to discharge, emission or transmission onto or into land, water, the atmosphere or living things; and
- (b) in relation to discharge, emission or transmission from premises, includes a reference to discharge, emission or transmission onto or into land, water, the atmosphere or living things on, in, under, above or part of the premises.

”.

### **70. Section 52 amended**

Section 52 is amended by inserting after “become” —

“ , or to become capable of being, ”.

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**71. Section 53 amended**

- (1) Section 53(1)(f)(iii) is amended by inserting after “in” —  
“ a closure notice or ”.
- (2) Section 53(2)(c)(iii) is amended by inserting after “in” —  
“ a closure notice or ”.

**72. Section 54 amended**

- (1) Section 54(1)(b) is amended by inserting after “prescribed” —  
“ by or determined under the regulations ”.
- (2) After section 54(2) the following subsection is inserted —  
“
  - (2a) As well as seeking comments under subsection (2)(b) the CEO is to advertise the application in the prescribed manner, inviting any person who wishes to comment on it to do so within such period as is specified in the advertisement.”.
- (3) Section 54(3) is amended by deleting “subsection (4)” and inserting instead —  
“ subsections (4) and (5) ”.
- (4) Section 54(3) is amended by inserting after “(2)(b)” —  
“ or (2a) ”.
- (5) After section 54(3) the following subsection is inserted —  
“
  - (3a) The CEO is to give the applicant written notice of the refusal to grant a works approval.”.



- (6) Section 54(4)(b) is deleted and the following paragraph is inserted instead —

“

- (b) contrary to, or otherwise than in accordance with, an implementation agreement or decision.

”.

- (7) After section 54(4) the following subsection is inserted —

“

- (5) If a decision-making authority makes a decision that has the effect of preventing the implementation of a proposal to which an application for a works approval made under subsection (1) is related, the CEO does not have to perform any duty imposed under subsection (3) while that decision has effect.

”.

**73. Section 55 amended**

Section 55(1) is amended by inserting after “the works approval” —

“ , or a suspension of the works approval, ”.

**74. Section 56 amended**

- (1) Section 56 is amended by inserting before “Subject” the subsection designation “(1)”.
- (2) At the end of section 56 the following subsection is inserted —

“

- (2) Subsection (1) does not apply if the emission is caused, increased or altered —
- (a) as a result of anything done in accordance with a works approval; and
- (b) while the works approval is in force.

”.

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**75. Section 57 amended**

(1) Section 57(1)(b) is amended by inserting after “prescribed” —  
“ by or determined under the regulations ”.

(2) Section 57(2)(a)(ii)(A) is amended by inserting after  
“subject” —

“

(to the extent to which that  
completion and those conditions  
are relevant to that application)

”.

(3) After section 57(2) the following subsection is inserted —

“

(2a) As well as seeking comments under subsection (2)(b)  
the CEO is to advertise the application in the  
prescribed manner, inviting any person who wishes to  
comment on it to do so within such period as is  
specified in the advertisement.

”.

(4) Section 57(3) is amended by inserting after “(2)(b)” —

“ or (2a) ”.

(5) After section 57(3) the following subsection is inserted —

“

(3a) The CEO is to give the applicant written notice of the  
refusal to grant a licence.

”.

(6) Section 57(4)(b) is deleted and the following paragraph is  
inserted instead —

“

(b) contrary to, or otherwise than in accordance  
with, an implementation agreement or decision.

”.

(7) After section 57(4) the following subsection is inserted —

“

- (4a) If a decision-making authority makes a decision that has the effect of preventing the implementation of a proposal to which an application for a licence made under subsection (1) is related, the CEO does not have to perform any duty imposed under subsection (3) while that decision has effect.

”.

**76. Section 58 amended**

Section 58(1) is repealed and the following subsection is inserted instead —

“

- (1) A holder of a licence who contravenes a condition to which the licence is subject commits an offence.

”.

**77. Section 59 replaced by sections 59, 59A and 59B**

Section 59 is repealed and the following sections are inserted instead —

“

**59. Amendment of works approval or licence**

- (1) The CEO may amend a works approval or licence by —
- (a) removing or varying any condition to which the works approval or licence is subject;
  - (b) subjecting the works approval or licence to a new condition;
  - (c) redesccribing the boundaries or area of the premises to which the works approval or licence applies;

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- (d) redesccribing the purpose for which the premises to which the works approval or licence applies are used;
  - (e) correcting in the works approval or licence —
    - (i) a clerical mistake or unintentional error or omission;
    - (ii) a figure which has been miscalculated; or
    - (iii) the misdescription of any person, thing or property;
  - (f) making an administrative change to the format of the works approval or licence which does not alter the obligations of the occupier of the premises to which the works approval or licence relates;
  - (g) adding a discharge point or emission point;
  - (h) deleting any discharge point or emission point which is no longer in use;
  - (i) amending the works approval or licence in conformity with an approved policy or prescribed standard or with an exemption conferred under this Act;
  - (j) amending the works approval or licence to give effect to a decision of the Minister under this Act (whether on an appeal or otherwise); or
  - (k) extending the duration of the works approval or licence.
- (2) A works approval or licence may be amended on application by the holder of the works approval or licence or on the initiative of the CEO.

**59A. Revocation or suspension of works approval or licence**

- (1) The CEO may revoke or suspend a works approval or licence.
- (2) The grounds for revocation or suspension of a works approval or licence are that —
  - (a) the CEO is satisfied that there has been a breach of any of the conditions —
    - (i) to which the works approval or licence is subject; or
    - (ii) to which a works approval granted to the licensee was at the time of that breach subject;
  - (b) the premises to which the licence relates are exempted by the regulations from requiring a licence;
  - (c) information contained in or supporting the application was false or misleading in a material respect;
  - (d) the current business address of the holder of the works approval or licence is unknown; or
  - (e) the holder of the works approval or licence has applied to the CEO to surrender the works approval or licence.

**59B. Manner of amendment, revocation or suspension**

- (1) An application for an amendment to a works approval or licence or to surrender a works approval or licence is to —
  - (a) be made in the manner and form approved by the CEO;

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- (b) be accompanied by the fee prescribed by or determined under the regulations; and
  - (c) be supported by any plans, specifications and other documents and information required by the CEO and include a summary of that supporting documentation and information.
- (2) Before amending, revoking or suspending a works approval or licence the CEO is to give the holder of the works approval or licence a written notice under this section.
- (3) The notice is to —
  - (a) state details of the proposed action;
  - (b) invite the holder to make representations to the CEO to show why the action should not be taken; and
  - (c) state the period (at least 21 days after the notice is given to the holder) within which representations may be made.
- (4) The representations must be made in writing.
- (5) Subject to subsection (7), the CEO may take the proposed action —
  - (a) at any time after the holder of the works approval or licence gives the CEO written notice that the holder does not intend to make any representations or any further representations; or
  - (b) if such notice is not given, after the end of the period stated in the notice within which representations may be made.
- (6) The CEO is to consider any representations properly made by the holder of the works approval or licence.

- (7) If the proposed amendment, revocation or suspension is related to a proposal which has been referred to the Authority under section 38, the CEO is not to so amend, revoke or suspend —
  - (a) while any decision-making authority is precluded by section 41 from making any decision which could have the effect of causing or allowing that proposal to be implemented; or
  - (b) contrary to, or otherwise than in accordance with, an implementation agreement or decision.
- (8) If a decision-making authority makes a decision that has the effect of preventing the implementation of a proposal to which an amendment proposed under this section is related, the CEO does not have to make a decision on the amendment while the decision-making authority's decision has effect.
- (9) The CEO is to give the holder of the works approval or licence written notice of any amendment, revocation or suspension of the works approval or licence.
- (10) Without limiting subsection (9), notice of an amendment can be given in the form of a revised works approval or licence document.

”.

**78. Section 60 amended**

Section 60(3) is repealed and the following subsection is inserted instead —

“

- (3) Despite anything in this section —
  - (a) if the CEO is satisfied that, as a result of environmental circumstances having changed, the environment or an environmental value of

the area concerned requires a higher level of protection than would be provided by the standards required by or under any approved policy or by prescribed standards, the CEO may grant or amend a works approval or licence so as to make the works approval or licence subject to conditions which specify standards that are more stringent than those required by or under the approved policy or by prescribed standards;

- (b) if the CEO is satisfied that, as a result of the approval under section 31(d) of a new approved policy or as a result of an approved policy as amended being confirmed under section 37, any condition to which an existing works approval or licence is subject is inconsistent with that approved policy, the CEO may amend that works approval or licence to make it consistent with that approved policy.

”.

**79. Sections 61 and 62 replaced by sections 61, 62 and 62A**

Sections 61 and 62 are repealed and the following sections are inserted instead —

“

**61. Duty of persons becoming occupiers of prescribed premises**

- (1) This section applies when a person becomes the occupier (the “**new occupier**”) of any prescribed premises (the “**premises**”).
- (2) In this section, the day on which the new occupier becomes the occupier of the premises is referred to as the “**relevant day**”.



- (3) If a works approval or licence (the “**existing authorisation**”) is in force in respect of the premises on the relevant day, the new occupier must comply with the conditions to which the existing authorisation is subject and must, within 30 days after the relevant day, apply —
  - (a) under section 64 for the transfer of the existing authorisation to the new occupier; or
  - (b) under section 54 or 57 for a works approval or licence.
- (4) If subsection (3) is not complied with, the new occupier commits an offence.
- (5) If the new occupier complies with subsection (3) in respect of the premises, the new occupier is to be regarded as having been the holder of the existing authorisation —
  - (a) during the period before applying for the transfer of the existing authorisation or for a works approval or licence, as the case may be; and
  - (b) while that application is pending.
- (6) This subsection applies if a works approval or licence is not in force in respect of the premises on the relevant day but, within 30 days after the relevant day, the new occupier applies under section 54 or 57 for a works approval or licence in respect of the premises.
- (7) If subsection (6) applies, the new occupier does not commit any offence under section 53 or 56 in respect of the emission of a pollutant from the premises without a works approval or licence while the application under section 54 or 57 is pending.

**62. Works approval and licence conditions**

- (1) A works approval or licence may be granted subject to such conditions as the CEO considers to be necessary or convenient for the purposes of this Act relating to the prevention, control, abatement or mitigation of pollution or environmental harm.
- (2) Section 62A sets out some kinds of conditions that may be attached to a works approval or licence and further kinds of conditions may be prescribed, but nothing in that section or the regulations prevents other conditions from being attached.
- (3) Subject to section 60 a condition is not to be inconsistent with an approved policy or a prescribed standard.

**62A. Some kinds of conditions**

- (1) The following list sets out things that the occupier of premises to which a works approval or licence relates can be required to do (at the expense of the occupier) under conditions attached to the works approval or licence —
  - (a) design, construct or operate any facilities or plant in accordance with specified criteria;
  - (b) install or operate any equipment for preventing, controlling, abating or monitoring pollution or environmental harm in accordance with specified criteria;
  - (c) take specified measures for the purpose of minimising the likelihood of pollution or environmental harm;
  - (d) meet specified criteria or comply with specified limits as to the characteristics, volume and effects of, emissions;

- (e) meet specified ambient concentration limits in specified premises or places;
- (f) comply with requirements set by management plans or other specified programmes;
- (g) monitor operations;
- (h) conduct analysis of monitoring data;
- (i) provide information on the nature and quantity of wastes and on materials leading to the generation of those wastes;
- (j) dispose of waste in a specified manner;
- (k) if practicable —
  - (i) reuse waste wholly or in part; or
  - (ii) make waste available for reuse by another person;
- (l) investigate options for measures for preventing, controlling or abating pollution or environmental harm;
- (m) conduct environmental risk assessment studies;
- (n) provide reports on monitoring data, and analysis of it, to the CEO;
- (o) provide reports on audits and studies of specified kinds to the CEO;
- (p) provide audit compliance reports to the CEO;
- (q) prepare, implement and adhere to environmental management systems, waste management systems, safety management systems, environmental management plans and environmental improvement plans;
- (r) have something required to be done under a condition done by —
  - (i) a person of a class approved by the CEO; or

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- (ii) a laboratory registered by the National Association of Testing Authorities;
  - (s) do something required to be done under a condition —
    - (i) within a specified period or before a specified date; or
    - (ii) in a specified form or manner.
- (2) An occupier of premises who, being required under a condition attached to a works approval or licence to provide a report on monitoring data, or analysis of it, to the CEO —
  - (a) fails to do so within the specified period or before the specified date; or
  - (b) fails to do so in the specified form or manner, commits an offence.
- (3) Without limiting subsection (1) paragraph (g), a condition referred to in that paragraph can require an occupier of premises to carry out a specified monitoring programme for the purpose of supplying the CEO with information relating —
  - (a) to the characteristics and volume of any waste held or stored on those premises; or
  - (b) to the characteristics, volume and effects of any pollutant being or to be emitted, from those premises into the environment, and to the characteristics of the environment.
- (4) In this section —

**“specified”** means specified by the CEO in the works approval or licence concerned.

”.

**80. Section 64 amended**

Section 64(1)(b) is amended by deleting “prescribed fee” and inserting instead —

“ fee prescribed by or determined under the regulations ”.

**81. Section 68A inserted**

After section 68 the following section is inserted —

“

**68A. Closure notices**

(1) In this section —

“**authorisation**” means a declaration under section 6, a clearing permit, a works approval, a licence, an exemption under section 75 or a licence, permit, approval or exemption under the regulations;

“**relevant premises**”, in relation to an authorisation, means premises —

- (a) in respect of which the authorisation was issued; or
- (b) at which conduct is being or has been engaged in under the authorisation;

“**specified**” means specified by the CEO in the closure notice concerned.

(2) If the CEO considers on reasonable grounds that, as a result of anything that has been done or has happened at relevant premises before the expiry or revocation of an authorisation, ongoing investigation, monitoring or management is or will be required at the premises following that expiry or revocation, the CEO may cause a notice (a “**closure notice**”) to be given in respect of the premises.

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- (3) If the authorisation is still in force, the closure notice is to be given to the person who holds the authorisation.
- (4) If the authorisation is not still in force, the closure notice is to be given to the person who held the authorisation or to the occupier or owner of the relevant premises.
- (5) If a person who is the owner of the relevant premises is not given the closure notice under subsection (3) or (4), a copy of the notice must be given to that person.
- (6) If a person who is the occupier of the relevant premises is not given the closure notice under subsection (3) or (4), a copy of the notice may be given to that person.
- (7) A closure notice may require any person bound by it to do any one or more of the following in relation to the relevant premises —
  - (a) take specified investigation and monitoring action;
  - (b) prepare a management plan;
  - (c) take specified management action;
  - (d) report on specified matters in a specified form at specified times;
  - (e) arrange for an audit of the premises to be carried out by a person nominated or approved by the CEO and report to the CEO on the findings of the audit as to whether or not the action required by the notice has been taken.
- (8) A closure notice is to specify —
  - (a) the name and address of the person to whom it is given;
  - (b) the reason for which it is given;

- (c) a description of the relevant premises and the location of the premises sufficient to identify both;
  - (d) the things referred to in subsection (7) that are required to be done; and
  - (e) the period (if any) within which the things are to be done.
- (9) A closure notice —
- (a) while it subsists, binds each person to whom it is given; and
  - (b) while it remains registered under section 66 (as applied by subsection (10)), binds each successive owner or occupier of the land to which it relates.
- (10) Section 65(4) to (7) and sections 66, 67 and 68 apply in relation to closure notices as if references in those enactments to an environmental protection notice were references to a closure notice.
- (11) If action required by a closure notice to be taken has not been taken, the CEO may —
- (a) cause that action to be taken; and
  - (b) recover the cost of the taking of that action from any person bound by the notice by action in a court of competent jurisdiction as a debt due to the Crown.
- (12) Any cost recovered under subsection (11)(b) is to be paid into the Consolidated Fund.

”.

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**82. Section 102 amended**

Section 102(2) is amended by deleting “revocation, suspension or amendment of a licence under section 59(1)” and inserting instead —

“  
amendment of the works approval or licence under section 59(1), or the revocation or suspension of the works approval or licence under section 59A(1),  
”.

**83. Section 105 amended**

Section 105(b) is amended by deleting “section 59(1)(b)(iii), (iv), (v) or (vi)” and inserting instead —

“ section 59(1)(e), (f), (h), (i) or (j) ”.

**84. Section 109 amended**

Section 109(2) is amended by deleting “(b)(i) or (ii)” and inserting instead —

“ (a) or (b) ”.

**85. Schedule 1 amended**

- (1) After Schedule 1 Part 2 Division 1 item 5 the following item is inserted —

“  
5A                      55(1a)                      \$62 500                      \$12 500  
”.

- (2) After Schedule 1 Part 2 Division 1 item 7 the following item is inserted —

“  
7A                      58(1a)                      \$62 500                      \$12 500  
”.



- (3) After Schedule 1 Part 2 Division 2 item 5 the following item is inserted —

“

5A	55(1a)	\$125 000	\$25 000	
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”.

- (4) After Schedule 1 Part 2 Division 2 item 7 the following item is inserted —

“

7A	58(1a)	\$125 000	\$25 000	
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”.

- (5) Schedule 1 Part 2 Divisions 1 and 2 are each amended in item 8 column 2 by deleting “(1)” and inserting instead —

“ (4) ”.

- (6) Schedule 1 Part 2 Division 3 item 3 column 2 is amended by deleting “62” and inserting instead —

“ 62A ”.

**86. Schedule 2 amended**

- (1) Schedule 2 item 2 is deleted and the following items are inserted instead —

- “
2. The fees to apply under this Act, including, without limiting sections 43, 45 and 45A of the *Interpretation Act 1984*, the following —
- (a) the time at which, or the periods for or during which, fees are to be paid;
  - (b) the structure of fees;
  - (c) the basis on which a fee is to be calculated;
  - (d) interest on unpaid fees;
  - (e) penalties for late payment or underpayment of fees;
- ”.

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- (f) recovery of fees;
- (g) refunding of fees.

2A. Without limiting item 2, in the case of a works approval or licence under Part V or a licence, permit, approval or exemption under the regulations (an “**authorisation**”) —

- (a) prescribing fees that are payable before or when the authorisation is granted, issued or given and fees that are payable at prescribed intervals or in prescribed circumstances during the currency of the authorisation;
- (b) providing for the authorisation to cease to have effect if a fee is not paid in accordance with the regulations.

”.

(2) Schedule 2 item 17 is deleted and the following item is inserted instead —

“

17. Prohibiting or regulating any conduct, operation or activity that is capable of causing pollution or environmental harm.

”.

## Part 5 — Financial assurances

### 87. Part VA inserted

After section 86 the following Part is inserted —

“

### Part VA — Financial assurances

#### 86A. Interpretation

In this Part —

“**authorisation**” means a declaration under section 6, a clearing permit, a works approval, a licence, an exemption under section 75 or a licence, permit, approval or exemption under the regulations;

“**financial assurance requirement**” means a requirement to provide a financial assurance imposed —

- (a) as an implementation condition;
- (b) as a condition of an authorisation; or
- (c) under section 86B(2);

“**responsible person**” means —

- (a) in relation to a proposal, the proponent;
- (b) in relation to an authorisation, the holder of the authorisation or, in the case of a declaration or exemption, a person required to comply with a condition of the exemption;
- (c) in relation to a closure notice, the person bound by the notice;
- (d) in relation to an environmental protection notice, the person bound by the notice;
- (e) in relation to a vegetation conservation notice, the person bound by the notice; or

- (f) in relation to a prevention notice, the person to whom the notice is given.

**86B. Financial assurance requirement**

- (1) Implementation conditions or conditions of an authorisation may require the responsible person to provide a financial assurance of a kind specified in the conditions within the time specified in the conditions.
- (2) The CEO may by written notice require —
  - (a) a person bound by a closure notice;
  - (b) a person bound by an environmental protection notice;
  - (c) a person bound by a vegetation conservation notice; or
  - (d) a person to whom a prevention notice is given, to provide a financial assurance of a kind specified in the notice within a time specified in the notice.
- (3) A person who fails to comply with a requirement under subsection (2) commits an offence.
- (4) A financial assurance may be required to be given in one or more of the following forms —
  - (a) a bank guarantee;
  - (b) a bond;
  - (c) an insurance policy;
  - (d) another form of security that the CEO specifies.
- (5) The CEO may require a financial assurance to be provided before an authorisation is declared, granted, amended or suspended.

- (6) A financial assurance requirement may provide for the procedures under which the financial assurance may be called on or used.
- (7) If a financial assurance is provided as a condition of an authorisation, the CEO may, before the authorisation ceases to have effect, require the responsible person to continue to provide the financial assurance under subsection (2).

**86C. Considerations when Minister consents to or imposes a financial assurance requirement**

- (1) A financial assurance requirement is not to be imposed under section 86B(1) or (2), or continued under section 86B(7), by the CEO unless the Minister has consented to the imposition or continuation.
- (2) In determining whether to —
  - (a) seek the consent of the Minister to the imposition of a financial assurance requirement under section 86B(1), the CEO; and
  - (b) consent to the imposition, the Minister,is to have regard to —
  - (c) the degree of risk of pollution or environmental harm associated with the implementation of the authorisation;
  - (d) the likelihood of action being required to deal with waste or prevent, control or abate pollution or environmental harm arising from acts associated with the implementation of the authorisation;
  - (e) the environmental record of the responsible person or proposed responsible person;
  - (f) other financial assurances required to be held by the responsible person or proposed

responsible person under this Act and other written laws; and

(g) any other matters prescribed.

(3) In determining whether to —

(a) seek the consent of the Minister to the imposition of a financial assurance requirement under section 86B(2) or continuation under section 86B(7), the CEO; and

(b) consent to the imposition or continuation, the Minister,

is to have regard to —

(c) the extent of action required under the closure notice, environmental protection notice or prevention notice;

(d) the environmental record of the responsible person;

(e) other financial assurances required to be held by the responsible person under this Act and other written laws; and

(f) any other matters prescribed.

(4) In determining whether to impose a financial assurance requirement as an implementation condition, the Minister is to have regard to the matters set out in subsection (2)(c) to (g) as if the proposal were an authorisation.

**86D. Amount of financial assurance**

The amount of the financial assurance —

(a) is to be specified in the financial assurance requirement; and

(b) is not to exceed an amount that, in the opinion of the CEO, represents a reasonable estimate of

the total likely costs and expenses that may be incurred in taking action in that case or in reimbursing a person for any action taken.

**86E. Claim on or realising of financial assurance**

- (1) This section applies if —
  - (a) the Minister incurs costs in taking action under section 48(4) or 69(2);
  - (b) an authorised person or inspector incurs costs in taking action under section 73(1);
  - (c) the CEO incurs costs in taking action under section 68A(11)(a) or 73(4); or
  - (d) the CEO reimburses costs under section 73A(3),

and the person from whom those costs are or would be recoverable under this Act is a person who has provided a financial assurance.

- (2) The Minister or the CEO may recover the reasonable costs of taking the action, or the costs reimbursed, by making a claim on or realising the financial assurance or part of it.
- (3) Before making the claim on or realising the financial assurance or part of it, the Minister or the CEO is to make all reasonable endeavours to give the responsible person a written notice under this section.
- (4) The notice is to —
  - (a) state details of the action taken;
  - (b) state the amount of the financial assurance to be claimed or realised;
  - (c) invite the responsible person to make representations to the Minister or the CEO to

show why the financial assurance should not be claimed or realised as proposed; and

- (d) state the period (at least 30 days after the notice is given to the responsible person) within which representations may be made.
- (5) The representations must be made in writing.
- (6) After the end of the period stated in the notice, the Minister or the CEO is to consider any representations properly made by the responsible person.
- (7) If the Minister or the CEO decides to make a claim on or realise the financial assurance or part of it, the Minister or the CEO is to immediately make reasonable endeavours to give written notice to the responsible person of the decision and the reasons for the decision.
- (8) Any costs recovered under this section are to be paid into the Consolidated Fund.

**86F. Lapsing of financial assurance**

- (1) The requirement to provide financial assurance lapses and no longer binds the responsible person if the CEO is satisfied that the reason for which the financial assurance was required no longer exists and has given the responsible person written notice of the lapsing of the financial assurance requirement.
- (2) If a responsible person makes a written request to the CEO for advice as to whether the reason for which a financial assurance provided by that person was required still exists, the CEO is to provide that advice.



**86G. Financial assurance not to affect other action**

- (1) Subject to subsections (3) and (4), a financial assurance may be called on and used, despite and without affecting —
  - (a) any liability of the responsible person to any penalty for an offence for a contravention to which the financial assurance relates; and
  - (b) any other action that might be taken or is required to be taken in relation to any contravention or other circumstances to which the financial assurance relates.
- (2) If the amount of financial assurance claimed or realised does not cover all the costs concerned, the Minister or CEO may recover the excess from the responsible person under section 48(5), 68A(11)(b), 69(3), 73(4a) or 73A(4), as the case requires.
- (3) The Minister is not entitled —
  - (a) to recover costs under section 48(5) or 69(3) if a financial assurance has been called on and used in respect of those costs (except to the extent that the financial assurance does not cover all the costs); or
  - (b) to call on or use a financial assurance in respect of costs which have been recovered under section 48(5) or 69(3).
- (4) The CEO is not entitled —
  - (a) to recover costs under section 68A(11)(b), 73(4a) or 73A(4) if a financial assurance has been called on and used in respect of those costs (except to the extent that the financial assurance does not cover all the costs); or

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- (b) to call on or use a financial assurance in respect of costs which have been recovered under section 68A(11)(b), 73(4a) or 73A(4).

”.

**88. Schedule 1 amended**

- (1) After Schedule 1 Part 2 Division 1 item 11 the following item is inserted —

“

11A	86B(3)	\$62 500	\$12 500
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”.

- (2) After Schedule 1 Part 2 Division 2 item 11 the following item is inserted —

“

11A	86B(3)	\$125 000	\$25 000
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”.

**89. Schedule 2 amended**

After Schedule 2 item 33A the following item is inserted —

“

- 33B. Making provision for or with respect to guidelines to be observed in relation to the content of financial assurance requirements.

”.

## **Part 6 — Environmental protection policies**

### **90. Section 5 amended**

Section 5(1) is amended as follows:

- (a) by inserting after “a provision of this Act” —  
“ or of an approved policy ”;
- (b) by inserting after “the provision of this Act” —  
“ or the approved policy, as the case requires, ”.

### **91. Section 26 amended**

- (1) Section 26 is amended by inserting before “The Authority” the subsection designation “(1)”.
- (2) At the end of section 26 the following subsection is inserted —  
“  
(2) If the draft policy does not identify an area of the State to which it applies, consultation shall be carried out under subsection (1) as if the draft policy applied to the whole of the State.  
”.

### **92. Section 28 amended**

- (1) Section 28 is amended by inserting before “After” the subsection designation “(1)”.
- (2) At the end of section 28 the following subsection is inserted —  
“  
(2) The Authority shall include reasons for any revision of the draft policy in the report referred to in subsection (1)(c)(ii).  
”.

**93. Section 30 replaced**

Section 30 is repealed and the following section is inserted instead —

“

**30. Consultation by Minister**

- (1) Subject to subsection (3), after considering a copy of a draft policy, and the report on the draft policy, submitted to the Minister under section 28 or 32(1)(b), the Minister shall make reasonable endeavours to consult such public authorities and persons as appear to the Minister to be likely to be affected by the draft policy submitted.
- (2) Subsection (1) applies whether or not the Minister appoints a committee of inquiry under section 29 in respect of the draft policy submitted.
- (3) Subsection (1) applies unless the Minister is of the opinion that —
  - (a) the draft policy submitted is substantially the same as the draft policy in respect of which notice was published under section 26(d); and
  - (b) the Authority has consulted such public authorities and persons as appear to the Minister to be likely to be affected by that draft policy.

”.

**94. Section 35 amended**

- (1) Section 35(2) is amended as follows:
  - (a) in paragraph (a) by deleting “the boundaries of the area, and”;
  - (b) by deleting “or” after paragraph (f)(v);

- (c) in paragraph (f)(vi) by deleting “protected,” and inserting instead —

“

protected; or

- (vii) procedures to evaluate the effectiveness of the programme,

”;

- (d) in paragraph (f) by deleting “(v) and (vi)” and inserting instead —

“ (v), (vi) and (vii) ”.

- (2) After section 35(2) the following subsection is inserted —

“

- (3) An approved policy may provide that it applies to —

- (a) an area of the State identified in the policy;
- (b) an area of the State identified in the policy or by regulation;
- (c) the whole of the State;
- (d) the whole of the State other than an area identified in the policy;
- (e) the whole of the State other than an area identified by regulation; or
- (f) the whole of the State other than an area identified in the policy or by regulation.

”.

**95. Section 36 amended**

After section 36(2) the following subsection is inserted —

“

- (3) The review of an approved policy does not change the force and effect of the approved policy.

”.

**96. Schedule 2 amended**

- (1) Schedule 2 item 25 is amended by inserting after “Prescribing standards” —
- “ and criteria ”.
- (2) After Schedule 2 item 25 the following items are inserted —
- “
- 25A. Identifying an area of the State to which an approved policy applies, or does not apply.
- 25B. Supplementing an approved policy by providing for any matter referred to in section 35(2).
- 25C. Prescribing methods for measuring, predicting or evaluating the effectiveness of an approved policy in achieving and maintaining the environmental quality objectives specified in the policy.
- 25D. Prescribing procedures for consultation with respect to the making of regulations in relation to a matter referred to in item 24, 25, 25A, 25B or 25C.

”.

**97. Approved policies amended and savings provisions**

- (1) Clause 14 of the *Environmental Protection (Swan Coastal Plain Lakes) Policy 1992\** is repealed and the following clause is inserted instead —

“

**14. Penalties**

A person who contravenes clause 10, 11, 12(1) or 13(1) commits a Tier 2 offence.

Penalty:

- (a) for an individual — \$62 500 and, in the case of a continuing offence, a daily penalty of \$12 500; and

- (b) for a body corporate — \$125 000 and, in the case of a continuing offence, a daily penalty of \$25 000.

[\* *Published in Gazette 18 December 1992 p. 6099-102.*]

- (2) Clause 16 of the *Environmental Protection (Gnangara Mound Crown Land) Policy 1992\** is repealed and the following clause is inserted instead —

**16. Penalties**

A person who contravenes clause 11, 12, 13, 14 or 15 commits a Tier 2 offence.

Penalty:

- (a) for an individual — \$62 500 and, in the case of a continuing offence, a daily penalty of \$12 500; and  
(b) for a body corporate — \$125 000 and, in the case of a continuing offence, a daily penalty of \$25 000.

[\* *Published in Gazette 24 December 1992 p. 6287-93.*]

- (3) Clause 35 of the *Environmental Protection (South West Agricultural Zone Wetlands) Policy 1998\** is repealed and the following clause is inserted instead —

**35. Penalties**

A person who contravenes clause 29, 30, 31, 32(1), 33(1) or 34 commits a Tier 2 offence.

Penalty:

- (a) for an individual — \$62 500 and, in the case of a continuing offence, a daily penalty of \$12 500; and  
(b) for a body corporate — \$125 000 and, in the case of a continuing offence, a daily penalty of \$25 000.

[\* *Published in Gazette 28 October 1998 p. 5975-89.*]

**s. 97**

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- (4) The amendments to approved policies effected by this section have effect as though the provisions were enacted as part of the *Environmental Protection Act 1986* on and from the day on which this section comes into operation.
- (5) Nothing in this section affects the operation of the *Environmental Protection Act 1986* with respect to amendments to the approved policies as amended by this section and revocation of approval of the approved policies as amended by this section.



## Part 7 — Appeals

### 98. Section 3 amended

Section 3(1) is amended by inserting in the appropriate alphabetical position the following definition —

“

“**Appeals Convenor**” means the Appeals Convenor appointed under section 107A;

”.

### 99. Section 102 amended

- (1) Section 102(1) is amended by inserting after “within 21 days of” —

“ being notified of ”.

- (2) Section 102(2) is amended by inserting after “within 21 days of” —

“ being notified of ”.

- (3) Section 102(3) and (4) are repealed and the following subsections are inserted instead —

“

- (3) A person who —

- (a) not being an applicant referred to in subsection (1), disagrees with a refusal or specification referred to in that subsection; or
- (b) not being a holder referred to in subsection (2), disagrees with an amendment, revocation or suspension referred to in that subsection,

may within the period within which the applicant or holder can lodge an appeal about that refusal, specification, revocation, suspension or amendment lodge with the Minister an appeal in writing setting out the grounds of that appeal.

**s. 100**

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- (4) Pending the determination of the relevant appeal lodged under subsection (1), (2) or (3) in respect of a refusal, specification, revocation or suspension, the decision against which that appeal is lodged continues to have effect.
- (5) Pending the determination of the relevant appeal lodged under subsection (2) in respect of an amendment, the amendment shall be deemed not to have been made.
- (6) Pending the determination of the relevant appeal lodged under subsection (3) in respect of an amendment, the amendment continues to have effect.

”.

**100. Section 106 replaced**

Section 106 is repealed and the following section is inserted instead —

“

**106. Preliminary action in respect of appeals**

- (1) When an appeal is lodged under this Part, the Appeals Convenor —
  - (a) if the appeal is lodged under section 100, shall request the Authority to report to the Minister on the appeal;
  - (b) if the appeal is lodged under section 101A, 102, 103 or 104, shall request the CEO to report to the Minister on the appeal;
  - (c) may consult the appellant and any other appropriate person to determine whether or not the point at issue in the appeal can be resolved; and

- (d) if the decision appealed against is not a decision of the Minister, shall consider and report to the Minister on the appeal.
- (2) When an appeal is lodged under this Part, the Minister —
  - (a) may, in any case; or
  - (b) shall, if the decision appealed against is a decision of the Minister,  
appoint an appeals committee to consider and report to the Minister on the appeal.
- (3) Subsection (2) does not apply to an appeal referred to in section 101(2a) or (2d).
- (4) If —
  - (a) an appeal is lodged under section 100 by a person other than a decision-making authority; and
  - (b) the decision-making authority has made submissions to the Minister in respect of the proposal to which the appeal relates,  
the Appeals Convenor shall have regard to those submissions when reporting on, and otherwise dealing with, the appeal.

”.

**101. Section 107 amended**

Section 107(1) is repealed and the following subsection is inserted instead —

“

- (1) On receiving a request under section 106(1), the Authority or CEO, as the case requires, shall report on the relevant appeal to the Minister.

”.

**s. 102**

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**102. Sections 107A, 107B, 107C and 107D inserted**

After section 107 the following sections are inserted —

“

**107A. Appeals Convenor**

- (1) The Governor may appoint a person as Appeals Convenor.
- (2) The office of Appeals Convenor is not an office in the Public Service and is not to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.
- (3) Schedule 7 has effect with respect to the tenure, salary and conditions of service of the Appeals Convenor.
- (4) If —
  - (a) the Appeals Convenor is unable to act by reason of illness, absence or other cause; or
  - (b) there is a vacancy in the office of Appeals Convenor,

the Minister may appoint a person to act temporarily in the place of the Appeals Convenor, and while so acting according to the tenor of the appointment that person has all of the functions, powers and immunities of the Appeals Convenor.

- (5) No act or omission of a person acting in place of the Appeals Convenor under subsection (4) is to be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

**107B. Functions and powers of Appeals Convenor**

- (1) Section 109 applies to and in relation to the Appeals Convenor as if the Appeals Convenor were an appeals committee and a report of the Appeals Convenor made

under section 106 has effect as if it were a report of an appeals committee.

- (2) In addition to any other function conferred on the Appeals Convenor by this Act, the Appeals Convenor may —
  - (a) advise the Minister generally on matters concerning appeals under this Act; and
  - (b) perform such other functions as are conferred on the Appeals Convenor by any other written law.
- (3) There are to be appointed under Part 3 of the *Public Sector Management Act 1994* such officers as are necessary to assist the Appeals Convenor to perform his or her functions.

**107C. Appeals panel**

- (1) The Appeals Convenor may convene an appeals panel whenever the Appeals Convenor considers it is necessary or desirable to do so for the purpose of advising the Appeals Convenor on matters arising in an appeal.
- (2) An appeals panel shall consist of one or more persons who, because of professional or other qualifications or experience, is or are in the opinion of the Appeals Convenor qualified to give advice on matters arising in an appeal.
- (3) A member of an appeals panel shall be paid remuneration and allowances as if the member were a member of an appeals committee.

**107D. Administrative procedures for appeals**

- (1) The Appeals Convenor may, with the approval of the Minister —
  - (a) draw up administrative procedures as to —
    - (i) the conduct of appeals; and
    - (ii) the appointment, composition and duties of an appeals panel;
  - (b) amend or revoke administrative procedures drawn up under this section; and
  - (c) publish in the *Gazette* administrative procedures drawn up under this section and any amendment or revocation of those administrative procedures.
- (2) If there is an inconsistency between administrative procedures drawn up under this section and this Act or regulations made under Schedule 2 item 35, this Act or those regulations prevail to the extent of that inconsistency.

”.

**103. Section 109 amended**

Section 109(1) is amended by deleting paragraph (a) and “and” after it and inserting the following paragraphs instead —

“

- (a) shall consult —
  - (i) the CEO in the case of an appeal against a decision of the CEO;
  - (ii) the Authority in the case of an appeal against a decision of the Minister or the Authority; and
  - (iii) the appellant;

- (aa) may consult such other persons as it considers necessary; and

”.

**104. Schedule 7 inserted**

After Schedule 4 the following Schedule is inserted in the appropriate numerical position —

“

**Schedule 7 — Appeals Convenor**

[s. 107A]

**1. Term of office**

Subject to clause 3, the Appeals Convenor holds office for a term, not exceeding 5 years, fixed by the instrument of appointment, and is eligible for reappointment.

**2. Salary and entitlements**

(1) The Appeals Convenor —

- (a) is to be paid salary and allowances at a rate per year determined by the Minister on the recommendation of the Minister for Public Sector Management; and
- (b) has the same annual leave, sick leave and long service leave entitlements as a permanent officer of the Public Service.

(2) Subclause (1)(a) has effect subject to the *Salaries and Allowances Act 1975* if that Act applies to the Appeals Convenor.

**3. Resignation and removal from office**

- (1) The Appeals Convenor may resign office by written notice delivered to the Governor.

- (2) The Governor may remove the Appeals Convenor from office —
- (a) for —
- (i) misbehaviour or incompetence; or
  - (ii) mental or physical incapacity, other than temporary illness, impairing the performance of the Appeals Convenor's functions;
- or
- (b) if the Appeals Convenor becomes a bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of salary for their benefit.
- (3) In subclause (2)(a) —
- “misbehaviour”** includes behaving in a manner that renders the Appeals Convenor unfit to hold office even if the conduct does not relate to any function of the office of Appeals Convenor.

**4. Appointment of public service officer**

- (1) A person who held office in the Public Service (**“previous office”**) immediately before being appointed as Appeals Convenor —
- (a) retains existing and accruing superannuation and leave entitlements as if service as the Appeals Convenor were a continuation of service in the previous office; and
  - (b) if he or she ceases to hold office as the Appeals Convenor on the completion of a periodical appointment, is entitled to be appointed to an office in the Public Service not lower in classification and salary than the previous office (as long as he or she is at that time eligible to hold such an office in the Public Service).



- (2) A person appointed to an office in the Public Service under subclause (1)(b) retains existing and accruing superannuation and leave entitlements as if service in the Public Service were a continuation of service as the Appeals Convenor.

**5. Other conditions of service**

The Governor may, on the recommendation of the Minister for Public Sector Management, determine any other terms and conditions of service to apply to the Appeals Convenor.

”.

## Part 8 — Bilateral Agreements

**105. Section 3 amended**

Section 3(1) is amended by inserting in the appropriate alphabetical position the following definition —

“

“**bilateral agreement**” means an agreement referred to in section 45(2) of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth to which the State is a party;

”.

**106. Section 16 amended**

After section 16(a) the following paragraph is inserted —

“

(aa) to facilitate the implementation of bilateral agreements;

”.

**107. Section 17 amended**

After section 17(3) the following subsection is inserted —

“

- (4) Without limiting the generality of this section, for the purposes of its function under section 16(aa) the Authority may, in relation to the assessment of a proposal to which a bilateral agreement applies —
- (a) have regard to requirements made by the bilateral agreement when deciding the level of assessment to be used;
  - (b) prepare guidelines and publish material as required under the bilateral agreement;
  - (c) require the proponent to do anything necessary to give effect to the bilateral agreement; and

- (d) make its report in a manner that satisfies the requirements of the bilateral agreement.

”.

**108. Section 120 amended**

After section 120(b) the following paragraph is inserted —

“ (ba) under a bilateral agreement; ”.

## **Part 9 — Clearing permits**

### **Division 1 — Amendments to *Environmental Protection Act 1986***

**109. Section 3 amended**

- (1) Section 3(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“**clearing**” has the meaning given by section 51A;

“**clearing permit**” means a clearing permit granted and in force under Part V Division 2;

“**vegetation conservation notice**” means a vegetation conservation notice given under section 70;

”.

- (2) Section 3(4) is amended as follows:

- (a) by deleting “a works” and inserting instead —

“ a clearing permit, works ”;

- (b) by deleting “the works” in both places where it occurs and inserting instead —

“ the clearing permit, works ”.

**110. Part V Division 2 inserted and transitional provisions**

- (1) Before section 52 the following Division is inserted —

“

### **Division 2 — Clearing of native vegetation**

**51A. Definitions**

In this Division —

“**area permit**” has the meaning given by section 51E(7);

**“clearing”** means —

- (a) the killing or destruction of;
- (b) the removal of;
- (c) the severing or ringbarking of trunks or stems of; or
- (d) the doing of any other substantial damage to, some or all of the native vegetation in an area, and includes the draining or flooding of land, the burning of vegetation, the grazing of stock, or any other act or activity, that causes —
  - (e) the killing or destruction of;
  - (f) the severing of trunks or stems of; or
  - (g) any other substantial damage to, some or all of the native vegetation in an area;

**“clearing principles”** means the principles for clearing native vegetation set out in Schedule 5;

**“environmentally sensitive area”** means an area that is the subject of a declaration that is in force under section 51B;

**“purpose permit”** has the meaning given by section 51E(8);

**“native vegetation”** has the meaning given by section 3(1) but does not include vegetation that was intentionally sown, planted or propagated unless —

- (a) that vegetation was sown, planted or propagated as required under this Act or another written law; or
- (b) that vegetation is of a class declared by regulation to be included in this definition;

**“occupier”** of land means a person who is in occupation or control of the land, or who is entitled to be in occupation or control of the land;

**“owner”** of land means —

- (a) in relation to land alienated from the Crown, the holder (at law or in equity) of an estate in fee simple in the land;
- (b) in relation to land that the Crown has lawfully agreed to alienate, the person who is entitled to the benefit of the agreement;
- (c) in relation to land held under a lease lawfully granted by the Crown, the lessee; and
- (d) in relation to any other land, the public authority that has the care, control or management of the land or, if there is no such public authority, the Crown.

**51B. Declaration of environmentally sensitive areas**

- (1) The Minister may, by notice, declare —
  - (a) an area of the State specified in the notice; or
  - (b) an area of the State of a class specified in the notice,

to be an environmentally sensitive area for the purposes of this Division.

- (2) A notice under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (3) Subsections (1), (2), (3), (5), (6) and (8)(a) of section 42 of the *Interpretation Act 1984* apply to a notice under this section as if it were regulations within the meaning of that section.

- (4) Before a notice is published under this section the Minister shall —
- (a) seek comments on it from the Authority and from any public authority or person which or who has, in the opinion of the Minister, an interest in its subject matter; and
  - (b) take into account any comments received from the Authority or such a public authority or person.

**51C. Unauthorised clearing of native vegetation**

A person who causes or allows clearing commits an offence unless the clearing —

- (a) is done in accordance with a clearing permit;
- (b) is of a kind set out in Schedule 6; or
- (c) is of a kind prescribed for the purposes of this section and is not done in an environmentally sensitive area.

**51D. Particular provisions in relation to soil and land conservation**

- (1) In this section —

**“agreement to reserve”** means an agreement to reserve as referred to in section 30B(2) of the SLC Act;

**“Commissioner”** means the person for the time being holding or acting in the office of the Commissioner of Soil and Land Conservation under the SLC Act;

**“conservation covenant”** means a conservation covenant as referred to in section 30B(2) of the SLC Act;

“**SLC Act**” means the *Soil and Land Conservation Act 1945*;

“**soil conservation notice**” has the same meaning as it has in Part V of the SLC Act.

- (2) Section 51C(a) does not apply to the clearing of vegetation on land the subject of an agreement to reserve unless —
- (a) the clearing permit was granted; or
  - (b) the clearing is done,
- with the written approval of the Commissioner.
- (3) Section 51C(a) does not apply to the clearing of vegetation —
- (a) on land the subject of a conservation covenant; or
  - (b) in contravention of a soil conservation notice.

**51E. Applications for clearing permits**

- (1) An application for a clearing permit shall —
- (a) be made in the form and in the manner approved by the CEO;
  - (b) indicate whether it relates to —
    - (i) the clearing of a particular area specified in the application; or
    - (ii) the clearing of different areas from time to time for a purpose specified in the application;
  - (c) be accompanied by the fee prescribed by or determined under the regulations; and
  - (d) be supported by any management plans, maps, and other documents and information required



by the CEO and include a summary of that supporting documentation and information.

- (2) An application for a clearing permit can only be made —
- (a) if it relates to clearing referred to in subsection (1)(b)(i) —
    - (i) by the owner of the land on which the clearing is proposed to be done or a person acting on the owner's behalf; or
    - (ii) by a person who satisfies the CEO that the person is likely to become the owner of the land on which the clearing is proposed to be done;
- or
- (b) if it relates to clearing referred to in subsection (1)(b)(ii), by the person by or on whose behalf the clearing is to be done.
- (3) If an application made under subsection (1) does not comply with subsections (1) and (2), the CEO shall decline to deal with the application and advise the applicant accordingly.
- (4) If the application complies with subsections (1) and (2), the CEO shall —
- (a) advise the applicant that the application has been received;
  - (b) invite any public authority or person which or who has, in the opinion of the CEO, a direct interest in the subject matter of the application, to comment on it within such period as the CEO specifies; and
  - (c) advertise the application in the prescribed manner, inviting any person who wishes to

comment on it to do so within such period as is specified in the advertisement.

- (5) The CEO shall, after having taken into account any comments received within the specified period from any public authority or person from which or whom comments were invited under subsection (4)(b) or (c) and subject to sections 51O and 51P —
  - (a) grant a clearing permit subject to such of the conditions referred to in section 51H as the CEO specifies in the permit; or
  - (b) refuse to grant a clearing permit.
- (6) The CEO is to give the applicant written notice of the refusal to grant a clearing permit.
- (7) If a clearing permit relates to clearing referred to in subsection (1)(b)(i), it —
  - (a) may be granted under subsection (5) for all or some of the clearing applied for;
  - (b) is to describe the boundaries of the area that may be cleared; and
  - (c) is referred to for the purposes of this Division as an **“area permit”**.
- (8) If a clearing permit relates to clearing referred to in subsection (1)(b)(ii), it —
  - (a) is to describe the purpose for which the clearing may be done;
  - (b) is to describe the principles and criteria that are to be applied, and the strategies and procedures that are to be followed, in relation to the clearing; and
  - (c) is referred to for the purposes of this Division as a **“purpose permit”**.

- (9) In the case of an application made under subsection (2)(a)(ii), the CEO may, under subsection (5)(a), give the applicant a written undertaking that if the person becomes the owner of the land on which the clearing is proposed to be done, the CEO will, subject to subsection (10), grant a clearing permit to the applicant subject to such of the conditions referred to in section 51H as the CEO specifies in the undertaking.
- (10) A clearing permit cannot be granted pursuant to an undertaking mentioned in subsection (9) unless —
- (a) the applicant becomes the owner of the land on or before such day as is specified in the undertaking; and
  - (b) the CEO has been notified in writing that the applicant has become the owner of the land.
- (11) A reference in subsection (5)(b), (6) or (7)(a) or in section 51P(2) or 101A to granting or refusing to grant a clearing permit includes a reference to giving or refusing to give an undertaking mentioned in subsection (9).
- (12) A reference in section 101A to the specification of a condition in a clearing permit includes a reference to the specification of a condition in an undertaking mentioned in subsection (9).

**51F. Other decisions to take precedence**

- (1) If an application for a clearing permit made under section 51E(1) is related to a proposal which has been referred to the Authority under section 38, the CEO shall not perform any duty imposed on the CEO by section 51E(5) —
- (a) while any decision-making authority is precluded by section 41 from making any

decision which could have the effect of causing or allowing that proposal to be implemented; or

- (b) contrary to, or otherwise than in accordance with, an implementation agreement or decision.

- (2) If a decision-making authority makes a decision that has the effect of preventing the implementation of a proposal to which an application for a clearing permit made under section 51E(1) is related, the CEO does not have to perform any duty imposed under section 51E(5) while that decision has effect.

**51G. Duration of clearing permits**

Subject to this Act, a clearing permit continues in force —

- (a) if it is an area permit, for 2 years; or
- (b) if it is a purpose permit, for 5 years,

from the date on which it is granted unless another period is specified in the permit.

**51H. Clearing permit conditions**

- (1) A clearing permit may be granted subject to such conditions as the CEO considers to be necessary or convenient for the purposes of preventing, controlling, abating or mitigating environmental harm or offsetting the loss of the cleared vegetation.
- (2) Section 51I sets out some kinds of conditions that may be attached to a clearing permit and further kinds of conditions may be prescribed, but nothing in that section or the regulations prevents other conditions from being attached.

- (3) The CEO is not to attach —
- (a) a condition that would, in the CEO's opinion, be seriously at variance with the clearing principles except to the extent necessary to give effect to a decision made under section 51O(3); or
  - (b) subject to section 51P, a condition that would be inconsistent with an approved policy.

**51I. Some kinds of conditions**

- (1) A condition may specify activities that are authorised, or not authorised, by the clearing permit.
- (2) The following list sets out things that the holder of a clearing permit can be required to do (at the expense of the holder) under conditions attached to the clearing permit —
  - (a) take specified measures for the purpose of —
    - (i) preventing, or minimising the likelihood of, environmental harm; or
    - (ii) controlling or abating environmental harm either generally or in accordance with specified criteria;
  - (b) establish and maintain vegetation on land other than land cleared under the permit in order to offset the loss of the cleared vegetation, or make monetary contributions to a fund maintained for the purpose of establishing or maintaining vegetation;
  - (c) give a conservation covenant or agreement to reserve under section 30B of the *Soil and Land Conservation Act 1945*, or some other form of binding undertaking to establish and maintain vegetation, in relation to land other than land cleared under the permit;

- (d) monitor operations (including abatement operations) and environmental harm, conduct analysis of monitoring data, and provide reports on monitoring data, and analysis of it, to the CEO;
  - (e) investigate options for measures for preventing, controlling or abating environmental harm;
  - (f) conduct environmental risk assessment studies;
  - (g) provide reports on audits and studies, including audit compliance reports, to the CEO;
  - (h) prepare, implement and adhere to environmental management systems, environmental management plans and environmental improvement plans;
  - (i) have something required to be done under a condition done by a person of a class approved by the CEO;
  - (j) do something required to be done under a condition —
    - (i) within a specified period or before a specified date; or
    - (ii) in a specified form or manner.
- (3) Without limiting subsection (2) paragraph (d), a condition referred to in that paragraph can require the holder of a clearing permit to carry out a specified monitoring programme for the purpose of supplying the CEO with information relating to the nature and extent of any impacts or potential impacts the activities under the permit may have on the environment or any environmental value.
- (4) In this section —  
**“establish”** includes conserve;

**“specified”** means specified by the CEO in the clearing permit concerned.

**51J. Contravention of clearing permit conditions**

- (1) The holder of a clearing permit who contravenes a condition to which the permit is subject commits an offence.
- (2) If a clearing permit is subject to a condition referred to in section 51I(2)(c), a reference in this Division to a contravention of a condition includes a reference to a contravention of the covenant, agreement or undertaking given by the permit holder.

**51K. Amendment of a clearing permit**

- (1) The CEO may amend a clearing permit by —
  - (a) removing or varying any condition to which the clearing permit is subject;
  - (b) subjecting the clearing permit to a new condition;
  - (c) in the case of an area permit, redescribing the boundaries of the area that may be cleared under the permit or of land to which a condition referred to in section 51I(2)(b) or (c) applies;
  - (d) in the case of a purpose permit, redescribing any of the principles or criteria that are to be applied, or the strategies or procedures that are to be followed, in relation to the clearing;
  - (e) correcting in the clearing permit —
    - (i) a clerical mistake or unintentional error or omission;
    - (ii) a figure which has been miscalculated;  
or

- (iii) the misdescription of any person, thing, area, property or activity;
  - (f) making an administrative change to the format of the clearing permit which does not alter the obligations of the permit holder;
  - (g) amending the clearing permit in conformity with an approved policy or with an exemption conferred under this Act;
  - (h) amending the clearing permit to give effect to a decision of the Minister under this Act (whether on an appeal or otherwise); or
  - (i) extending the duration of the clearing permit.
- (2) A clearing permit may be amended on application by the holder of the permit or on the initiative of the CEO.

**51L. Revocation or suspension of clearing permit**

- (1) The CEO may revoke or suspend a clearing permit.
- (2) The grounds for revocation or suspension of a clearing permit are that —
  - (a) the CEO is satisfied that there has been a breach of any of the conditions to which the clearing permit is subject;
  - (b) where a person has become the holder of the clearing permit by operation of section 51N, the CEO is satisfied that the person is unwilling or unable to comply with the conditions to which the permit is subject;
  - (c) information contained in or supporting the application was false or misleading in a material respect; or
  - (d) the holder of the clearing permit has applied to the CEO to surrender the permit.



**51M. Manner of amendment, revocation or suspension**

- (1) An application for an amendment to a clearing permit or to surrender a clearing permit is to —
  - (a) be made in the manner and form approved by the CEO;
  - (b) be accompanied by the fee prescribed by or determined under the regulations; and
  - (c) be supported by any management plans, maps, and other documents and information required by the CEO and include a summary of that supporting documentation and information.
- (2) Before amending, revoking or suspending a clearing permit the CEO is to give the holder of the permit a written notice under this section.
- (3) The notice is to —
  - (a) state details of the proposed action;
  - (b) invite the holder to make representations to the CEO to show why the action should not be taken; and
  - (c) state the period (at least 28 days after the notice is given to the holder) within which representations may be made.
- (4) The representations must be made in writing.
- (5) Subject to subsection (8), the CEO may take the proposed action —
  - (a) at any time after the holder of the clearing permit gives the CEO written notice that the holder does not intend to make any representations or any further representations;  
or

- (b) if such notice is not given, after the end of the period stated in the notice within which representations may be made.
- (6) The CEO is to consider any representations properly made by the holder of the clearing permit.
- (7) If the proposed action is —
  - (a) the revocation or suspension of the clearing permit; or
  - (b) an amendment of the clearing permit reducing or restricting the extent or method of clearing that may be done,the permit, by force of this subsection, ceases to have effect until —
  - (c) notice of any amendment, revocation or suspension of the permit is given under subsection (10); or
  - (d) after considering any representations properly made by the holder of the permit, the CEO gives the holder written notice that the action will not be taken.
- (8) If the proposed action is related to a proposal which has been referred to the Authority under section 38, the CEO is not to so amend, revoke or suspend —
  - (a) while any decision-making authority is precluded by section 41 from making any decision which could have the effect of causing or allowing that proposal to be implemented; or
  - (b) contrary to, or otherwise than in accordance with, an implementation agreement or decision.
- (9) If a decision-making authority makes a decision that has the effect of preventing the implementation of a proposal to which an amendment proposed under this

section is related, the CEO does not have to make a decision on the amendment while the decision-making authority's decision has effect.

- (10) The CEO is to give the holder of the clearing permit written notice of any amendment, revocation or suspension of the permit.
- (11) Without limiting subsection (10), notice of an amendment can be given in the form of a revised clearing permit.

**51N. Continuation of area permit on change of ownership**

- (1) If an area permit is held by the owner of the land to which the permit relates and the interest by reason of which that person is the owner (the “**interest**”) is or is to be transferred, or passes or is to pass, to another person (the “**new owner**”), the new owner may, in the form and in the manner approved by the CEO, notify the CEO —
  - (a) that the transfer or passing of the interest has occurred or is to occur; and
  - (b) that the new owner wishes to become the holder of the permit.
- (2) If notification is given to the CEO under subsection (1) then —
  - (a) on the transfer or passing of the interest; or
  - (b) on the receipt of the notification by the CEO,whichever is later, the new owner becomes the holder of the area permit by operation of this section on the conditions to which the permit is subject.
- (3) If when the interest is transferred or passes the CEO has not received notification under subsection (1), the

area permit has no further effect unless and until such notification is received.

**51O. Principles and instruments to be considered when making decisions as to clearing permits**

- (1) In this section —
  - “clearing matter”** means —
    - (a) an application for a clearing permit; or
    - (b) an amendment of a clearing permit;
  - “decision”** means a decision about a clearing matter;
  - “planning instrument”** means —
    - (a) a scheme or a strategy, policy or plan made or adopted under a scheme;
    - (b) a statement of planning policy approved under section 5AA of the *Town Planning and Development Act 1928*; or
    - (c) a local planning strategy made under the *Town Planning and Development Act 1928*.
- (2) In considering a clearing matter the CEO shall have regard to the clearing principles so far as they are relevant to the matter under consideration.
- (3) The CEO may make a decision that is seriously at variance with the clearing principles if, and only if, in the CEO’s opinion there is a good reason for doing so. That reason must be recorded and published under section 51Q.
- (4) In considering a clearing matter the CEO shall have regard to any planning instrument, or other matter, that the CEO considers relevant.

**51P. Relationship between clearing permits and approved policies**

- (1) In considering —
  - (a) an application for a clearing permit; or
  - (b) an amendment of a clearing permit,

the CEO shall ensure that the clearing permit, or its amendment, is consistent with any approved policy.
- (2) The CEO shall not amend or shall refuse to grant a clearing permit if the CEO considers that the associated effect on the environment would be inconsistent with any approved policy.
- (3) Despite anything in this section —
  - (a) if the CEO is satisfied that, as a result of environmental circumstances having changed, the environment or an environmental value of the area concerned requires a higher level of protection than would be provided by the standards required by or under any approved policy, the CEO may grant or amend a clearing permit so as to make the permit subject to conditions which specify standards that are more stringent than those required by or under the approved policy;
  - (b) if the CEO is satisfied that, as a result of the approval under section 31(d) of a new approved policy or as a result of an approved policy as amended being confirmed under section 37, any condition to which an existing clearing permit is subject is inconsistent with that approved policy, the CEO may amend that permit to make it consistent with that approved policy.

**51Q. Particulars of clearing permits to be recorded**

- (1) The CEO is to keep a record of such particulars of —
  - (a) applications for clearing permits;
  - (b) clearing permits and undertakings mentioned in section 51E(9); and
  - (c) notifications received under section 51N(1),as are prescribed.
- (2) The CEO is to publish from time to time in a prescribed manner prescribed particulars of the record.

**51R. Evidentiary matters**

- (1) In proceedings under this Division a document purporting to be —
  - (a) a true copy of an aerial photograph marked so as to identify, and show the boundaries of, land according to official survey; and
  - (b) signed and certified by the Surveyor General as being a true copy of a photograph taken under the authority of the Surveyor General on the date specified in the certificate and as correctly identifying, and showing the boundaries of, the land according to official survey,is, without proof of the signature of the Surveyor General, admissible as evidence of the matters so certified and of the condition, on the date so specified, of the vegetation on the land so identified.
- (2) A document shall not be admitted pursuant to subsection (1) as evidence that the land has been cleared contrary to this Division unless the court is satisfied that the Minister, the CEO or a person acting with the authority of the Minister or of the CEO has

entered upon and inspected the land for the purposes of ascertaining whether the land has been so cleared.

- (3) Where, in a prosecution for an offence under this Division involving clearing, it is proved that clearing has taken place on land —
- (a) the person who was the occupier of the land at the time of the clearing is to be regarded as having caused the clearing in the absence of evidence to the contrary; and
  - (b) the person who was the owner of the land at the time of the clearing is to be regarded as having allowed the clearing in the absence of proof to the contrary.
- (4) Subsection (3) does not affect the liability of any other person for the offence concerned.
- (5) In a prosecution for an offence under this Division, an averment in the complaint to the effect that vegetation is or was native vegetation is to be regarded as having been proved in the absence of proof to the contrary.
- (6) For the purposes of this Division, if —
- (a) land is shared by a corporation and a subsidiary or subsidiaries of the corporation;
  - (b) the corporation or a subsidiary referred to in paragraph (a) is the holder of a clearing permit in respect of an area situated on the land; and
  - (c) a condition to which the clearing permit is subject is contravened,

the permit holder is to be regarded as having caused the contravention unless the contrary is proved.

- (7) In subsection (6) —
- “**corporation**” has the meaning given by the *Corporations Act 2001* of the Commonwealth;
- “**subsidiary**” has the meaning given by the *Corporations Act 2001* of the Commonwealth.

**51S. Clearing injunctions**

- (1) In this section —
- “**contravention**” includes the continuation of a contravention;
- “**court**” means the Supreme Court;
- “**improper conduct**” means an act or omission constituting a contravention of, or involvement in a contravention of, section 51C or 51J;
- “**involvement in a contravention**” means —
- (a) aiding, abetting, counselling, or procuring the contravention;
  - (b) inducing the contravention, whether by threats or promises or otherwise;
  - (c) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention;
  - (d) conspiring with others to effect the contravention; or
  - (e) attempting to do anything constituting involvement in a contravention under paragraph (a), (b), (c) or (d).
- (2) Without limiting any other power the court may have to grant injunctive relief, it is declared that the court may grant an injunction to prevent a person from engaging in improper conduct (a “**clearing injunction**”).



- (3) The CEO may apply for a clearing injunction.
- (4) A clearing injunction may be granted if the court is satisfied that it would be appropriate to grant the injunction —
  - (a) whether or not it is proved that the person intends to engage, or to engage again, or to continue to engage, in improper conduct of the kind sought to be prevented by the injunction; and
  - (b) whether or not the person has previously engaged in improper conduct of that kind.
- (5) An interim clearing injunction may be granted before final determination of an application for a clearing injunction.
- (6) The court is not to require, as a condition of granting an interim clearing injunction, that an undertaking be given as to damages or costs.
- (7) The taking of proceedings against any person for an offence under this Act is not affected by —
  - (a) the making of an application for a clearing injunction;
  - (b) the grant or refusal of a clearing injunction or an interim clearing injunction; or
  - (c) the rescission, variation, or expiry of a clearing injunction or an interim clearing injunction.

**51T. Other requirements not affected**

Despite section 5, the operation of any other enactment under which a permit, permission, licence, approval or other authorisation is required in relation to the clearing of vegetation is not affected by —

- (a) this Division; or

- (b) the grant of a clearing permit under this Division,

and this Division has effect in addition to that enactment.

”.

- (2) In subsections (3) and (4) —  
“**commencement day**” means the day on which section 110 comes into operation;  
“**EP Act**” means the *Environmental Protection Act 1986* as amended by this Act.
- (3) Despite section 51B of the EP Act, the Governor may make regulations declaring —  
(a) an area of the State specified in the notice; or  
(b) an area of the State of a class specified in the notice,  
to be an environmentally sensitive area for the purposes of Part V Division 2 of the EP Act.
- (4) Regulations under subsection (3) —  
(a) cannot be made after the expiration of the period of 3 months after the commencement day; and  
(b) expire on the expiration of the period of 9 months after the commencement day.

**111. Section 70 replaced and transitional provisions**

- (1) Section 70 is repealed and the following section is inserted instead —

“

**70. Vegetation conservation notices**

- (1) In this section —  
“**specified**” means specified by the CEO in the vegetation conservation notice concerned;

**“unlawful clearing”** means anything constituting a contravention of section 51C or 51J.

- (2) If the CEO suspects on reasonable grounds —
- (a) that unlawful clearing is likely to take place on any land; or
  - (b) that unlawful clearing is taking place or has taken place on any land,
- the CEO may cause a notice (a **“vegetation conservation notice”**) to be given requiring a person bound by it to ensure that no unlawful clearing, or no further unlawful clearing, takes place on the land.
- (3) A vegetation conservation notice may be given to one or more of the following —
- (a) the owner of the land;
  - (b) the occupier of the land;
  - (c) a person other than the owner or occupier of the land, if the CEO considers that it is practicable for that person to comply with and give effect to the vegetation conservation notice.
- (4) A vegetation conservation notice —
- (a) is to specify —
    - (i) the name and address of the person to whom it is given; and
    - (ii) the reason for which it is given;and
  - (b) in the case of a vegetation conservation notice given under subsection (2)(b), may require any person bound by it to take such specified measures as the CEO considers necessary for one or more of the following purposes —
    - (i) to repair any damage caused by the clearing;

- (ii) to re-establish and maintain vegetation on any area affected by the clearing to a condition as near as possible to the condition of the vegetation before the clearing occurred;
  - (iii) to prevent the erosion, drift or movement of sand, soil, dust or water;
  - (iv) to ensure that specified land, or a specified watercourse or wetland (within the meaning of the *Rights in Water and Irrigation Act 1914*) will not be damaged or detrimentally affected, or further damaged or detrimentally affected, by the clearing,  
within or for the duration of a specified period.
- (5) Before a vegetation conservation notice containing a requirement under subsection (4)(b) is given to a person the CEO shall, by written notice given to the person, invite the person to make submissions to the CEO within such period as is specified in that notice on any matter relevant to the determination of whether or not the person should have to take the specified measures.
- (6) The CEO shall consider any such submissions that are received from the person within the specified period.
- (7) A vegetation conservation notice —
  - (a) while it subsists, binds each person to whom it is given; and
  - (b) if it is, and while it remains, registered under section 66 (as applied by subsection (9)), binds each successive owner or occupier of the land to which it relates.

- (8) Subsections (4) to (7) of section 65 apply in relation to vegetation conservation notices as if references in those subsections to an environmental protection notice were references to a vegetation conservation notice.
- (9) If the person, or at least one of the persons, to whom a vegetation conservation notice is given is the owner or occupier of the land, sections 66, 67 and 68 apply in relation to the vegetation conservation notice as if references in those sections to an environmental protection notice were references to a vegetation conservation notice.
- (10) If action required by a vegetation conservation notice to be taken has not been taken, the CEO may —
- (a) cause that action to be taken; and
  - (b) recover the cost of the taking of that action from any person bound by the notice by action in a court of competent jurisdiction as a debt due to the Crown.
- (11) Any cost recovered under subsection (10)(b) is to be paid into the Consolidated Fund.

”.

- (2) In subsections (3) to (5) —
- “**CEO**” has the same meaning as it has in the EP Act;
  - “**EP Act**” means the *Environmental Protection Act 1986* as amended by this Act;
  - “**transitional period**” means the period beginning on 26 June 2002 and ending on the day before the day on which this section comes into operation;

**“unlawful clearing”** means anything within the meaning of “clearing” in Part V Division 2 of the EP Act that —

- (a) constituted, at the time when the thing was done, a contravention of —
  - (i) section 28 or 35 of the *Soil and Land Conservation Act 1945*;
  - (ii) the *Soil and Land Conservation (Clearing Control) Regulations 1991* or regulation 4 or 5 of the *Soil and Land Conservation Regulations 1992*;
  - (iii) section 109, 110, 111 or 267(2)(c) or (f) of the *Land Administration Act 1997*; or
  - (iv) section 12B of the *Country Areas Water Supply Act 1947*;

or

- (b) would have constituted a contravention of section 41A of the EP Act if that section had been inserted into the EP Act before the thing was done,

but does not include clearing of a kind set out in Schedule 6 to the EP Act.

- (3) If the CEO suspects on reasonable grounds that unlawful clearing has taken place on any land during the transitional period, the CEO may cause a notice to be given under this subsection in respect of the land.
- (4) Section 70(3) to (11) and 74A of the EP Act apply in relation to a notice given under subsection (3) as if it were a vegetation conservation notice given under section 70(2)(b) of the EP Act and as if the reference to an offence in section 70(6) were a reference to an offence under an enactment mentioned in the definition of “unlawful clearing” in subsection (2).
- (5) Section 74A, Part VA and sections 89 and 103 of the EP Act apply in relation to a notice given under subsection (3) as if it

were a vegetation conservation notice given under section 70(2)(b) of the EP Act.

**112. Section 101A inserted**

After section 101 the following section is inserted —

“

**101A. Lodging of appeals in respect of clearing permits**

- (1) Subject to section 105, an applicant for —
- (a) a clearing permit who is aggrieved by the refusal of the CEO —
    - (i) to grant the permit under section 51E(5); or
    - (ii) to grant the permit under section 51E(5) for all of the clearing applied for;
  - or
  - (b) a clearing permit who is aggrieved by the specification by the CEO of any condition in the permit under section 51E(5) or 51N(2),

may within 28 days of being notified of that refusal or specification, as the case requires, lodge with the Minister an appeal in writing setting out the grounds of that appeal.

- (2) Subject to section 105, the holder of a clearing permit who is aggrieved by the amendment of the permit under section 51K(1), or the revocation or suspension of the permit under section 51L(1), may within 28 days of being notified of that amendment, revocation or suspension lodge with the Minister an appeal in writing setting out the grounds of that appeal.

- (3) A person who —
- (a) not being an applicant referred to in subsection (1), disagrees with a refusal or specification referred to in that subsection; or
  - (b) not being a holder referred to in subsection (2), disagrees with an amendment, revocation or suspension referred to in that subsection,
- may within the period within which the applicant or holder can lodge an appeal about that refusal, specification, revocation, suspension or amendment lodge with the Minister an appeal in writing setting out the grounds of that appeal.
- (4) A person who disagrees with a decision of the CEO to grant a clearing permit under section 51E(5) may within 21 days of that grant lodge with the Minister an appeal in writing setting out the grounds of that appeal.
- (5) Subsections (1)(a)(ii) and (b), (3)(a) and (4) do not apply in relation to the grant of a permit pursuant to an undertaking mentioned in section 51E(9).
- (6) Pending the determination of the relevant appeal lodged under subsection (1), (2) or (3) in respect of a refusal, specification, revocation or suspension, the decision against which that appeal is lodged continues to have effect.
- (7) Pending the determination of the relevant appeal lodged under subsection (2) in respect of an amendment, the amendment shall be deemed not to have been made unless it reduces or restricts the extent or method of clearing that may be done, in which case it continues to have effect.
- (8) Pending the determination of the relevant appeal lodged under subsection (3) in respect of an amendment, the amendment continues to have effect.



- (9) Pending the determination of the relevant appeal lodged under subsection (4), the clearing permit shall be deemed not to have been granted.

”.

**113. Section 105 amended**

Section 105 is amended as follows:

- (a) in paragraph (a) by inserting before “102” —  
“ 101A, ”;
- (b) after paragraph (a) by deleting “or” and inserting —  
“  
(aa) under section 101A(2) in respect of the amendment of a clearing permit by correcting it under section 51K(1)(e), (f), (g) or (h); or

”.

**114. Section 109 amended**

After section 109(1) the following subsection is inserted —

“

- (1a) In relation to an appeal lodged under section 101A(2) in respect of the amendment of a clearing permit under section 51K(1)(a) or (b), an appeals committee shall not consider, or make recommendations in respect of, a matter which is not directly related to or consequential to that amendment.

”.

**115. Schedule 1 amended**

- (1) Before Schedule 1 Part 1 Division 1 item 9 the following item is inserted —

“

8D	51C	\$250 000	\$50 000
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”.

- (2) Before Schedule 1 Part 1 Division 2 item 9 the following item is inserted —

“

8D	51C	\$500 000	\$100 000
----	-----	-----------	-----------

”.

- (3) Before Schedule 1 Part 2 Division 1 item 2 the following item is inserted —

“

1E	51J(1)	\$62 500	\$12 500
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”.

- (4) Before Schedule 1 Part 2 Division 2 item 2 the following item is inserted —

“

1E	51J(1)	\$125 000	\$25 000
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”.

**116. Schedules 5 and 6 inserted**

After Schedule 4 the following Schedules are inserted —

“

**Schedule 5 — Principles for clearing  
native vegetation**

[s. 51A]

**1. Principles**

Native vegetation should not be cleared if —

- (a) it comprises a high level of biological diversity;
- (b) it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia;
- (c) it includes, or is necessary for the continued existence of, rare flora;

- (d) it comprises the whole or a part of, or is necessary for the maintenance of, a threatened ecological community;
- (e) it is significant as a remnant of native vegetation in an area that has been extensively cleared;
- (f) it is growing in, or in association with, an environment associated with a watercourse or wetland;
- (g) the clearing of the vegetation is likely to cause appreciable land degradation;
- (h) the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area;
- (i) the clearing of the vegetation is likely to cause deterioration in the quality of surface or underground water; or
- (j) the clearing of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding.

## 2. **Definitions**

In this Schedule —

**“conservation area”** means a conservation park, national park, nature reserve, marine nature reserve, marine park or marine management area within the meaning of the *Conservation and Land Management Act 1984* or any other land or waters reserved, protected or managed for the purpose of, or purposes including, nature conservation;

**“rare flora”** has the same meaning as it has in section 23F of the *Wildlife Conservation Act 1950*;

**“threatened ecological community”** means an ecological community listed, designated or declared under a written law or a law of the Commonwealth as threatened, endangered or vulnerable;

**“watercourse”** has the same meaning as it has in the *Rights in Water and Irrigation Act 1914*;

“**wetland**” means an area of seasonally, intermittently or permanently waterlogged or inundated land, whether natural or otherwise, and includes a lake, swamp, marsh, spring, dampland, tidal flat or estuary.

**Schedule 6 — Clearing for which a clearing permit is not required**

[s. 51C]

1. Clearing that is done in order to give effect to a requirement to clear under a written law.
2. Clearing that is done —
  - (a) in the implementation of a proposal in accordance with an implementation agreement or decision;
  - (b) in the case of a proposal that —
    - (i) was made under an assessed scheme; and
    - (ii) because of section 48I(2), was not referred to the Authority,in the implementation of the proposal in accordance with a subdivision approval, a development approval or a planning approval given by the responsible authority;
  - (c) in accordance with —
    - (i) a prescribed standard;
    - (ii) a works approval;
    - (iii) a licence;
    - (iv) a requirement contained in a closure notice, an environmental protection notice or a prevention notice;
    - (v) an approved policy;
    - (vi) a declaration under section 6;
    - (vii) an exemption under section 75; or

- (viii) a licence, permit, approval or exemption granted, issued or given under the regulations;
  - or
  - (d) in the exercise of any power conferred under this Act.
3. Clearing by the Department, within the meaning of the *Conservation and Land Management Act 1984*, in the performance of its function under section 33(1)(a) of that Act of managing land, but, in the case of land referred to in section 33(1)(a)(i), only if the management is carried out in accordance with section 33(3).
  4. Clearing authorised under a licence —
    - (a) referred to in paragraph (a); or
    - (b) granted under paragraph (b),of section 3(1) of the *Sandalwood Act 1929*.
  5. Clearing consisting of the taking of flora —
    - (a) as authorised under a licence under section 23C of the *Wildlife Conservation Act 1950*; or
    - (b) as consented to under section 23F of the *Wildlife Conservation Act 1950* by the Minister administering that Act.
  6. Clearing consisting of the taking of flora by a person authorised —
    - (a) by subsection (1)(a); or
    - (b) under subsection (1)(b),of section 23D of the *Wildlife Conservation Act 1950* for the purposes of sale under a licence issued under that section.
  7. Clearing under the *Forest Products Act 2000*, of vegetation maintained, or established and maintained, under section 10(1)(g) of that Act.
  8. Clearing under a production contract or road contract entered into and having effect under the *Forest Products Act 2000*.

9. Clearing in accordance with a subdivision approval given by the responsible authority under the *Town Planning and Development Act 1928*, including —
- (a) clearing for the purposes of any development that is deemed by section 20D of that Act to have been approved by the responsible authority; and
  - (b) clearing in any building envelope described in the approved plan or diagram.
10. Clearing that is done —
- (a) as permitted under section 17(5);
  - (b) in accordance with a permit obtained under section 18;
  - (c) in accordance with permission granted under section 21(2);
  - (d) under section 22(2), 23, 26A, 39(1)(d) or 44(1)(c); or
  - (e) as authorised by a proclamation under section 26, of the *Bush Fires Act 1954*.
11. Clearing that is done under section 34(a), (c) or (h) of the *Fire Brigades Act 1942*.
12. Clearing that is done for fire prevention or control purposes or other fire management works on Crown land, within the meaning of the *Land Administration Act 1997*, by the Fire and Emergency Services Authority of Western Australia established under the *Fire and Emergency Services Authority of Western Australia Act 1998*.
13. Clearing caused by the grazing of stock on land under a pastoral lease within the meaning of the *Land Administration Act 1997* as long as that grazing is not in breach of —
- (a) that Act;
  - (b) the pastoral lease; or
  - (c) any relevant condition set or determination made by the Pastoral Board under Part 7 of that Act.

14. Clearing of aquatic vegetation that occurs under the authority of a licence or permit within the meaning of the *Fish Resources Management Act 1994*.

”.

## **Division 2 — Consequential repeal and amendment of Soil and Land Conservation Regulations**

### **117. *Soil and Land Conservation (Clearing Control) Regulations 1991* repealed**

The *Soil and Land Conservation (Clearing Control) Regulations 1991* are repealed.

### **118. *Soil and Land Conservation Regulations 1992* amended**

- (1) The amendments in this section are to the *Soil and Land Conservation Regulations 1992*\*.

[\* *Published in Gazette 17 June 1992.*

*For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 4, p. 316.]*

- (2) Regulation 2 is amended by deleting the definition of “to clear”.
- (3) Regulation 4 is repealed.
- (4) Schedule 2 Form 1 is deleted.
- (5) Schedule 3 is deleted.

### **119. Transitional provisions**

- (1) In this section —
- “**Authority**” has the same meaning as it has in the EP Act;
- “**commencement day**” means the day on which section 110 comes into operation;
- “**EP Act**” means the *Environmental Protection Act 1986* as amended by this Act;

**“regulation 4 notice”** means a notice of intention under regulation 4 of the *Soil and Land Conservation Regulations 1992*.

- (2) This subsection applies to clearing if —
- (a) a regulation 4 notice relating to the clearing was given not less than 90 days before the commencement day;
  - (b) the clearing was or is commenced not more than 2 years after the giving of the notice and is completed not more than 2 years after the commencement day;
  - (c) the clearing was not referred to the Authority as a proposal under Part IV of the EP Act, or was so referred and not accepted by the Authority; and
  - (d) a soil conservation notice, within the meaning of section 31 of the *Soil and Land Conservation Act 1945*, has not been served in respect of the clearing.
- (3) For the purposes of sections 51C and 74B of the EP Act, clearing to which subsection (2) applies is to be regarded as being clearing of a kind set out in Schedule 6 to the EP Act.
- (4) Subject to subsection (5), a regulation 4 notice given less than 90 days before the commencement day is to be regarded as being an application for a clearing permit made in accordance with section 51E(1) and (2) of the EP Act.
- (5) Subsection (4) does not apply to a regulation 4 notice unless the fee prescribed under the EP Act for the purposes of this subsection is paid.

**120. *Wildlife Conservation Act 1950* sections 16 and 23D amended**

- (1) The amendments in this section are to the *Wildlife Conservation Act 1950*.

[\* Reprinted as at 20 November 1998.

For subsequent amendments see Act No. 6 of 2002.]



(2) After section 16(1) the following subsection is inserted —

“

(1a) In the case of fauna other than fauna in respect of which a declaration under section 14(2)(ba) is in operation, subsection (1) does not apply to the taking of fauna incidental to clearing referred to in section 51C(a), (b) or (c) of the *Environmental Protection Act 1986*.

”.

(3) Section 23D(5) is amended by deleting “subsection (6)” and inserting instead —

“ subsections (6) and (7) ”.

(4) After section 23D(6) the following subsections are inserted —

“

(7) In considering an application under subsection (3) the Minister shall have regard to the principles set out in Schedule 5 to the *Environmental Protection Act 1986* and shall not issue a licence if the taking of the protected flora to which the licence would relate would be seriously at variance with those principles.

(8) Subsection (7) does not apply if the taking of the protected flora to which the licence would relate is authorised by a clearing permit granted and in force under Part V Division 2 of the *Environmental Protection Act 1986*.

”.

## Part 10 — Miscellaneous

### 121. Section 3 amended

- (1) Section 3(1) is amended as set out in Schedule 1.
- (2) Section 3(2a) is amended as follows:
  - (a) in paragraph (a) by deleting “activity” and inserting instead —  
“ an activity ”;
  - (b) in paragraph (b) by deleting “strata plan,” and inserting instead —  
“ a strata plan, ”.

### 122. Section 4A inserted

After section 4 the following section is inserted —

“

#### 4A. Object and principles of Act

The object of this Act is to protect the environment of the State, having regard to the following principles —

##### Table

1. *The precautionary principle*

Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, decisions should be guided by —

- (a) careful evaluation to avoid, where practicable, serious or irreversible damage to the environment; and
- (b) an assessment of the risk-weighted consequences of various options.

2. *The principle of intergenerational equity*

The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

3. *The principle of the conservation of biological diversity and ecological integrity*

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

4. *Principles relating to improved valuation, pricing and incentive mechanisms*

(1) Environmental factors should be included in the valuation of assets and services.

(2) The polluter pays principle — those who generate pollution and waste should bear the cost of containment, avoidance or abatement.

(3) The users of goods and services should pay prices based on the full life cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any wastes.

(4) Environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, which enable those best placed to maximise benefits and/or minimise costs to develop their own solutions and responses to environmental problems.

5. *The principle of waste minimisation*

All reasonable and practicable measures should be taken to minimise the generation of waste and its discharge into the environment.

”.

**s. 123**

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**123.     Section 5 amended**

- (1) Section 5(1) is amended by deleting “(1) Subject to subsection (2), whenever” and inserting instead —  
“   Whenever   ”.
- (2) Section 5(2) and (3) are repealed.

**124.     Section 12 amended**

- (1) Section 12(2) is repealed.
- (2) Section 12(3) is amended by deleting “that interest exists.” and inserting instead —  
“   the Authority member has that interest.   ”.
- (3) Section 12(4) is amended by deleting “and the Authority member may take part in the consideration or discussion of the matter, but shall not vote thereon”.
- (4) After section 12(4) the following subsection is inserted —  
“
  - (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 shall not —
    - (a) take part, as an Authority member, in the consideration or discussion of the matter; or
    - (b) vote on the matter.”.

**125. Section 16 amended**

After section 16(d) the following paragraph is inserted —

“

- (da) to advise the Minister on the making or amendment of regulations when requested by the Minister to do so or on its own initiative;

”.

**126. Section 23 repealed**

Section 23 is repealed.

**127. Section 81A amended**

- (1) Section 81A(2) is amended by deleting “Any equipment” and inserting instead —

“ Subject to subsection (2a), any equipment ”.

- (2) After section 81A(2) the following subsections are inserted —

“

(2a) The CEO may require the person who appears or has been determined to be entitled to possession of equipment seized under subsection (1) to pay to the CEO the reasonable costs of seizing and storing the equipment, and the equipment is not required to be delivered under subsection (2) until those costs have been paid.

(2b) A person is not to be required to pay costs under subsection (2a) if that person shows to the satisfaction of the CEO that he or she did not use or cause or allow to be used the equipment in the way that caused the equipment to emit the unreasonable noise that resulted in the seizure of the equipment.

**s. 128**

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- (2c) If a person refuses to pay, or fails to pay within such reasonable time as is specified by the CEO, the reasonable cost of seizing and storing the equipment, the equipment may be disposed of in accordance with the regulations.

”.

**128. Section 99 amended**

Section 99(1) is amended as follows:

- (a) in paragraph (a) by inserting after “premises” —  
“ or a vehicle ”;
- (b) in paragraph (c) by inserting after “premises” —  
“ or vehicle ”.

**129. Section 99A amended**

Section 99A(1)(b) is deleted.

**130. Section 99J amended**

Section 99J(1) is amended by inserting after “An inspector” —

“

or, in the case of an alleged infringement notice offence in respect of which a prosecution may be instituted by a police officer without the consent of the CEO, a police officer

”.

**131. Section 99K amended**

Section 99K(3) is amended by deleting “a Tier 3 offence” and inserting instead —

“ an infringement notice offence ”.

**132. Section 111A inserted and Schedule 1 amended**

(1) After section 111 the following section is inserted —

“

**111A. Victimisation**

(1) A person who for a reason described in subsection (2) —

- (a) prejudices, or threatens to prejudice, the safety or career of another person;
- (b) intimidates or harasses, or threatens to intimidate or harass, another person; or
- (c) takes, or threatens to take, detrimental action against another person,

commits an offence.

(2) The reasons referred to in subsection (1) are that the other person or a member of the other person's family —

- (a) has furnished, is furnishing, or will or may in the future furnish, information or assistance —
  - (i) in the course of, or for the purpose of, an inspection or investigation under this Act; or
  - (ii) to the CEO for a purpose relating to the administration of this Act;

or

- (b) has made, or will or may in the future make, an appropriate disclosure of information that tends to show that another person is, has been, or proposes to be involved in an offence under this Act.

**s. 133**

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- (3) In subsection (1) —  
    **“detrimental action”** includes action causing, comprising or involving —
- (a) damage or loss;
  - (b) adverse discrimination, disadvantage, or adverse treatment in relation to a person’s career, profession, employment, trade or business; or
  - (c) a reprisal.
- (4) For the purposes of this section, a reference to an appropriate disclosure of information is a reference to a disclosure of information if, and only if, the disclosure is made in good faith and with an honest and reasonable belief that the information is of sufficient significance to justify its disclosure so that its truth may be investigated.

”.

- (2) After Schedule 1 Part 2 Division 1 item 14 the following item is inserted —

“

15	111A(1)	\$62 500	\$12 500
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”.

- (3) After Schedule 1 Part 2 Division 2 item 14 the following item is inserted —

“

15	111A(1)	\$125 000	\$25 000
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”.

**133. Section 114 amended**

- (1) Section 114(1) is amended by deleting “acting with the consent of the Minister”.



- (2) Section 114(1a) is amended as follows:
  - (a) by deleting “subsection (3)” and inserting instead —  
“ subsections (3) and (4) ”;
  - (b) by deleting “acting with the consent of the Minister”.
- (3) Section 114(2) is repealed.
- (4) Section 114(3) is amended by inserting after “police officer” —  
“ , or the chief executive officer of a local government, ”.
- (5) After section 114(3) the following subsection is inserted —  
“
  - (4) If the CEO has delegated a power under section 65(1) to a local government or the chief executive officer or an employee of a local government, a prosecution for an offence under section 65(5) in respect of a failure to comply with a requirement contained in an environmental protection notice caused to be served under section 65(1) by that local government, chief executive officer or employee may be instituted by the chief executive officer of the local government.”.

**134. Section 114A inserted**

After section 114 the following section is inserted —

“

**114A. Limitation periods**

- (1) Despite section 51 of the *Justices Act 1902*, a complaint of a Tier 1 offence may be made at any time.
- (2) Despite section 51 of the *Justices Act 1902*, a complaint of any other offence under this Act may be made within 24 months of the time when the matter of complaint arose.

**s. 135**

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- (3) Despite section 51 of the *Justices Act 1902* and subsection (2), if a complaint of an offence to which subsection (2) applies specifies the day on which evidence of the alleged offence first came to the attention of a person authorised to institute the prosecution under section 114 the complaint —
  - (a) may be made within 24 months after that day; and
  - (b) need not contain particulars of the day on which the offence is alleged to have been committed.
- (4) The day on which evidence first came to the attention of a person authorised to institute a prosecution under section 114 is the day specified in the complaint, unless the contrary is shown.

”.

**135. Section 118 replaced**

Section 118 is repealed and the following section is inserted instead —

“

**118. Liability of body corporate and of directors and managers of body corporate**

- (1) If a body corporate commits an offence under this Act or the regulations, each person who is a director or who is concerned in the management of the body corporate is taken to have also committed the same offence unless the person proves that —
  - (a) the person did not know, and could not reasonably be expected to have known, that the offence was being committed;

- (b) the person —
    - (i) was not in a position to influence the conduct of the body corporate in relation to the commission of the offence; or
    - (ii) being in such a position, used all due diligence and reasonable precautions to prevent the commission of the offence;or
  - (c) the body corporate would not have been found guilty of the offence by reason of being able to establish a defence available to it under this Act.
- (2) Under this section a person may be proceeded against and convicted of an offence whether or not the body corporate has been proceeded against or convicted in respect of the commission of the offence.
  - (3) Nothing in this section prejudices or affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act or the regulations.
  - (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a body corporate (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the body corporate had that state of mind.

”.

**s. 136**

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**136.     Section 121 replaced**

Section 121 is repealed and the following section is inserted instead —

“

**121.     Protection from liability**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) This section does not relieve the Crown of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

”.

**137.     Section 123 amended**

Section 123(1) is amended by deleting “, on the recommendation of the Authority,”.

**138.     Schedule 2 amended**

- (1) Schedule 2 item 3 is amended by inserting after “measurements” —  
“ and analysis of substances and things ”.

- (2) Schedule 2 item 5 is amended as follows:
- (a) in paragraph (b) by inserting after “results, of” —  
“ analysis referred to in item 3 or ”;
  - (b) in paragraph (c) by inserting after “measurements” —  
“ , analysis ”;
  - (c) in paragraph (d) —
    - (i) by inserting after “such tests” —  
“ or analysis ”;
    - (ii) by inserting after “measurements” —  
“ , analysis ”.
- (3) After Schedule 2 item 30A the following items are inserted —
- “
- 30B. Specifying the minimum and maximum permissible concentrations or amounts of constituents of any matter that may be present in any substance or thing.
  - 30C. Prohibiting or regulating the manufacture, sale, distribution for sale, use or operation of any prescribed substance or thing or any substance or thing of a prescribed class or description.
- ”.
- (4) Schedule 2 item 36 is amended by deleting “and inspection” and inserting instead —
- “ , inspection and production ”.

**139. Schedule 3 amended**

Schedule 3 item 20 is amended as follows:

- (a) by deleting “In any” and inserting instead —  
“ (1) Subject to subitem (2), in any ”;

**s. 140**

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(b) by inserting the following subitem —

“

(2) The Minister, by notice published in the *Gazette*, may determine that a reference in any written law, agreement, deed or other instrument referred to in subitem (1) to “the Department of Conservation and Environment” or “the Department” shall be construed as a reference to the Department of the Public Service of the State through which this Act is administered, and the determination shall have effect accordingly.

”.

**140. References to “Chief Executive Officer”**

(1) Section 3(1) is amended as follows:

- (a) by deleting the definition of “Chief Executive Officer”;
- (b) by inserting in the appropriate alphabetical position the following definition —

“

“**CEO**” means the chief executive officer of the Department;

”.

(2) In each place listed in the Table to this section “Chief Executive Officer” is deleted and the following is inserted instead —

“ CEO ”.

**Table**

s. 11(3) (twice)	s. 99(3) and (4) (twice)
s. 20(1) (twice), (3) and (4)	s. 99A(1)(a) and (c), (2) (twice) and (4) (twice)
s. 22(1) and (2)	s. 99B(3)
s. 54(1)(a) and (c), (2) (twice), (3) (twice), (4)	s. 99C
s. 57(1)(a) and (c), (2) (3 times), (3) (4 times) and (4)	s. 99D(1) (twice)

- |  |   |
|--|---|
| s. 60(1) and (2)                               | s. 99E(3)                                   |
| s. 64(1)(a) and (c) and (2) (twice)            | s. 99F(1) (twice)                           |
| s. 65(4) (twice), (6) and (7)                  | s. 99I(1)                                   |
| s. 66(1) and (3) (twice)                       | s. 99R(2)                                   |
| s. 67(a)                                       | s. 99V(3)                                   |
| s. 68  | s. 99X(5)                                   |
| s. 71(1), (2) and (4)                          | s. 99Y(1) (twice)                           |
| s. 72(3)                                       | s. 99ZA(4) and (5)                          |
| s. 73(3) (in the second place where it occurs) | s. 99ZB(3)                                  |
| s. 74(1)(b), (1a)(b) and (2)                   | s. 102(1)(a), (b) and (c)                   |
| s. 75(1), (3), (4) and (5)                     | s. 105(a)                                   |
| s. 87(1) and (2) (twice)                       | s. 110(1)                                   |
| s. 88(1), (2), (3) (twice) and (6)             | s. 110C(a)                                  |
| s. 92B(1) (twice), (3) and (4) (twice)         | s. 110L(2)(a)                               |
| s. 92C(1), (2) (3 times) and (5)               | s. 112                                      |
| s. 92D(1)                                      | s. 114(1), (1a) (twice), (1b)(a), (1c), (3) |
| s. 92E(1) and (2)                              | s. 123(3)(a)                                |
| s. 92H(1), (2) and (3) (twice)                 | Schedule 3, clause 14(b)                    |
| s. 94(1)                                       | Schedule 3, clause 20(g)                    |
| s. 95(1) (twice)                               | Schedule 4, clause 1(a) and (b) (twice)     |
| s. 96(1) (3 times) and (2) (twice)             | Schedule 4, clause 14                       |
| s. 97(1)                                       |   |

**s. 141**

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**141.     *Environmental Protection (Landfill) Levy Act 1998 amended***

Section 3(1) of the *Environmental Protection (Landfill) Levy Act 1998*\* is amended by deleting the definition of “licensed premises” and inserting the following definition instead —

“

“**licensed premises**” means premises in respect of which the occupier is required to hold a licence under Part V of the principal Act and which are used for the purpose of disposing of waste to landfill, whether or not a licence is in force;

”.

[\* *Act No. 11 of 1998.*]

**142.     *Control of Vehicles (Off-road Areas) Act 1978 amended***

Section 18(7)(b) of the *Control of Vehicles (Off-road Areas) Act 1978*\* is amended by deleting “the Department of Conservation and Environment and any other” and inserting instead —

“

the CEO within the meaning of the *Environmental Protection Act 1986* and any

”.

[\* *Reprinted as at 5 March 1999.*

*For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 75 and Act No. 7 of 2002.]*



**Schedule 1 — Minor amendments to section 3(1)**

[s. 121(1)]

<b>Definition</b>	<b>Amendment</b>
analysis	Delete “means test” and insert instead — “ means a test ”.
analyst	Delete “means analyst” and insert instead — “ means an analyst ”.
applicant	Delete “means person” and insert instead — “ means the person ”.
appeals committee	Delete “means appeals” and insert instead — “ means an appeals ”.
approved policy	Delete “means draft” and insert instead — “ means a draft ”.
assessed scheme	
paragraph (a)	Delete “means scheme” and insert instead — “ means a scheme ”.
paragraph (b)	Delete “includes scheme” and insert instead — “ includes a scheme ”.
paragraph (c)	Delete “include scheme” and insert instead — “ include a scheme ”.
Authority	Delete “means Environmental” and insert instead — “ means the Environmental ”.
Authority member	Delete “means person” and insert instead — “ means a person ”. Delete “includes Chairman” and insert instead — “ includes the Chairman ”.

**Schedule 1** Minor amendments to section 3(1)

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authorised person	Delete “means person” and insert instead — “ means a person ”. Delete “includes Chief Executive Officer” and insert instead — “ includes the CEO ”.
beneficial use	Delete “means use” and insert instead — “ means a use ”.
committee of inquiry	Delete “means committee” and insert instead — “ means a committee ”.
condition	Delete “includes restriction” and insert instead — “ includes a restriction ”.
decision-making authority	Delete “means public” and insert instead — “ means a public ”.
Department	Delete “means department” and insert instead — “ means the department ”.
draft policy	Delete “means draft” and insert instead — “ means a draft ”.
driver	
paragraph (b)	Delete “means pilot” and insert instead — “ means the pilot ”.
paragraph (c)	Delete “means master” and insert instead — “ means the master ”.
equipment	Delete “means apparatus” and insert instead — “ means any apparatus ”.
final approval	
paragraph (a)	Delete “means approval” and insert instead — “ means an approval ”.
paragraph (aa)	Delete “means approval” and insert instead — “ means an approval ”.
paragraph (ab)	Delete “means approval” and insert instead — “ means an approval ”.

paragraph (ac)	Delete “means approval” and insert instead — “ means an approval ”.
paragraph (b)	Delete “means approval” and insert instead — “ means an approval ”.
paragraph (c)	Delete “means approval” and insert instead — “ means an approval ”.
paragraph (d)	Delete “means approval” and insert instead — “ means an approval ”.
paragraph (e)	Delete “means approval” and insert instead — “ means an approval ”.
paragraph (f)	Delete “means approval” and insert instead — “ means an approval ”.
fuel burning equipment	Delete “or open” and insert instead — “ or an open ”.
inspector	Delete “means person” and insert instead — “ means a person ”. Delete “includes Chief Executive Officer” and insert instead — “ includes the CEO ”.
licence	Delete “means licence” and insert instead — “ means a licence ”.
licensee	Delete “means holder” and insert instead — “ means the holder ”.
occupier	
paragraph (a)	Delete “means person” and insert instead — “ means a person ”.
paragraph (b)	Delete “part, person” and insert instead — “ part, a person ”.
period of public review	
paragraph (a)	Delete “means period” and insert instead — “ means the period ”.

**Schedule 1** Minor amendments to section 3(1)

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paragraph (aa)	Delete “means period” and insert instead — “ means the period ”.
paragraph (ab)	Delete “means period” and insert instead — “ means the period ”.
paragraph (ac)	Delete “means period” and insert instead — “ means the period ”.
paragraph (b)	Delete “means period” and insert instead — “ means the period ”.
paragraph (c)	Delete “means period” and insert instead — “ means the period ”.
paragraph (d)	Delete “means period” and insert instead — “ means the period ”.
paragraph (e)	Delete “means period” and insert instead — “ means the period ”.
paragraph (f)	Delete “means period” and insert instead — “ means the period ”.
proponent	Delete “means person” and insert instead — “ means the person ”. Delete “or public” and insert instead — “ or the public ”.
proposal	Delete “means project” and insert instead — “ means a project ”.
proposal under an assessed scheme	Delete “means application” and insert instead — “ means an application ”.
public authority	Delete “means Minister” and insert instead — “ means a Minister ”.
public place	Delete “means place” and insert instead — “ means a place ”.
responsible authority	
paragraph (a)(i)	Delete “means East” and insert instead — “ means the East ”.

paragraph (a)(ia)	Delete “means Midland” and insert instead — “ means the Midland ”.
paragraph (a)(ic)	Delete “means Armadale” and insert instead — “ means the Armadale ”.
paragraph (a)(ii)	Delete “means Subiaco” and insert instead — “ means the Subiaco ”.
paragraph (a)(iii)	Delete “means Western” and insert instead — “ means the Western ”.
paragraph (a)(iv)	Delete “means Western” and insert instead — “ means the Western ”.
paragraph (a)(v)	Delete “means local authority within the meaning of the <i>Town Planning and Development Act 1928</i> ” and insert instead — “ means the local government ”.
paragraph (a)(vi)	Delete “means Western” and insert instead — “ means the Western ”.
paragraph (b)(i)	Delete “means Western” and insert instead — “ means the Western ”.
paragraph (b)(ii)	Delete “means local authority (as defined by the <i>Town Planning and Development Act 1928</i> )” and insert instead — “ means the local government ”.
responsible Minister	Delete “means Minister” and insert instead — “ means the Minister ”.
scheme	Delete the definition and insert instead — “ <b>“scheme”</b> means — (a) a redevelopment scheme within the meaning of the <i>East Perth Redevelopment Act 1991</i> , or an amendment to such a redevelopment scheme;

- (b) a redevelopment scheme within the meaning of the *Midland Redevelopment Act 1999*, or an amendment to such a redevelopment scheme;
- (c) a master plan within the meaning of the *Hope Valley-Wattleup Redevelopment Act 2000*, or an amendment to such a master plan;
- (d) a redevelopment scheme within the meaning of the *Armadale Redevelopment Act 2001*, or an amendment to such a redevelopment scheme;
- (e) a redevelopment scheme within the meaning of the *Subiaco Redevelopment Act 1994*, or an amendment to such a redevelopment scheme;
- (f) an amendment to the Metropolitan Region Scheme;
- (g) a regional planning scheme, or an amendment to a regional planning scheme;
- (h) a town planning scheme, or an amendment to a town planning scheme; or

	<p>(i) a statement of planning policy to which section 5AA(8) of the <i>Town Planning and Development Act 1928</i> applies, or an amendment to such a statement;</p> <p>”.</p>
the repealed Act	<p>Delete the definition.</p> <p>Insert in the appropriate alphabetical position the following definition —</p> <p>“</p> <p>    <b>“repealed Act”</b> means the <i>Environmental Protection Act 1971</i>;</p> <p>”.</p>
the regulations	<p>Delete the definition.</p> <p>Insert in the appropriate alphabetical position the following definition —</p> <p>“</p> <p>    <b>“regulations”</b> means the regulations under section 123(1);</p> <p>”.</p>
the Western Australian Planning Commission	<p>Delete the definition.</p> <p>Insert in the appropriate alphabetical position the following definition —</p> <p>“</p> <p>    <b>“Western Australian Planning Commission”</b> means the Western Australian Planning Commission established by section 4 of the <i>Western Australian Planning Commission Act 1985</i>;</p> <p>”.</p>

**Schedule 1** Minor amendments to section 3(1)

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trade	Delete “means trade” and insert instead — “ means a trade ”.
	Delete “includes activity” and insert instead — “ includes an activity ”.
vehicle	Delete “includes self-propelled” and insert instead — “ includes a self-propelled ”.
works approval	Delete “means works approval” and insert instead — “ means a works approval ”.

