Western Australia

Environmental Protection Act 1986

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Defined terms

Western Australia

Environmental Protection Act 1986

An Act to provide for an Environmental Protection Authority, for the prevention, control and abatement of pollution and environmental harm, for the conservation, preservation, protection, enhancement and management of the environment and for matters incidental to or connected with the foregoing.

[Long title amended: No. 54 of 2003 s. 27.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Environmental Protection Act 1986*.

2. Commencement

The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

3. Terms used

(1) In this Act, unless the contrary intention appears —

analysis means a test or examination of any matter, substance or process for the purpose of determining its composition or qualities or its effect (whether physical, chemical or biological) on any portion of the environment, or examination of emissions or recordings of noise to determine the level or other characteristics of noise or its effects on any portion of the environment;

analyst means an analyst appointed under section 94;

appeals committee means an appeals committee appointed under section 45(6) or 106;

Appeals Convenor means the Appeals Convenor appointed under section 107A;

applicant, in relation to an application for a works approval or licence, means the person applying for the works approval or licence;

approved policy means a draft policy approved under section 31(d);

approved proposal means a proposal the implementation of which is authorised under a Ministerial statement;

assessed scheme —

(a) means a scheme which has been assessed under Division 3 of Part IV and in respect of which a statement

has been delivered to the responsible authority under section 48F(2)(a);

(aa) includes the first Swan Valley Planning Scheme submitted in accordance with the *Swan Valley Planning Act 2020* section 44 and approved under section 25(2)(a) of that Act;

(b) for the purposes of Part IV, includes a scheme —

(ia) of a class prescribed by regulations made under section 48AAA(2); or

(i) in respect of which the responsible authority has been informed under section 48A(1)(a); or

(ii) in respect of which the responsible authority has not been informed under section 48A(1)(a), (b) or (c) within 28 days after the referral of that scheme to the Authority under the relevant scheme Act; or

(iii) which is a local planning scheme, or an amendment to a local planning scheme, in respect of which sections 124, 125, 126 or 128 of the *Planning and Development Act 2005* have been complied with to the extent, if any, necessary in relation to a region planning scheme, or an amendment to a region planning scheme, which amendment or scheme is a scheme referred to in paragraph (a) or subparagraph (i) or (ii); or

(iv) which is a local planning scheme or a region planning scheme, or an amendment to a local planning scheme or a region planning scheme, amended under the *Planning and Development Act 2005* section 122J or 122K to the extent, if any, necessary in relation to an improvement scheme, or an amendment to an improvement scheme, which amendment or scheme is a

scheme referred to in paragraph (a) or subparagraph (i) or (ii);

(c) does not include a scheme in respect of which the responsible authority has been advised under section 48A(2)(b);

authorised person means a person or member of a class of persons appointed under section 87(1), and includes the CEO;

Authority means the Environmental Protection Authority continued in existence by section 7(1);

Authority member means a person for the time being holding office as a member of the Authority under section 7 and includes the Chair and Deputy Chair;

beneficial use means a use of the environment, or of any portion thereof, which is —

(a) conducive to public benefit, public amenity, public safety, public health or aesthetic enjoyment 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 a beneficial use to be protected under an approved policy;

books, without limiting the generality of the definition of ***book*** in section 3 of the *Interpretation Act 1984*, includes —

(a) any register or other record of information; and

(b) any accounts or accounting records,

however compiled, recorded or stored, and also includes any document;

CEO means the chief executive officer of the Department;

Chair means the Authority member appointed to be Chair of the Authority under section 7(4a);

clearing has the meaning given by section 51A;

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

closure notice has the meaning given by section 68A;

committee of inquiry means a committee of inquiry appointed under section 29(1);

Commonwealth Environment Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth);

condition includes a restriction or limitation;

contaminated has the same meaning as it has in the *Contaminated Sites Act 2003*;

contaminated sites auditor means a person accredited as a contaminated sites auditor under the *Contaminated Sites Act 2003*;

decision-making authority, in relation to a proposal, means a public authority empowered by or under —

(a) a written law; or

(b) any agreement —

(i) to which the State is a party; and

(ii) which is ratified or approved by an Act,

to make a decision in respect of the proposal and, in Division 2 of Part IV, includes, in relation to a particular proposal, any Minister prescribed for the purposes of this definition as being the Minister responsible for that proposal;

Department means the department of the Public Service of the State through which this Act is administered;

Deputy Chair means the Authority member appointed to be Deputy Chair of the Authority under section 7(4a);

development approval means a development approval under a scheme or a scheme Act;

discharge, in relation to waste or other matter, includes deposit it or allow it to escape, or cause or permit it to be, or fail to

prevent it from being, discharged, deposited or allowed to escape;

draft policy means a draft of an environmental protection policy prepared under section 26;

driver, in relation to —

(a) a vehicle as defined in the *Road Traffic (Administration) Act 2008* section 4, has the meaning given by that section; or

(b) a vehicle other than a vehicle referred to in paragraph (a), means the pilot or other person steering or controlling the movements of that vehicle; or

(c) a vessel, means the master as defined by the *Western Australian Marine Act 1982*;

ecological community has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

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; or

(b) emission of noise, odour or electromagnetic radiation; or

(c) transmission of electromagnetic radiation;

environment, subject to subsection (2), means living things, their physical, biological and social surroundings, and interactions between all of these;

environmental harm has the meaning given by section 3A;

environmental monitoring programme has the meaning given in section 110K;

environmental protection covenant means an environmental protection covenant entered into and in effect under Part VB;

environmental protection notice has the meaning given by section 65;

environmental undertaking means —

(a) a biodiversity conservation agreement under the *Biodiversity Conservation Act 2016* section 114; or

(b) a biodiversity conservation covenant under the *Biodiversity Conservation Act 2016* section 122; or

(c) a conservation covenant or agreement to reserve under the *Soil and Land Conservation Act 1945* section 30B; or

(d) an environmental protection covenant; or

(e) some other form of binding undertaking to manage land for the protection of the environment;

environmental value means —

(a) a beneficial use; or

(b) an ecosystem health condition;

equipment means any apparatus, appliance, boiler, chimney, crane, device, dredge, engine, facility, fireplace, furnace, generator, incinerator, instrument (including musical instrument), kiln, machine, mechanism, oven, plant, railway locomotive, retort, structure, tool, vehicle or vessel or any other equipment of any kind whatsoever;

final approval, in relation to a scheme which is —

[(a), (aa) deleted]

(ab) prepared under the *Hope Valley-Wattleup Redevelopment Act 2000*, means an approval under section 15 of that Act, or under section 17 of that Act as read with that section; or

(b) prepared under the *Swan Valley Planning Act 2020*, means an approval under section 25(2)(a) of that Act; or

(c) a region planning scheme, or an amendment to a region planning scheme, means an approval under section 53 or 62, as the case requires, of the *Planning and Development Act 2005*; or

(d) a local planning scheme, or an amendment to a local planning scheme, means an approval under section 87(2) of the *Planning and Development Act 2005*; or

(e) a State planning policy, or an amendment to a State planning policy, to which regulations made under the *Planning and Development Act 2005* section 28(3)(a) apply, means an approval of the policy or amendment by the Governor or responsible Minister under regulations made under section 28(1) of that Act; or

(ea) a planning code, or an amendment to a planning code, to which regulations made under the *Planning and Development Act 2005* section 32B(3)(a) apply, means an approval of the planning code or amendment by the responsible Minister under regulations made under section 32B(1) of that Act; or

(f) an improvement scheme, or an amendment to an improvement scheme, means an approval under the *Planning and Development Act 2005* section 87(2), as read with section 122B(1) of that Act; or

(g) prepared under the *Metropolitan Redevelopment Authority Act 2011*, means an approval given under section 47 of that Act, or under section 49 of that Act as read with that section;

fuel burning equipment means equipment (other than a motor vehicle) or an open fire in the operation of which fuel or other combustible material is or is to be used or which is or is to be used in or in connection with the burning of fuel or other combustible material;

implementation conditions has the meaning given in section 44A;

improvement scheme has the meaning given in the *Planning and Development Act 2005* section 4(1);

industrial plant means equipment —

(a) which is used for the manufacturing, processing, handling, transport, storage or disposal of materials in or in connection with any trade, industry or process; or

(b) which when operated is capable of an emission; or

(c) which is of a prescribed class;

inspector means a person appointed to be an inspector under section 88, and includes the CEO;

licence means a licence granted and in force under Part V Division 3;

licensee means the holder of a licence;

local planning scheme has the meaning given to that term in the *Planning and Development Act 2005* section 4;

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

materials includes raw materials, materials in the process of manufacture, manufactured materials, by-products and waste;

Ministerial statement has the meaning given in subsection (1A);

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

monitoring programme means all actions taken and equipment used for the purpose of detecting or measuring quantitatively or qualitatively the presence, amount or level of any substance, characteristic, noise, odour, electromagnetic radiation or effect;

motor vehicle has the meaning given by the *Road Traffic (Administration) Act 2008* section 4;

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;

NEPM means a national environment protection measure within the meaning of the *National Environment Protection Council (Western Australia) Act 1996*;

noise includes vibration of any frequency, whether transmitted through air or any other physical medium;

occupier, in relation to —

(a) any premises, means a person who is in occupation or control of those premises, whether or not that person is the owner of those premises; or

(b) premises different parts of which are occupied by different persons, means, in relation to any such part, a person who is in occupation or control of that part, whether or not that person is the owner of that part;

owner, in relation to —

(a) a vehicle as defined in the *Road Traffic (Administration) Act 2008* section 4, has the meaning given by section 5 of that Act; or

(b) a vessel, has the meaning given by the *Western Australian Marine Act 1982*;

period of public review, in relation to a scheme which is —

[(a), (aa) deleted]

(ab) prepared under the *Hope Valley-Wattleup Redevelopment Act 2000*, means the period referred to in section 14(1)(a) of that Act, or in section 17 of that Act as read with that section; or

(b) prepared under the *Swan Valley Planning Act 2020*, means the period of advertisement for public inspection that applies for the purposes of section 23 of that Act; or

(c) a region planning scheme, or an amendment to a region planning scheme, means the period of advertisement for

public inspection prescribed for the purposes of the *Planning and Development Act 2005* section 43; or

(d) a local planning scheme, or an amendment to a local planning scheme, means the period of advertisement for public inspection prescribed for the purposes of section 84 of the *Planning and Development Act 2005*; or

(e) a State planning policy, or an amendment to a State planning policy, to which regulations made under the *Planning and Development Act 2005* section 28(3)(a) apply, means the period of advertisement for public inspection prescribed under section 28(3)(b)(ii) of that Act; or

(ea) a planning code, or an amendment to a planning code, to which regulations made under the *Planning and Development Act 2005* section 32B(3)(a) apply, means the period of advertisement for public inspection prescribed under section 32B(3)(b)(ii) of that Act; or

(f) an improvement scheme, or an amendment to an improvement scheme, means the period of advertisement for public inspection prescribed for the purposes of the *Planning and Development Act 2005* section 84, as read with section 122B(1) of that Act; or

(g) prepared under the *Metropolitan Redevelopment Authority Act 2011*, means the period set and notified under section 43 of that Act, or under section 49 of that Act as read with that section;

person includes a public authority;

planning code means a planning code prepared under the *Planning and Development Act 2005* Part 3A;

planning instrument means —

(a) a scheme or a strategy, policy or plan made or adopted under a scheme; or

(b) a State planning policy approved under the *Planning and Development Act 2005* Part 3; or

(c) a local planning strategy made under the *Planning and Development Act 2005*;

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

pollution has the meaning given by section 3A;

practicable means reasonably practicable having regard to, among other things, local conditions and circumstances (including costs) and to the current state of technical knowledge;

practicable means includes provision and maintenance of equipment and proper use of equipment;

premises means residential, industrial or other premises of any kind whatsoever and includes land, water and equipment;

prescribed means prescribed by the regulations;

prescribed premises means premises prescribed for the purposes of Part V;

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

proponent, in relation to a proposal, means the person who or which is responsible for the proposal, or the public authority on which the responsibility for the proposal is imposed under another written law;

proposal means any of the following but not a scheme —

(a) a policy, plan or programme;

(b) a project, undertaking or development;

(c) a change in land use;

(d) an amendment of any proposal described in paragraph (a), (b) or (c);

(e) an amendment described in paragraph (b) of the definition of ***significant amendment***;

proposal under an assessed scheme means an application under the assessed scheme or an Act for the approval of any development or subdivision of any land within the area to which the assessed scheme applies;

protection, in relation to the environment, includes conservation, preservation, enhancement and management thereof;

public authority means a Minister of the Crown acting in an official capacity, department of the Government, State agency or instrumentality, local government or other person, whether corporate or not, who or which under the authority of a written law administers or carries on for the benefit of the State, or any district or other part thereof, a social service or public utility;

public place means a place that is open to the public or is used by the public, whether or not on payment of money or other consideration, whether or not that place is ordinarily so open or used and whether or not the public to whom that place is so open, or by whom that place is so used, consists only of a limited class of persons;

referred proposal means a proposal referred to the Authority under section 38;

region planning scheme has the meaning given to that term in the *Planning and Development Act 2005* section 4;

Registrar of Deeds and Transfers has the meaning given in the *Registration of Deeds Act 1856* section 2;

Registrar of Titles means the person designated to be the Registrar of Titles under the *Transfer of Land Act 1893* section 7(1);

regulations means the regulations under section 123(1);

repealed Act means the *Environmental Protection Act 1971*;

reserve means land or waters or both reserved by or under a written law for a public purpose;

responsible authority, in relation to —

(a) a scheme which is —

[(i), (ii) deleted]

(iii) prepared under the *Hope Valley-Wattleup Redevelopment Act 2000*, means the Western Australian Land Authority established by section 5(1) of the *Western Australian Land Authority Act 1992*; or

(iv) prepared under the *Swan Valley Planning Act 2020*, means the Western Australian Planning Commission; or

[(v) deleted]

(vi) a region planning scheme, or an amendment to a region planning scheme, means the Western Australian Planning Commission; or

(vii) a local planning scheme, or an amendment to a local planning scheme, means the local government which is responsible for the local planning scheme or amendment; or

(viii) a State planning policy, or an amendment to a State planning policy, to which regulations made under the *Planning and Development Act 2005* section 28(3)(a) apply, means the Western Australian Planning Commission; or

(viiia) a planning code, or an amendment to a planning code, to which regulations made under the *Planning and Development Act 2005* section 32B(3)(a) apply, means the Western Australian Planning Commission; or

(ix) an improvement scheme, or an amendment to an improvement scheme, means the Western Australian Planning Commission; or

(x) prepared under the *Metropolitan Redevelopment Authority Act 2011*, means the Metropolitan Redevelopment Authority established by that Act;

or

(b) a subdivision which is —

(i) an activity requiring approval under Part 10 Division 2 of the *Planning and Development Act 2005* (including a subdivision of land by a community scheme under the *Community Titles Act 2018*); means the Western Australian Planning Commission; or

(ii) a subdivision of land by a strata scheme under the *Strata Titles Act 1985*, means the local government within the district of which the subdivision is proposed;

responsible Minister, in relation to a scheme, means the Minister to whom the administration of the relevant scheme Act is for the time being committed by the Governor;

road has the meaning given by the *Road Traffic (Administration) Act 2008* section 4;

scheme means —

[(a), (b) deleted]

(c) a master plan within the meaning of the *Hope Valley-Wattleup Redevelopment Act 2000*, or an amendment to such a master plan; or

(d) the Swan Valley Planning Scheme, as defined in the *Swan Valley Planning Act 2020* section 3, or an amendment of that Scheme; or

[(e) deleted]

(f) a region planning scheme, or an amendment to a region planning scheme; or

(g) a local planning scheme, or an amendment to a local planning scheme; or

(h) a State planning policy, or an amendment to a State planning policy, to which regulations made under the *Planning and Development Act 2005* section 28(3)(a) apply; or

(ha) a planning code, or an amendment to a planning code, to which regulations made under the *Planning and Development Act 2005* section 32B(3)(a) apply; or

(i) an improvement scheme or an amendment to an improvement scheme; or

(j) a redevelopment scheme prepared under the *Metropolitan Redevelopment Authority Act 2011* or an amendment to such a scheme;

scheme Act means any of the following Acts —

(a) the *Planning and Development Act 2005*;

(b) the *Metropolitan Redevelopment Authority Act 2011*;

(c) the *Hope Valley-Wattleup Redevelopment Act 2000*;

(d) the *Swan Valley Planning Act 2020*;

sell includes —

(a) barter, offer or attempt to sell, receive for sale, have in possession for sale, expose for or on sale, send, forward or deliver for sale or cause or permit to be sold or offered for sale; and

(b) sell for resale;

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

significant amendment, of an approved proposal, means —

(a) a proposal that —

(i) is or includes the amendment of an approved proposal; and

(ii) is likely, if implemented, to have a significant effect on the environment;

or

(b) a proposed amendment to implementation conditions relating to an approved proposal if implementation of the proposal under the amended implementation conditions is likely to have a significant detrimental effect on the environment in addition to, or different from, the effect the proposal has in its implementation under the existing implementation conditions;

State planning policy means a State planning policy prepared under the *Planning and Development Act 2005* Part 3;

Tier 1 offence means —

(a) an offence listed in Part 1 of Schedule 1; or

(b) an offence declared to be a Tier 1 offence under an approved policy;

Tier 2 offence means —

(a) an offence listed in Part 2 of Schedule 1; or

(b) an offence declared to be a Tier 2 offence under an approved policy;

Tier 3 offence means —

(a) an offence listed in Part 3 of Schedule 1; or

(b) an offence declared to be a Tier 3 offence under an approved policy;

trade means a trade, business or undertaking, whether ordinarily carried on at fixed premises or at different places, the carrying on of which results or may result in an emission, and includes an activity prescribed to be a trade, business or undertaking for the purposes of this Act;

unreasonable noise has the meaning given by subsection (3);

vegetation conservation notice means a vegetation conservation notice given under section 70;

vehicle includes a self-propelled vehicle, whether operated on a road or rails or otherwise, aircraft or air-cushion vehicle or rolling stock, trailer, semi-trailer or caravan when attached to such a self-propelled vehicle;

vessel has the meaning given by the *Western Australian Marine Act 1982*;

waste includes matter —

(a) whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or

(b) prescribed to be waste;

waters means any waters whatsoever, whether in the sea or on or under the surface of the land;

Western Australian Planning Commission means the Western Australian Planning Commission established by the *Planning and Development Act 2005*.

works approval means a works approval granted and in force under Part V Division 3.

(1A) A reference in this Act to a Ministerial statement is a reference to —

(a) a statement served and published under section 45(8) or under section 45(8) as applied by section 46(8); or

(b) a statement published under section 45(8)(b) as applied by section 110(3); or

(c) a statement published as required by section 45D(2) or (3); or

(d) if it is appropriate in the context, the implementation agreement or decision, as defined in section 44A, set out in a statement mentioned in paragraph (a), (b) or (c).

(1B) A reference in this Act to the effect of a proposal on the environment includes a reference to the cumulative effect of impacts of the proposal on the environment.

(2) In the case of humans, the reference to social surroundings in the definition of ***environment*** in subsection (1) is a reference to aesthetic, cultural, economic and other social surroundings to the extent to which they directly affect or are affected by physical or biological surroundings.

(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.

(2a) For the purposes of the definition of ***proposal under an assessed scheme*** in subsection (1), ***subdivision*** means —

(a) an activity requiring the approval of the Western Australian Planning Commission under Part 10 Division 2 of the *Planning and Development Act 2005* (including a subdivision of land by a community scheme under the *Community Titles Act 2018*); or

(b) a subdivision of land by a strata scheme under the *Strata Titles Act 1985*.

(2b) If a person is for the time being nominated under section 38H(2) 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.

(3) For the purposes of this Act, noise is to be taken to be unreasonable if —

(a) it is emitted, or the equipment emitting it is used, in contravention of —

(i) this Act; or

(ii) any subsidiary legislation made under this Act; or

(iii) any requirement or permission (by whatever name called) made or given by or under this Act;

or

(b) having regard to the nature and duration of the noise emissions, the frequency of similar noise emissions from the same source (or a source under the control of the same person or persons) and the time of day at which the noise is emitted, the noise unreasonably interferes with the health, welfare, convenience, comfort or amenity of any person; or

(c) it is prescribed to be unreasonable for the purposes of this Act.

(3a) A reference in this Act to the amendment or changing of implementation conditions is a reference to —

(a) varying, removing or adding implementation conditions; or

(b) inserting implementation conditions where none existed.

(4) A reference in this Act to amending a clearing permit, works approval or licence includes a reference to revoking or amending any condition to which the clearing permit, works approval or licence is subject and to making the clearing permit, works approval or licence subject to a new condition.

[Section 3 amended: No. 113 of 1987 s. 32; No. 34 of 1993 s. 4; No. 84 of 1994 s. 46; No. 14 of 1996 s. 4; No. 23 of 1996 s. 12; No. 50 of 1996 s. 8; No. 14 of 1998 s. 4, 23 and 28; No. 38 of 1999 s. 71(2); No. 77 of 2000 s. 37(2); No. 25 of 2001 s. 69; No. 54 of 2003 s. 4, 28, 69, 98, 105, 109, 121 and 140(1); No. 60 of 2003 s. 100; No. 38 of 2005 s. 15; No. 36 of 2007 s. 100; No. 8 of 2009 s. 53; No. 28 of 2010 s. 25; No. 45 of 2011 s. 137(2)-(6); No. 8 of 2012 s. 100; No. 30 of 2018 s. 138; No. 32 of 2018 s. 210; No. 40 of 2020 s. 4(1), (3), (5)-(9) and 111(1); No. 45 of

2020 s. 102; No. 26 of 2020 s. 55 and 68; No. 34 of 2023 s. 25; No. 36 of 2024 s. 12.]

3A. Terms used relating to pollution and environmental harm

(1) In this Act —

pollution means direct or indirect alteration of the environment —

(a) to its detriment or degradation; or

(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;

or

(b) alteration of the environment to its detriment or degradation or potential detriment or degradation; or

(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; or

(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 $100 000, or if a greater amount is prescribed by regulation, that amount.

[Section 3A inserted: No. 54 of 2003 s. 29; amended: No. 40 of 2020 s. 5.]

4. Crown bound

This Act binds the Crown.

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.

[Section 4A inserted: No. 54 of 2003 s. 122.]

5. Inconsistent laws

Whenever a provision of this Act or of an approved policy is inconsistent with a provision contained in, or ratified or approved by, any other written law, the provision of this Act or the approved policy, as the case requires, prevails.

Note for this section:

Despite this section, the *State Development Act 2025* prevails over this Act to the extent of any inconsistency (see section 6 of that Act).

[Section 5 amended: No. 54 of 2003 s. 90 and 123; No. 21 of 2025 s. 100.]

6. Power of Minister or Authority to exempt

(1) The Minister or the Authority may with the approval of the Governor declare by order that all or any of the provisions of

this Act or of an approved policy do not apply according to that order in respect of —

(a) any specified area of the State; or

(b) any specified premises, act or thing; or

(c) all premises, acts or things comprised in a specified class thereof or situated in a specified area of the State.

(2) The Minister or the Authority, as the case requires, may —

(a) subject a declaration made under this section to such circumstances or conditions or both as are specified; and

(b) require specified persons or members of specified classes of persons to comply with any conditions to which the declaration referred to in paragraph (a) is subjected,

and, notwithstanding anything contained in this Act but subject to this section, a declaration so made has effect according to its tenor.

(3) If the circumstances or conditions subject to which a declaration is made under this section cease to exist or are breached, or a declaration is revoked under subsection (4), the declaration ceases to have effect.

(4) Subject to subsections (5) and (6), the Minister or the Authority, as the case requires, may with the approval of the Governor by order revoke a declaration made under this section.

(5) The Minister or Authority shall, before exercising the power of revocation conferred by subsection (4), publish in the *Gazette* reasonable notice of the intention of the Minister or Authority to exercise that power so as to enable persons likely to be aggrieved by the revocation of the declaration concerned to make representations in writing to the Minister or the Authority.

(6) Notice is not reasonable notice within the meaning of subsection (5) unless the relevant notice is published in the *Gazette* not less than 14 days before the day on which the

Minister or the Authority exercises the power of revocation concerned.

(7) A person who breaches a condition with which the person is required under subsection (2) to comply commits an offence.

(8) Section 42 of the *Interpretation Act 1984* applies to an order made under this section as if that order were regulations within the meaning of that section of that Act, except that the reference in section 42(1) of that Act to 6 sitting days shall for the purposes of this section be construed as a reference to 9 sitting days.

(9) Nothing in this section affects or prevents the application to the regulations of section 43(8)(d) of the *Interpretation Act 1984*.

(10) In subsections (1) and (2) —

specified means specified in the relevant order made under this section.

[Section 6 amended: No. 40 of 2020 s. 111(1).]

Part II — Environmental Protection Authority

Division 1 — Composition, procedure, etc. of Environmental Protection Authority

7. Continuation and composition of Environmental Protection Authority

(1) The body known as the Environmental Protection Authority and established under the repealed Act is under that name hereby continued in existence subject to this Act.

(2) The Authority consists of 5 to 9 members appointed by the Governor on the recommendation of the Minister.

(2A) The Minister can recommend a person under subsection (2) only if the Minister is satisfied that the person has —

(a) a suitable level of interest in, and experience of, matters affecting the environment generally; and

(b) a suitable level of knowledge, skills, experience or qualifications in 1 or more of the following fields —

(i) environmental science;

(ii) natural resource and biodiversity management;

(iii) waste management and pollution control;

(iv) industry, commerce or economic development;

(v) public administration, governance, regulation or law;

(vi) regional areas and issues.

(3) Before making a recommendation under subsection (2) the Minister must publish a notice calling for expressions of interest in appointment to the office of Authority member.

(4) The Minister shall consider expressions of interest lodged in accordance with the notice but may make a recommendation

under subsection (2) whether or not the person recommended has lodged an expression of interest.

(4a) One of the Authority members shall be appointed by the Governor on the recommendation of the Minister to be the Chair of the Authority and another to be the Deputy Chair of the Authority.

(4b) The duties of the Chair are to be performed on a full-time basis.

(4c) The duties of an Authority member other than the Chair are to be performed on a full-time or part-time basis as determined by the Governor on the recommendation of the Minister in the case of that member.

(5) An Authority member shall not be a person who is employed under and subject to Part 3 of the *Public Sector Management Act 1994*.

(6) Subject to this Act, an Authority member shall hold office for such period not exceeding 3 years as is specified in the instrument of appointment, but may from time to time be reappointed.

(7) The office of an Authority member becomes vacant if the Authority member —

(a) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* (Commonwealth); or

(b) after appointment as an Authority member, becomes a person employed under and subject to the *Public Sector Management Act 1994* Part 3; or

(c) is removed from office by the Governor —

(i) on the grounds of misbehaviour, incompetence, or mental or physical incapacity, impairing the performance of the Authority member's functions and proved to the satisfaction of the Governor; or

(ii) on the grounds of being absent without leave, if it is proved to the satisfaction of the Governor that the Authority member has been absent, except on leave granted by the Minister, from 3 consecutive meetings of the Authority of which the Authority member has had reasonable notice;

or

(d) resigns from office by notice in writing delivered to the Minister.

(8) The person who is the Chair or the Deputy Chair ceases to hold that office if the person's office as an Authority member becomes vacant.

[Section 7 amended: No. 113 of 1987 s. 32; No. 34 of 1993 s. 5; No. 32 of 1994 s. 19; No. 10 of 2001 s. 70; No. 40 of 2020 s. 6 and 111(1); No. 36 of 2024 s. 4.]

7A. Authority member unable to act

(1) Subsection (2) applies if —

(a) the Minister is satisfied that the Chair or Deputy Chair is unable to act by reason of illness, absence or other cause; or

(b) the office of Chair or Deputy Chair is vacant.

(2) The Governor may, on the Minister's recommendation, appoint an Authority member to act temporarily as the Chair or Deputy Chair (as the case requires).

(3) Subsection (4) applies if the Minister is satisfied that an Authority member, other than the Chair or Deputy Chair, is unable to act by reason of illness, absence or other cause.

(4) The Governor may, on the Minister's recommendation, appoint a person as an alternate Authority member to act temporarily in the Authority member's place.

(5) The Minister can recommend a person under subsection (4) only if the Minister is satisfied in relation to the person as set out in section 7(2A).

(6) The Governor's power to appoint a person under subsection (4) is subject to section 7(5).

(7) The remuneration, travelling and other allowances and other terms and conditions of appointment of an alternate Authority member are those that the Minister, on the recommendation of the Public Sector Commissioner, determines for the alternate Authority member.

(8) While acting in accordance with their appointment under subsection (4), an alternate Authority member is taken to be an Authority member (subject to subsection (7) which applies instead of section 9).

(9) An act or omission of a person acting in an office under this section cannot be questioned on the ground that the occasion to act in the office had not arisen or had ceased.

[Section 7A inserted: No. 36 of 2024 s. 5.]

8. Independence of Authority and Chair

Subject to this Act, neither of the following is subject to the direction of the Minister —

(a) the Authority;

(b) the Chair.

[Section 8 inserted: No. 40 of 2020 s. 7.]

9. Remuneration and allowances of Authority members

Subject to section 7 the remuneration, travelling and other allowances and other terms and conditions of appointment of an Authority member shall be those that the Minister from time to time on the recommendation of the Public Sector Commissioner determines in the Authority member's case.

[Section 9 amended: No. 34 of 1993 s. 7; No. 14 of 1998 s. 37; No. 39 of 2010 s. 89; No. 40 of 2020 s. 111(1).]

10. Business of Authority

Subject to this Act, the business of the Authority shall be conducted in such manner as the Authority determines.

11. Meetings of Authority

(1) Meetings of the Authority are to be held at such times and places as the Authority determines, but —

(a) the Chair may convene a meeting of the Authority at any time; and

(b) the Minister may convene a meeting of the Authority if the Minister wishes it to discuss a matter on which the Minister has requested its advice.

(2) At a meeting of the Authority —

(a) the person who presides is —

(i) the Chair, if present; or

(ii) if the Chair is not present — the Deputy Chair, if present; or

(iii) if both the Chair and the Deputy Chair are not present — an Authority member elected to preside by the Authority members present;

and

(b) 3 Authority members constitute a quorum; and

(c) each Authority member present must cast a deliberative vote on any question that is to be decided; and

(d) any question must be decided by a majority of the votes cast by the Authority members present, but if the voting on a question is equally divided, the person presiding at that meeting has a casting vote in addition to a deliberative vote; and

(e) a question cannot be decided unless at least 3 Authority members vote on it.

(3) Notice of meetings of the Authority must be given to the Department.

(4) The CEO, or a representative of the CEO, is entitled to be present at any meeting and to take part in the consideration and discussion of any matter before a meeting, but cannot vote on any matter.

(5) At a meeting of the Authority the presence of an Authority member need not be by attendance in person but may be by that Authority member, each other Authority member at the meeting and any person at the meeting under subsection (4) being simultaneously in contact by telephone or other means of instantaneous communication.

(6) At a meeting of the Authority the presence of a person under subsection (4) need not be by attendance in person but may be by that person and each Authority member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

[Section 11 inserted: No. 40 of 2020 s. 8; amended: No. 36 of 2024 s. 6.]

12. Disclosure of interests by Authority members

(1) If an Authority member has a direct or indirect pecuniary interest in a matter that is, or is to be, before a meeting of the Authority, the Authority member must disclose the nature of the interest.

(1A) The disclosure must —

(a) be made as soon as possible after the relevant facts have come to the Authority member's knowledge; and

(b) be made to the Authority prior to the meeting or, if that is not possible, be made to the Authority members who are at the meeting; and

(c) be recorded in the minutes of the proceedings of the meeting.

[(2) deleted]

(3) If an Authority member has, in the opinion of the person presiding at a meeting of the Authority, a direct or indirect pecuniary interest in a matter before that meeting, the person so presiding may call on the Authority member to disclose the nature of that interest and, in default of any such disclosure, may determine that the Authority member has that interest.

(4) A determination under subsection (3) that an Authority member is interested in a matter shall be recorded in the minutes of the proceedings of the meeting concerned.

(5) If an Authority member discloses an interest in a matter under subsection (1), or is determined under subsection (3) to have an interest in a matter, the Authority member cannot be present at the meeting for any consideration or discussion of, or vote on, the matter.

[Section 12 amended: No. 54 of 2003 s. 124; No. 40 of 2020 s. 111(1); No. 36 of 2024 s. 7.]

13. Decisions of persons presiding at meetings of Authority

In any case of difficulty, dispute or doubt respecting or arising out of —

(a) matters of order or procedure; or

(b) the determination of an interest under section 12,

the decision of the person presiding at the relevant meeting of the Authority shall be final and conclusive.

14. Minutes to be kept of meetings of Authority

(1) Minutes of the proceedings of every meeting of the Authority shall —

(a) be kept in a concise and accurate manner; and

(b) be approved by the person presiding at that meeting or at the next succeeding meeting of the Authority.

(2) The Authority must cause the minutes kept under subsection (1) to be published.

[Section 14 amended: No. 34 of 1993 s. 9; No. 40 of 2020 s. 9.]

14A. Decision without meeting

(1) The purpose of this section is to enable the Authority to make a decision on a matter (the ***matter***) without a meeting of the Authority being held.

(2) A notice setting out a draft decision on the matter may be sent by the Chair to each other Authority member for consideration.

(3) The Deputy Chair may send a notice under subsection (2) if the Chair is unable to do so for any reason.

(4) Subject to subsection (5), an Authority member may, by notice sent to each other Authority member, cast a vote on whether or not the decision should be made.

(5) An Authority member who has a direct or indirect pecuniary interest in the matter cannot cast a vote under subsection (4).

(6) If at least 3 Authority members cast a vote under subsection (4) and a majority of the votes are in favour of the decision being made, the decision is taken to have been made and is as effectual as if it had been made at a meeting of the Authority.

(7) The Authority must cause a record to be kept of each decision under subsection (6) and section 14(2) applies to that record.

[Section 14A inserted: No. 40 of 2020 s. 10.]

15. Objectives of Authority

It is the objective of the Authority to use its best endeavours —

(a) to protect the environment; and

(b) to prevent, control and abate pollution and environmental harm.

[Section 15 amended: No. 54 of 2003 s. 30.]

16. Functions of Authority

The functions of the Authority are —

(a) to conduct environmental impact assessments; and

[(aa) deleted]

(b) to consider and initiate the means of protecting the environment and the means of preventing, controlling and abating pollution and environmental harm; and

(c) to encourage and carry out studies, investigations and research into the problems of environmental protection and the prevention, control and abatement of pollution and environmental harm; and

(d) to obtain the advice of persons having special knowledge, experience or responsibility in regard to environmental protection and the prevention, control and abatement of pollution and environmental harm; and

(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; and

(e) to advise the Minister on environmental matters generally and on any matter which the Minister may refer to it for advice, including the environmental protection aspects of any proposal or scheme, and on the evaluation of information relating thereto; and

(f) to prepare, and seek approval for, environmental protection policies; and

(g) to promote environmental awareness within the community and to encourage understanding by the community of the environment; and

(h) to receive representations on environmental matters from members of the public; and

(i) to provide advice on environmental matters to members of the public; and

(j) to publish reports on environmental matters generally; and

(k) to publish for the benefit of planners, builders, engineers or other persons guidelines to assist them in undertaking their activities in such a manner as to minimise the effect on the environment of those activities or the results thereof; and

(l) to keep under review the progress made in the attainment of the objects and purpose of this Act; and

(m) to coordinate all such activities, whether governmental or otherwise, as are necessary to protect, restore or improve the environment in the State; and

(n) to establish and develop criteria for the assessment of the extent of environmental change, pollution and environmental harm; and

(o) to specify standards and criteria, and the methods of sampling and testing to be used for any purpose; and

(p) to promote, encourage, coordinate or carry out planning and projects in environmental management; and

(q) generally, to perform such other functions as are conferred by this Act or prescribed.

[Section 16 amended: No. 23 of 1996 s. 13; No. 54 of 2003 s. 31, 106 and 125; No. 40 of 2020 s. 11 and 111(1).]

17. Powers of Authority

(1) The Authority has all such powers as are reasonably necessary to enable it to perform its functions.

(2) The Authority may, on matters relevant to the purposes of this Act, confer and collaborate with Departments of the Commonwealth or of Territories or, other States, or other agencies, bodies or instrumentalities of the Commonwealth or of Territories or other States having to do with environmental protection.

(3) Without limiting the generality of this section, the Authority, if it considers it appropriate or is requested to do so by the Minister, may —

(a) invite any person to act in an advisory capacity to the Authority in relation to all or any aspects of its functions; and

(b) advise the Minister on any matter relating to this Act or on any proposals, schemes or questions that may be referred to it with regard to environmental matters; and

(c) request the Minister to seek information on environmental management from any other Minister and, on receipt of that information, to give it to the Authority; and

(d) consider and make proposals as to the policy to be followed in the State with regard to environmental matters; and

(e) conduct and promote relevant research; and

(f) undertake investigations and inspections; and

(g) publish reports and provide information and advice on the environment to the community at large for the purpose of increasing public awareness of the environment; and

(h) exercise such powers, additional to those referred to in paragraphs (a) to (g), as are conferred on the Authority

by this Act or as are necessary or convenient for the performance of the functions imposed on the Authority by this Act.

[(4) deleted]

[Section 17 amended: No. 23 of 1996 s. 14; No. 54 of 2003 s. 107; No. 40 of 2020 s. 12.]

17A. Provision of services, information etc. to Authority

(1) The Minister shall ensure that the Authority is provided with such services and facilities as are reasonably necessary to enable it to perform its functions.

(2) Without limiting subsection (1), the Minister may, by arrangement with the Authority, and on such terms and conditions as may be mutually arranged with the Authority, allow the Authority to make use, either full-time or part-time, of —

(a) the services of any officer or employee employed in the Department; or

(b) any services or facilities of the Department.

(3) This section does not limit the operation of section 24.

[Section 17A inserted: No. 34 of 1993 s. 10.]

18. Delegation by Minister

(1) The Minister may delegate, either generally or as otherwise provided by the instrument of delegation, to —

(a) any officer or other person referred to in section 22; or

(b) a public authority or officer or employee thereof; or

(c) any other person,

specified in the instrument of delegation (in this section called the ***delegate***) all or any of the Minister's powers and duties under this Act, other than this power of delegation.

(2) The Minister shall cause the name or title of the delegate to be published in the *Gazette* as soon as is practicable after the making of the delegation concerned.

(3) A power or duty delegated by the Minister under this section shall, if exercised or performed by the delegate, be exercised or performed in accordance with the instrument of delegation.

[Section 18 amended: No. 40 of 2020 s. 111(1).]

19. Delegation by Authority

(1) The Authority may, with the approval of the Minister, delegate, either generally or as otherwise provided by the instrument of delegation, to —

(a) any officer or other person referred to in section 22; or

(b) a public authority or officer or employee thereof; or

(c) any other person,

specified in the instrument of delegation (in this section called the ***delegate***) all or any of its powers and duties under this Act, other than this power of delegation.

(2) The Authority shall cause the name or title of the delegate to be published in the *Gazette* as soon as is practicable after the making of the delegation concerned.

(3) A power or duty delegated by the Authority under this section shall, if exercised or performed by the delegate, be exercised or performed in accordance with the instrument of delegation.

20. Delegation by CEO

(1) The CEO may by notice published in the *Gazette*, with the approval of the Minister, delegate either generally or as otherwise provided in the notice, to —

(a) an officer or other person referred to in section 22; or

(b) a public authority or officer or employee of a public authority; or

(c) any other person,

specified in the notice (in this section called the ***delegate***) all or any of the powers and duties of the CEO under this Act, other than this power of delegation.

[(2) deleted]

(3) The CEO shall cause the name or title of the delegate to be published in the *Gazette* as soon as is practicable after the making of the delegation concerned.

(4) A power or duty delegated by the CEO under this section shall, if exercised or performed by the delegate, be exercised or performed in accordance with the instrument of delegation.

[Section 20 amended: No. 34 of 1993 s. 11; No. 14 of 1998 s. 29; No. 54 of 2003 s. 140(2).]

21. Authority to make annual report

The Authority shall as soon as practicable after the end of each financial year and in any event before the end of October next following that financial year make an annual report to the Minister on —

(a) the activities of the Authority during that financial year; and

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

(b) environmental matters generally,

and the Minister shall cause a copy of that report to be laid before each House of Parliament within 9 sitting days of that House after the receipt of that report by the Minister.

[Section 21 amended: No. 36 of 2024 s. 9.]

Division 1A — Ministerial statement of expectation

[Heading inserted: No. 36 of 2024 s. 10.]

21A. Terms used

In this Division —

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

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

[Section 21A inserted: No. 36 of 2024 s. 10.]

21B. Minister to issue ministerial statement of expectation

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

(2) The purpose of the expectation statement is to set out the Minister's objectives on matters relating to the Authority's functions.

(3) It is for the Minister to determine which matters are to be covered by the expectation statement.

(4) The expectation statement takes effect on the day after the day on which it is issued under subsection (1).

(5) In performing its functions, the Authority must have regard to the expectation statement.

[Section 21B inserted: No. 36 of 2024 s. 10.]

21C. Review and reissue of expectation statement

(1) The Minister may do either of the following at any time —

(a) review the expectation statement;

(b) reissue the expectation statement to the Authority, either as an amended statement or a new statement.

(2) Subsection (3) applies if, after the effective day, there is any 4-year period during which the Minister does not review the expectation statement under subsection (1)(a).

(3) The Minister must review the expectation statement under subsection (1)(a) as soon as practicable after the end of the 4-year period.

(4) A reissue of the expectation statement under subsection (1)(b) takes effect on the day after the day on which it is reissued or on a later day specified in the reissued expectation statement.

[Section 21C inserted: No. 36 of 2024 s. 10.]

21D. Expectation statement to be laid before Parliament

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

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

[Section 21D inserted: No. 36 of 2024 s. 10.]

21E. Expectation statement to be published

The Authority must cause the expectation statement to be published.

[Section 21E inserted: No. 36 of 2024 s. 10.]

Division 2 — Staff of Department, etc.

22. Appointment and engagement of staff generally

(1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* a chief executive officer

and such other officers as are necessary to assist the Minister, the Authority and the CEO in the performance of their respective functions.

(2) The CEO may engage persons as wages or field staff otherwise than under Part 3 of the *Public Sector Management Act 1994* and persons so engaged shall, subject to any relevant industrial award or agreement, be employed on such terms and conditions as the Minister determines on the recommendation of the Public Sector Commissioner.

[Section 22 amended: No. 34 of 1993 s. 12; No. 32 of 1994 s. 19; No. 14 of 1998 s. 37; No. 54 of 2003 s. 140(2); No. 39 of 2010 s. 89.]

*[**23.** Deleted: No. 54 of 2003 s. 126.]*

24. Use of staff and facilities of other departments etc.

The Minister or the Authority may, by arrangement made between the Minister or the Authority and the Minister concerned, and on such terms and conditions as may be mutually arranged with that Minister and, if appropriate, with the relevant employing authority within the meaning of the *Public Sector Management Act 1994*, make use, either full-time or part-time, of —

(a) the services of any officer or employee employed in the Public Service of the State or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or

(b) any facilities of a department of the Public Service of the State or of a State agency or instrumentality.

[Section 24 amended: No. 32 of 1994 s. 19; No. 40 of 2020 s. 111(1).]

25. Advisory groups, committees, councils and panels

(1) The Minister or the Authority may establish such groups, committees, councils and panels —

(a) as the Minister or the Authority thinks are necessary for the purpose of advising on the administration of this Act; and

(b) with such terms of reference in each case as the Minister or the Authority thinks fit.

(2) The Minister or the Authority may appoint such persons as the Minister or the Authority thinks fit to any group, committee, council or panel established under subsection (1).

(3) A member of a group, committee, council or panel appointed under subsection (2) is entitled to such remuneration and allowances as are on the recommendation of the Public Sector Commissioner determined by the Minister or the Authority, as the case requires, in the member's case.

(4) The terms and conditions, other than those referred to in subsection (3), applicable to or in relation to a person appointed under subsection (2) shall be as determined by the Minister or the Authority, as the case requires, from time to time either generally or with respect to a particular appointment.

(5) A person appointed under subsection (2) is not by that reason alone an officer of the Public Service of the State.

[Section 25 amended: No. 14 of 1998 s. 37; No. 39 of 2010 s. 89; No. 40 of 2020 s. 111(1).]

Part III — Environmental protection policies

26. Draft policy, preparation and publicising of

(1) The Authority shall, if it considers it necessary or desirable for —

(a) the protection of any portion of the environment; or

(b) the prevention, control or abatement of pollution or environmental harm,

that an environmental protection policy be approved under section 31(d) —

(c) prepare a draft of the environmental protection policy, having regard to the description of, and requirements in respect of, an approved policy set out in section 35; and

(d) cause a notice containing prescribed particulars of the draft referred to in paragraph (c), including the places at which, and the period during which, that draft will be available for public inspection, to be published —

(i) in the *Gazette*; and

(ii) if the regulations so require, in any other manner specified in the regulations;

and

(e) make reasonable endeavours to consult in respect of the draft referred to in paragraph (c) such public authorities and persons as appear to the Authority to be likely to be affected by that draft; and

(f) in the case of a draft of an environmental protection policy concerned with the protection of a portion of the environment confined to, or with the prevention, control or abatement of pollution or environmental harm in, a particular local government district or districts, consult the Western Australian Planning Commission and the local government or local governments of the relevant district or districts in respect of that draft.

(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.

[Section 26 amended: No. 14 of 1996 s. 4; No. 23 of 1996 s. 15; No. 54 of 2003 s. 32 and 91; No. 40 of 2020 s. 13.]

27. Persons may make representations to Authority on draft policy

Any person may, in the manner and within the period specified in the relevant notice published under section 26(1)(d) or 32(1)(a), make representations to the Authority on the draft policy to which that notice relates.

28. Consideration, revision and submission to Minister of draft policy by Authority

(1) After the expiry of the period specified in the relevant notice published under section 26(1)(d) or 32(1)(a), the Authority —

(a) shall consider any representations made to it under section 27 and any views expressed by the public authorities and persons consulted under section 26(1)(e) or 32(1)(a), and by any local government or local governments consulted under section 26(1)(f) or 32(1)(a), in respect of the draft policy to which that notice relates; and

(b) may revise the draft policy to which that notice relates; and

(c) shall, after revising the draft policy to which that notice relates to such extent, if any, as it considers necessary —

(i) cause to be published, in the same manner as a notice (in this subparagraph called a ***first notice***) is published under section 26(1)(d), a notice in respect of that draft policy containing particulars

of the same kind as those contained in a first notice; and

(ii) submit a copy of that draft policy, together with a report thereon, to the Minister.

(2) The Authority shall include reasons for any revision of the draft policy in the report referred to in subsection (1)(c)(ii).

[Section 28 amended: No. 14 of 1996 s. 4; No. 54 of 2003 s. 92.]

29. Public inquiry into draft policy

(1) After receiving and considering a copy of a draft policy, together with a report thereon, submitted under section 28 or 32(1)(b), the Minister —

(a) shall, if the Minister considers it expedient in the public interest to do so; or

(b) may, if the Authority so requests,

by notice published in the *Gazette* appoint a committee of inquiry consisting of —

(c) Authority members; or

(d) Authority members and persons other than Authority members; or

(e) persons other than Authority members,

to hold a public inquiry into and report to the Minister on the draft policy in accordance with terms of reference determined by the Minister.

(2) A committee of inquiry shall hold a public inquiry into the draft policy in respect of which it is appointed and the *Royal Commissions Act 1968* applies to and in relation to that public inquiry as if references in that Act to —

(a) a Commission were references to; and

(b) the Chairman were references to the member presiding over; and

(c) a Commissioner were references to a member of,

the committee of inquiry.

(3) A committee of inquiry shall, after holding a public inquiry into the draft policy in respect of which it was appointed, report on that draft policy to the Minister.

(4) The member presiding over and other members of a committee of inquiry shall each of them be paid such remuneration and travelling and other allowances as the Minister on the recommendation of the Public Sector Commissioner determines in the member's case.

[Section 29 amended: No. 14 of 1998 s. 37; No. 39 of 2010 s. 89; No. 40 of 2020 s. 111(1).]

30. Minister to consult on draft policy

(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(1)(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.

[Section 30 inserted: No. 54 of 2003 s. 93.]

31. Minister to remit draft policy, or approve it (with or without amendments) or refuse to approve it

After the Minister —

(a) has received and considered —

(i) a copy of a draft policy (in this section called the ***draft policy***), together with a report thereon, submitted under section 28 or 32(1)(b); and

(ii) if a committee of inquiry is appointed under section 29 in respect of the draft policy, the report made by the committee of inquiry;

and

(b) has consulted any public authority or person under section 30 in respect of the draft policy,

the Minister shall —

(c) remit the draft policy to the Authority for reconsideration and shall, if the Minister considers that the matter calling for remittal is of minor importance, give to the Authority a certificate to that effect briefly describing that matter and cause that certificate to be published in the *Gazette*; or

(d) approve the draft policy, with or without such amendments as the Minister thinks fit to make to the draft policy, by order setting out the draft policy in amended or unamended form, as the case requires; or

(e) refuse to approve the draft policy by order setting out the Minister's reasons for so refusing.

[Section 31 amended: No. 40 of 2020 s. 111(1).]

32. Reconsidering and resubmitting remitted draft policy

(1) After receiving a draft policy remitted to it under section 31(c), the Authority shall —

(a) if the Minister has not given a certificate under that section —

(i) cause to be published, in the same manner as a notice (in this subparagraph called a ***first notice***) is published under section 26(1)(d), a notice in respect of that draft policy containing particulars of the same kind as those contained in a first notice; and

(ii) make reasonable endeavours to consult in respect of that draft policy such public authorities and persons as appear to the Authority to be likely to be affected by that draft policy; and

(iii) in the case of a draft policy concerned with the protection of a portion of the environment confined to, or with the prevention, control or abatement of pollution or environmental harm in, a particular local government district or districts, consult the local government or local governments of the relevant district or districts in respect of that draft policy; and

(iv) reconsider that draft policy;

or

(b) if the Minister has given a certificate under that section —

(i) reconsider that draft policy; and

(ii) submit that draft policy, together with a report thereon, to the Minister.

(2) Sections 27, 28, 29, 30 and 31 apply to a draft policy reconsidered under subsection (1)(a).

(3) Sections 29, 30 and 31 apply to a draft policy reconsidered under subsection (1)(b).

[Section 32 amended: No. 14 of 1996 s. 4; No. 40 of 2020 s. 14.]

33. Approved policies, status and revocation of

(1) Subject to this section, a draft policy approved under section 31(d) has, until that approval is revoked under subsection (2) and subject to any specification under section 35(2)(b) and to section 42 of the *Interpretation Act 1984* the force of law, as though it had been enacted as part of this Act, on and from the day on which the relevant order is published in the *Gazette* under section 41 of the *Interpretation Act 1984* or such subsequent day as is specified in that order.

(2) The Minister may, having obtained and considered the advice of the Authority in the matter, by order revoke an approval given under section 31(d).

(3) An approval of a draft policy under section 31(d) and a revocation of an approved policy under subsection (2) may be contained in the same order.

(4) To the extent that there is an inconsistency between an approved policy and a scheme which came into operation before the approved policy was approved under section 31(d), the approved policy prevails.

(5) To the extent that there is an inconsistency between an approved policy and an assessed scheme which was assessed under Division 3 of Part IV after the approved policy was approved under section 31(d), that assessed scheme prevails.

[Section 33 amended: No. 23 of 1996 s. 16.]

34. Orders made under s. 31(d), Parliamentary oversight of

Section 42 of the *Interpretation Act 1984* applies to an order referred to in section 31(d) as if that order were regulations within the meaning of that section of that Act.

35. Content of approved policies

(1) An approved policy —

(a) establishes the basis on which —

(i) the portion of the environment to which it relates is to be protected; or

(ii) pollution of, and environmental harm to, the portion of the environment to which it relates is to be prevented, controlled or abated,

and may delineate programmes for that protection or that prevention, control or abatement, as the case requires; and

(b) may relate to any activity directed towards the protection, or the prevention, control or abatement, referred to in paragraph (a), whether in respect of any portion of the environment or an emission or otherwise.

(1a) An approved policy may create offences and provide penalties for them as follows —

(a) for a Tier 1 offence —

(i) if the offender is an individual, a penalty not exceeding $250 000 and, in the case of a continuing offence, a daily penalty not exceeding $50 000; and

(ii) if the offender is a body corporate, a penalty not exceeding $500 000 and, in the case of a continuing offence, a daily penalty not exceeding $100 000;

and

(b) for a Tier 2 offence —

(i) if the offender is an individual, a penalty not exceeding $62 500 and, in the case of a continuing offence, a daily penalty not exceeding $12 500; and

(ii) if the offender is a body corporate, a penalty not exceeding $125 000 and, in the case of a continuing offence, a daily penalty not exceeding $25 000;

and

(c) for a Tier 3 offence, a penalty not exceeding $5 000 and, in the case of a continuing offence, a daily penalty not exceeding $1 000.

(1b) For the purposes of subsection (1a), an offence is a Tier 1, Tier 2 or Tier 3 offence if the approved policy declares that such an offence is an offence of that category.

(2) An approved policy may, unless it is inappropriate in the circumstances to do so —

(a) identify the portion of the environment, to which the approved policy applies; and

(b) specify —

(i) the period, if any, during each day, or any particular day, of 24 hours; and

(ii) subject to section 33(2) and section 42 of the *Interpretation Act 1984*, the total period,

during which the approved policy has the force of law; and

(c) identify and declare the environmental values to be protected under the approved policy; and

(d) set out the indicators, parameters or criteria to be used in measuring environmental quality; and

(e) specify the environmental quality objectives to be achieved and maintained by means of the approved policy; and

(f) establish a programme by which the environmental quality objectives referred to in paragraph (e) are to be achieved and maintained, and may specify in that programme, among other things —

(i) the qualities and maximum quantities of any waste permitted to be discharged into the relevant portion of the environment; or

(ii) the maximum levels of noise, odour or electromagnetic radiation permitted to be emitted into the relevant portion of the environment; or

(iii) the minimum standards to be complied with in the installation and operation of works or equipment for the control of waste or noise, odour or electromagnetic radiation; or

(iv) measures designed to minimise the possibility of pollution or environmental harm; or

(v) measures designed to protect the environment; or

(vi) measures designed to achieve the environmental values to be protected; or

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

or any 2 or more of the matters referred to in subparagraphs (i), (ii), (iii), (iv), (v), (vi) and (vii).

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

(a) an area of the State identified in the policy; or

(b) an area of the State identified in the policy or by regulation; or

(c) the whole of the State; or

(d) the whole of the State other than an area identified in the policy; or

(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.

[Section 35 amended: No. 14 of 1998 s. 5; No. 54 of 2003 s. 33 and 94.]

36. Review of approved policies

(1) The Authority shall review an approved policy —

(a) if the Minister by notice published in the *Gazette* so directs, whether on the recommendation of the Authority, on the Minister's own initiative or otherwise, at the time or within the period and to the extent specified in that direction; and

(aa) if the approved policy is inconsistent with an assessed scheme which was assessed under Division 3 of Part IV after the approved policy was approved under section 31(d); and

(b) unless the Minister by notice published in the *Gazette* otherwise directs, within a period of 7 years from the date on which the approved policy was approved under section 31(d).

(2) The review under subsection (1) of an approved policy shall be effected by means of a new draft policy prepared, dealt with and submitted to the Minister for approval under this Part.

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

[Section 36 amended: No. 23 of 1996 s. 17; No. 54 of 2003 s. 95; No. 40 of 2020 s. 111(1).]

37. Minor changes to approved policies

(1) The Minister may, if the Authority recommends, and the Minister agrees, that a minor change be made to an approved policy, give to the Authority a certificate stating that the Minister so agrees and setting out the minor change so recommended and cause that certificate to be published in the *Gazette*.

(2) After receiving a certificate given to it under subsection (1), the Authority shall amend the approved policy concerned by making the minor change to which that certificate relates and submit the approved policy as so amended, together with a report thereon, to the Minister.

(3) After the Minister has received an approved policy submitted under subsection (2), together with a report thereon, the Minister may —

(a) confirm that approved policy by order setting out that approved policy as amended under that subsection; or

(b) refuse to confirm that approved policy.

(4) Subject to subsection (5), this Act applies to an approved policy confirmed under subsection (3) as if that approved policy had been approved under section 31(d) in its amended form on the date of that confirmation.

(5) Section 42 of the *Interpretation Act 1984* applies to an order referred to in subsection (3)(a) as if that order were regulations within the meaning of that section of that Act.

[Section 37 amended: No. 40 of 2020 s. 111(1).]

37A. NEPM may be declared to be approved policy

(1) The Minister may, by notice published in the *Gazette*, declare that an NEPM specified in the declaration is, for the purposes specified in the declaration, to be taken to be an approved policy with the force of law, and the declaration has effect accordingly.

(2) The Minister may by notice published in the *Gazette* revoke or amend a declaration made under subsection (1).

[Section 37A inserted: No. 14 of 1998 s. 30.]

Part IV — Environmental impact assessment

Division 1 — Referral and assessment of proposals

37B. Terms used

(1) In this Division —

proposal of a prescribed class includes a proposal of a prescribed class under an assessed scheme;

significant proposal means a proposal likely, if implemented, to have a significant effect on the environment and includes a significant amendment of an approved proposal;

strategic proposal has the meaning given in subsection (2).

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

(a) a future proposal likely, if implemented, to have a significant effect on the environment; or

(b) future proposals likely, if implemented in combination with each other, to have a significant effect on the environment.

[Section 37B inserted: No. 40 of 2020 s. 15.]

38. Referral of proposals

(1) The proponent of a significant proposal, or any other person, may refer the 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) 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.

(4) A decision-making authority must refer a proposal to the Authority as soon as it has notice of the proposal if the proposal appears to it to be —

(a) a significant proposal; or

(b) a proposal of a prescribed class.

(5) Subsection (4) does not apply if the proposal has been referred to the Authority under subsection (1) or (3).

(6) In the case of a proposal under an assessed scheme, the application of subsection (4)(a) is subject to section 48I.

(7) The proponent of a strategic proposal may refer the proposal to the Authority.

[Section 38 inserted: No. 40 of 2020 s. 15.]

38A. Calling in a proposal

(1) If a proposal has not been referred to the Authority under section 38, the Authority must require the proponent or a decision-making authority to refer the proposal to the Authority if the Authority considers that the proposal is —

(a) a significant proposal; or

(b) a proposal of a prescribed class.

(2) A requirement under subsection (1) must be in writing and must specify the period within which it has to be complied with.

(3) A proponent or decision-making authority that is required under subsection (1) to refer a proposal to the Authority must do so within the period specified in the requirement.

(4) In the case of a proposal under an assessed scheme, the Authority can only require the referral of the proposal 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.

(5) A requirement under subsection (1) has effect despite section 48I(2).

(6) A proposal referred to the Authority under subsection (3) is taken to have been referred to the Authority under section 38.

[Section 38A inserted: No. 40 of 2020 s. 15.]

38B. Requirements as to referrals

(1) A referral to the Authority must be in writing.

(2) A proposal cannot be referred to the Authority more than once unless —

(a) under section 38D, a referral of the proposal is taken to have been withdrawn; or

(b) under section 38F(4), a referral of the proposal has been declared to have been withdrawn; or

(c) under section 40A, assessment of the proposal has been terminated; or

(d) under section 47A, a Ministerial statement relating to the proposal has been withdrawn or is taken to have been withdrawn.

[Section 38B inserted: No. 40 of 2020 s. 15.]

38C. Proponent may amend a referred proposal

(1) At any time before the Authority decides whether or not to assess a referred proposal, the proponent may, by written notice, request the Authority to approve of the proposal being amended in the manner set out in the request.

(2) The Authority may, at its discretion, give or refuse to give approval under subsection (1).

(3) If approval is given by the Authority the proposal as so amended is taken to have been referred to the Authority under section 38.

[Section 38C inserted: No. 40 of 2020 s. 15.]

38D. Proponent may give notice that a referred proposal will not proceed

(1) If at any time before the Authority has decided whether or not to assess a referred proposal the Authority receives written notice from the proponent that the proponent does not wish to proceed with the proposal, the referral of the proposal is taken to have been withdrawn.

(2) This section applies whether or not the proposal was referred to the Authority by the proponent.

[Section 38D inserted: No. 40 of 2020 s. 15.]

38E. Proposals derived from assessed strategic proposals

(1) A referred proposal may be dealt with under this section if —

(a) there has been an assessment under this Division (the ***strategic assessment***) of a strategic proposal; and

(b) a Ministerial statement has been published in relation to the strategic proposal.

(2) If this section applies, the proponent of a referred proposal may request the Authority in writing to declare the referred proposal to be a derived proposal.

(3) If the proposal is referred by the proponent, a request under subsection (2) may be made in the referral.

(4) If a request is made under subsection (2), the Authority must declare the referred proposal to be a derived proposal if it considers that —

(a) the referred proposal was identified in the strategic proposal; and

(b) in the implementation agreement or decision set out in the statement mentioned in subsection (1)(b) it was agreed or decided that the referred proposal could be implemented, or could be implemented subject to conditions and procedures agreed or decided under section 45.

(5) Despite subsection (4), 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 in the strategic assessment; or

(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 assessment was completed.

(6) If the Authority declares the referred proposal to be a derived proposal, it must —

(a) record the declaration in the public record kept under section 39(1); and

(b) give written notice of the declaration to the Minister.

(7) If the Authority declares the referred proposal to be a derived proposal, it cannot decide to assess the proposal except for the purposes of conducting an inquiry under section 46(4).

(8) If the Authority refuses to declare the referred proposal to be a derived proposal, it must give written notice of the refusal to the proponent.

(9) A notice under subsection (8) may be included in the notice given under section 38G(1)(b)(i).

(10) For the purposes of this section it does not matter whether the proponent of the referred proposal was, or was not, the proponent of the strategic proposal.

[Section 38E inserted: No. 40 of 2020 s. 15.]

38F. Request for further information

(1) This subsection applies if the Authority considers that it does not have enough information about a referred proposal to enable it to decide —

(a) whether or not to assess the proposal; or

(b) whether or not to agree to a request made under section 38E(2).

(2) If subsection (1) applies, the Authority may, by written notice (a ***requisition***), request any person to provide it with additional information about the proposal before the end of a period specified in the notice (the ***compliance period***).

(3) In determining whether the 28 day period set by section 38G(1) has ended the following are to be disregarded —

(a) if a requisition is complied with within the compliance period — the period from the day on which it was issued until the day on which it was complied with;

(b) if a requisition is not complied with within the compliance period — the compliance period.

(4) If a requisition in relation to a proposal is issued to the person who referred the proposal and the compliance period ends without the requisition having been complied with, the Authority may, by written notice to the person, declare the referral to have been withdrawn.

(5) If the proposal was not referred by the proponent, the Authority must obtain the consent of the proponent before giving notice under subsection (4).

[Section 38F inserted: No. 40 of 2020 s. 15.]

38G. Authority must decide whether to assess a referred proposal

(1) The Authority must, within 28 days after the referral of a proposal —

(a) decide whether or not to assess the referred proposal; and

(b) give written notice of the decision —

(i) to the proponent; and

(ii) if the proposal was not referred by the proponent — to the person that referred it; and

(iii) to any decision-making authority determined by the Authority to be a relevant decision-making authority in relation to the proposal;

and

(c) if the Authority decides not to assess the proposal — publish a summary of the Authority's reasons for the decision.

(2) Subsection (1) does not apply if —

(a) under section 38D, the referral is taken to have been withdrawn; or

(b) the proposal is declared under section 38E to be a derived proposal; or

(c) under section 38F(4), the referral has been declared to have been withdrawn.

(3) The Authority's decision under subsection (1) must be based on —

(a) any information submitted to it when the proposal was referred; and

(b) any additional information provided to it under section 38F; and

(c) any information derived from its own investigations and inquiries.

(4) In making its decision under subsection (1) the Authority may take into account other statutory decision-making processes that can mitigate the potential impacts of the proposal on the environment.

(5) If, for any reason, a relevant decision-making authority is not given notice as required by subsection (1)(b)(iii) that a proposal is going to be assessed, the Authority may give written notice to the decision-making authority under this subsection.

(6) Notice under subsection (5) 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(1).

(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.

[Section 38G inserted: No. 40 of 2020 s. 15; amended: No. 36 of 2024 s. 32.]

38H. Nomination of person responsible for proposal

(1) This section applies to a proposal if —

(a) the proposal is referred, or is required to be referred, to the Authority under section 38; and

(b) the Authority decides that the proposal should be assessed by it under this Part.

(2) Except when the responsibility for a proposal is imposed on a public authority under another written law, the Authority must nominate a person as being responsible for the proposal.

(3) If an individual is nominated under subsection (2), the nomination may be made —

(a) by reference to the individual's name; or

(b) by reference to the individual being the person for the time being holding or acting in a particular office or position.

(4) Written notice of a nomination under subsection (2) must be served on —

(a) the person nominated; and

(b) any decision-making authority to which or whom notice of the Authority's decision to assess the proposal has been given under section 38G(1)(b)(iii) or (5).

[Section 38H inserted: No. 40 of 2020 s. 15.]

38I. Change of person responsible for proposal

(1) A person nominated under section 38H(2) in relation to a proposal that proposes to transfer responsibility for the proposal to another person must give written notice advising the name of that other person —

(a) to the Authority; or

(b) if a statement relating to the proposal has been published under section 45(8)(b) — to the Minister.

(2) The Authority may —

(a) revoke a nomination under section 38H(2) in relation to a proposal; and

(b) nominate another person under section 38H(2) in relation to the proposal.

(3) Subsection (2) applies even if —

(a) no written notice has been given to the Authority under subsection (1); or

(b) the person mentioned in subsection (2)(b) is not the person named in a written notice given to the Authority under subsection (1).

(4) Subsections (1) and (2) apply even if a report on the proposal has been published under section 44(3) or a statement has been published under section 45(8)(b) but, if a statement has been published, the powers conferred by subsection (2) must be exercised by the Minister.

(5) Subsections (1) and (2) do not apply if the assessment of the proposal has been terminated under section 40A.

(6) For the purposes of subsections (1) and (2) and section 3(2b), a person that has been notified under section 38G(1)(b)(i) that the Authority is going to assess a proposal is taken to have been nominated under section 38H(2) as being responsible for the proposal whether or not such a nomination has been made.

[Section 38I inserted: No. 40 of 2020 s. 15.]

39. Authority to keep records of referred proposals

The Authority must keep a public record of each referred proposal, and shall in that public record set out —

(a) whether or not that proposal is to be assessed under this Part; and

(b) if the proposal is to be assessed under this Part, the level of assessment.

[Section 39 inserted: No. 40 of 2020 s. 16.]

*[**39A, 39B.** Deleted: No. 40 of 2020 s. 17.]*

40. Assessing referred proposals

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

(2) The Authority may, for the purposes of assessing a proposal —

(a) require any person to provide it with such information as is specified in that requirement; or

(aa) require the proponent to provide to the Authority a contaminated sites auditor's report on the proposal, which complies with any relevant regulations made under the *Contaminated Sites Act 2003*; or

(b) require the proponent to undertake an environmental review and to report thereon to the Authority; or

(c) with the approval of the Minister and subject to section 42, conduct a public inquiry in such manner as it sees fit or appoint a committee consisting of —

(i) Authority members; or

(ii) Authority members and persons other than Authority members; or

(iii) persons other than Authority members,

to conduct a public inquiry and report to the Authority on its findings on the public inquiry.

(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.

(3) Subject to any direction made under section 43, the Authority shall determine the form, content, timing and procedure of any environmental review required to be undertaken under subsection (2)(b) and publish an indicative outline of the timing of the environmental review.

(4) Subject to any direction made under section 43(1), the Authority may cause the following to be published —

(a) any information or report provided in compliance with a requirement made under subsection (2)(a) or (aa);

(b) any report made in compliance with a requirement made under subsection (2)(b).

(5) When publishing information or a report under subsection (4) the Authority may —

(a) declare the information or report to be available for public review; and

(b) specify the period within which, the extent to which and the manner in which public authorities or persons may make submissions to the Authority in respect of the information or report.

(6) When the Authority declares any information or report to be available for public review under subsection (5)(a) —

(a) the proponent must —

(i) at the proponent's own expense, publish notice of that information or report being available for public review; and

(ii) provide copies of that information or report free of charge to such public authorities and persons, in such manner and at such places and times as the Authority determines; and

(iii) provide copies of that information or report to members of the public in such manner, 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.

(7) A committee appointed under subsection (2)(c) shall —

(a) conduct a public inquiry in respect of the proposal concerned; and

(b) after holding the public inquiry referred to in paragraph (a), report to the Authority on its findings on that public inquiry.

(8) The member presiding over and other members of a committee appointed under subsection (2)(c) shall each of them be paid such remuneration and travelling and other allowances as the Authority on the recommendation of the Public Sector Commissioner determines in the member's case.

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

[Section 40 amended: No. 57 of 1997 s. 54(2); No. 14 of 1998 s. 37; No. 54 of 2003 s. 9; No. 60 of 2003 s. 100 (as amended: No. 40 of 2005 s. 13(2) and (3)); No. 39 of 2010 s. 89; No. 40 of 2020 s. 18 and 111(1).]

40AA. Assessment of significant amendments

(1) This section applies if the Authority assesses a significant amendment of an approved proposal.

(2) The Authority must assess the significant amendment in the context of the approved proposal and have regard to the combined effect that the implementation of the approved proposal and the significant amendment might have on the environment.

(3) For the purposes of subsection (2) the Authority may inquire into and report on the implementation conditions relating to the approved proposal.

(4) Each of those implementation conditions continues to apply in relation to the approved proposal subject to —

(a) it being amended under section 45C or 46(9); or

(b) revised conditions or procedures being agreed or decided under sections 45 and 45A in relation to the

approved proposal after the significant amendment has been assessed.

(5) Subsection 41A(1) does not apply to the doing of anything to implement the approved proposal.

(6) If a statement is served and published under subsection 45(8), it may be in the form of —

(a) a statement that only applies to the significant amendment; or

(b) a statement that includes the implementation conditions for the approved proposal as amended by the significant amendment, and supersedes the previous Ministerial statement relating to the approved proposal.

[Section 40AA inserted: No. 40 of 2020 s. 19.]

40A. Termination of assessment

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

(a) the proponent agrees with the termination; or

(aa) the Authority receives written notice from the proponent that the proponent does not wish to proceed with the proposal; or

(b) the proponent has failed to comply with —

(i) a requirement made under section 40(2)(a) or (b); or

(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.

[Section 40A inserted: No. 54 of 2003 s. 10; amended: No. 40 of 2020 s. 20.]

40B. Application of assessment provisions to strategic proposals and strategic assessments

(1) Sections 41, 41A and 45(12) do not apply in relation to a strategic proposal.

(2) Sections 44, 45 (other than subsection (12)) and 45A 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 38E to be a derived proposal.

(3) This section does not affect the application of sections 41, 41A, 44, 45 and 45A in relation to a strategic proposal to the extent to which the strategic proposal is itself a significant proposal.

[Section 40B inserted: No. 40 of 2020 s. 21.]

41. Restrictions on decisions by decision-making authorities

[(1) deleted]

(1A) In this section —

restricted decision means a decision of a prescribed class.

(2) A decision-making authority that —

(a) has referred a proposal to the Authority under section 38; or

(b) has been required under section 38A(1) to refer a proposal to the Authority,

shall not make any restricted decision that could have the effect of causing or allowing the proposal to be implemented until —

(c) it is informed under section 38G(1)(b)(iii) that the Authority is not going to assess the proposal; or

(d) an authority is served on it under section 45(12),

as the case requires.

(3) Without limiting subsection (2), a decision-making authority that has been given notice under section 38G(1)(b)(iii) or (5) that a proposal is going to be or is being assessed is not to make any restricted decision that could have the effect of causing or allowing the proposal to be implemented without having had an authority under section 45(12) served on it.

(4) Subsections (2) and (3) do not apply to a restricted decision in relation to a proposal if the effect of the decision would be to cause or allow the doing of minor or preliminary work to which the Authority has consented under section 41A(3).

(5) Subsections (2) and (3) do not apply to a restricted decision in relation to a proposal if the decision is made under the *Aboriginal Heritage Act 1972*.

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

(a) the written law, or the provision of a written law, under which the decision is made;

(b) the agreement to which the State is a party and which is ratified or approved by an Act, or the provision of such an agreement, under which the decision is made;

(c) the public authority which has the power or duty to make the decision;

(d) any characteristic of, or other circumstance or matter relating to, the proposal in relation to which the decision is made.

Note for this section:

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

[Section 41 amended: No. 54 of 2003 s. 11; No. 40 of 2010 s. 14; No. 40 of 2020 s. 22; No. 27 of 2021 s. 348(2); No. 23 of 2023 s. 28; No. 36 of 2024 s. 13 and 33.]

41A. Proposal not to be implemented before action under s. 45 taken

(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(8)(b) or a notification is given under section 45(13) 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(8)(b) and (13) were references to the application of those provisions to any new 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.

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

[Section 41A inserted: No. 54 of 2003 s. 12; amended: No. 40 of 2020 s. 23; No. 36 of 2024 s. 14.]

42. Conduct of public inquiries under s. 40(2)(c)

(1) The *Royal Commissions Act 1968* applies to and in relation to a public inquiry conducted under section 40(2)(c) as if references in that Act to —

(a) a Commission were references to the Authority or to the relevant committee; and

(b) the Chairman were references to the Chair of the Authority or to the member presiding over the relevant committee; and

(c) a Commissioner were references to an Authority member or to a member of the relevant committee,

appointed under that section.

(2) The Authority shall, after conducting a public inquiry under section 40(2)(c) or considering the report of the relevant committee appointed under that section to conduct a public inquiry, as the case requires, incorporate the findings made by it —

(a) on the public inquiry conducted by it; or

(b) on that report,

as the case requires, in the report prepared by it under section 44.

[Section 42 amended: No. 40 of 2020 s. 24 and 111(1).]

43. Minister may direct Authority as to assessing proposal

(1) The Minister may —

(a) if the Authority considers that a referred proposal should not be assessed by it under this Part; or

(b) during or after the assessment by the Authority of a proposal referred to it under that section,

and after consulting the Authority, direct the Authority to assess that proposal, or to assess or re-assess that proposal more fully

or more publicly or both, as the case requires, in accordance with that direction, and the Authority shall comply with that direction.

(2) Sections 38G(1), 39, 40(2) to (8), 41, 42 and 44 apply to the assessment or reassessment of a proposal under a direction given under subsection (1) as if that direction were a referral under section 38 of the proposal.

(3) A direction cannot be given under subsection (1) if a statement has been served under section 45(8)(a) or a notification has been given under section 45(13).

[(3A) deleted]

(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.

[Section 43 amended: No. 57 of 1997 s. 54(3); No. 54 of 2003 s. 13; No. 40 of 2020 s. 25; No. 36 of 2024 s. 34.]

43A. Amendments to proposals during assessment

(1) While a proposal is being assessed, the proponent may, by written notice —

(a) advise the Authority that the proponent wishes to amend the proposal in the manner set out in that notice; and

(b) request that the Authority approve of the assessment of the proposal being completed in respect of the proposal as so amended.

(2) The Authority may, at its discretion, give or refuse to give approval under subsection (1)(b).

(3) If the Authority gives approval under subsection (1)(b) —

(a) the proposal as so amended is taken to have been referred to the Authority under section 38; and

(b) without limiting section 40, the Authority, if it thinks fit, may perform, or perform again, any function that it could have performed, or has already performed, in respect of the proposal.

[Section 43A inserted: No. 40 of 2020 s. 26.]

44. Report by Authority on assessment of proposal

(1) If the Authority assesses a proposal, it must 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.

(2AA) In considering key environmental factors and any recommendations that may be included in the assessment report the Authority may take into account other statutory decision-making processes that can mitigate the potential impacts of the proposal on the environment.

(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

(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.

(3) The Minister shall, as soon as the Minister is reasonably able to do so after receiving copies of the assessment report, simultaneously cause —

(a) that report to be published; and

(b) copies of that report to be given to —

(i) any other Minister appearing to the Minister to be likely to be concerned in the outcome of the proposal to which that report relates; and

(ii) each decision-making authority, if any, by which the proposal to which that report relates was referred to the Authority or which had been given notice under section 38G(1)(b)(iii) or (5) in relation to the proposal; and

(iii) if the proposal to which that report relates was referred to the Authority by the proponent or another person, to the proponent or the other person.

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

(a) given to the Authority; and

(b) published as soon as practicable after the direction is given.

[Section 44 amended: No. 54 of 2003 s. 15; No. 40 of 2020 s. 27 and 111(1); No. 36 of 2024 s. 30.]

Division 2 — Implementation of proposals

44A. Terms used

In this Division —

assessed proposal means the proposal to which a report mentioned in section 45(1) relates;

DMA decision means a decision of a decision-making authority that could have the effect of causing or allowing the assessed proposal to be implemented;

implementation agreement or decision means an agreement or decision under sections 45 and 45A (or under those sections as applied by section 46(8)) as to whether or not a proposal to which a report published under section 44(3)(a) 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 the assessed proposal under section 45 and 45A (or under those sections as applied by section 46(8)) and, if those conditions and procedures are amended under section 45C or on an appeal lodged under section 100(3), means those conditions and procedures as so amended;

implementation issue means —

(a) the issue of whether or not the assessed proposal may be implemented; or

(b) the issue of the conditions and procedures, if any, to which the assessed proposal, if implemented, should be subject;

key decision-making authority means a decision-making authority determined by the Minister under section 45(2).

[Section 44A inserted: No. 40 of 2020 s. 28.]

45. Procedure for deciding if assessed proposal may be implemented

(1) This section applies after the Minister has caused a report to be published under section 44(3)(a).

(2) For the purposes of this section the Minister must determine which or whom of the decision-making authorities in relation to the assessed proposal the Minister considers to be a key decision-making authority.

(3) If the key decision-making authority, or one or more of the key decision-making authorities, is or are another Minister or other Ministers, the Minister must consult and, if possible, agree with that Minister or those Ministers on the implementation issues.

(4) If neither the key decision-making authority, nor any of the key decision-making authorities, as the case requires, is another Minister, the Minister must consult and, if possible, agree with that key decision-making authority or those key decision-making authorities on the implementation issues.

(5) If the Minister and the other Minister or Ministers referred to in subsection (3) cannot agree on an implementation issue, the Minister must refer the matter or matters in dispute to the Governor for decision, and the decision of the Governor on that matter or matters is final and without appeal.

(6) If the Minister and the decision-making authority or decision-making authorities referred to in subsection (4) cannot agree on an implementation issue, the Minister must appoint an

appeals committee to consider and report to the Minister on the matter or matters in dispute.

(7) Sections 106, 107, 108, 109 and 110 apply to and in relation to a matter in respect of which the Minister has appointed an appeals committee under subsection (6) as if that matter were the subject of an appeal from a decision of the Minister.

(8) If the implementation agreement or decision is that the assessed proposal may be implemented, or may be implemented subject to implementation conditions, the Minister must within 30 days of the agreement or decision being made —

(a) cause copies of a statement setting out the implementation agreement or decision to be served on —

(i) the Authority; and

(ii) each key decision-making authority and any other decision-making authority to which or whom notice of the Authority's decision to assess the proposal was given under section 38G(1)(b)(iii) or (5); and

(iii) the proponent of the assessed proposal; and

(iv) the person who referred the assessed 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).

(9) Section 45A sets out some kinds of implementation conditions that may be agreed or decided in relation to the assessed proposal, but nothing in that section prevents any other implementation condition from being agreed or decided.

(10) Despite anything in this section —

(a) an implementation issue cannot be agreed or decided under this section during the period of 21 days referred to in section 100(3a)(b); and

(b) if an appeal is lodged under section 100(1)(d) in respect of the report mentioned in subsection (1) —

(i) an implementation issue cannot be agreed or decided under this section while the appeal is pending; and

(ii) if the decision on the appeal is to remit the assessed proposal to the Authority for further assessment or reassessment — an implementation issue cannot be agreed or decided under this section before the report on that further assessment or reassessment has been published under section 44(3)(a).

(11) Subsection (12) applies if —

(a) a statement has been published under subsection (8)(b) in relation to the assessed proposal; and

(b) the Minister is satisfied that there is no reason why the assessed proposal should not be implemented.

(12) As soon as this subsection applies, the Minister may cause to be served on the decision-making authority precluded by section 41 from making a DMA decision an authority in writing permitting a DMA decision to be made.

(13) If the implementation agreement or decision is that the assessed proposal may not be implemented, the Minister must within 30 days of the agreement or decision being made give written notice of the implementation agreement or decision to —

(a) the Authority; and

(b) each key decision-making authority and any other decision-making authority to which or whom notice of

the Authority's decision to assess the proposal was given under section 38G(1)(b)(iii) or (5); and

(c) the proponent of the assessed proposal; and

(d) the person who referred the assessed proposal (if it was not referred by a person referred to in paragraph (b) or (c)).

(14) If notice is given under subsection (13) of an implementation agreement or decision for a significant amendment of an approved proposal, that implementation agreement or decision does not affect the implementation of the approved proposal.

[Section 45 inserted: No. 40 of 2020 s. 28.]

45A. Implementation conditions

(1) The following list sets out things the proponent of the assessed proposal can be required to do under implementation conditions —

(a) substantially commence implementation of the proposal within a specified period or before a specified date;

(b) at the proponent's expense, take environmental protection, abatement or restoration measures on the subject land, or on other land, in order to directly or indirectly offset the impacts of the implementation of the proposal on the environment;

(c) contribute moneys to be used for the purpose of taking environmental protection, abatement or restoration measures on the subject land or other land;

(d) give an environmental undertaking in relation to other land;

(e) arrange for an environmental protection covenant to be given by a specified person other than the proponent in relation to other land;

(f) at the proponent's expense, prepare, implement and adhere to environmental management systems,

environmental management plans and environmental improvement plans;

(g) at the proponent's expense, arrange for audits as to whether or not the implementation conditions have been complied with to be carried out at specified times by a person nominated or approved by the CEO and report to the CEO on the findings of those audits.

(2) In subsection (1) —

other land means land other than the subject land;

specified means specified in an implementation condition;

subject land means the land to which the assessed proposal relates.

(3) If the implementation agreement or decision authorises the assessed proposal to be implemented only if it is implemented in 2 or more stages, the implementation agreement or decision may include implementation conditions specifying requirements in relation to the implementation of a stage of the proposal that must be met to the satisfaction of the CEO before the implementation of the next stage can take place.

(4) An implementation condition may require the proponent to pay fees or charges payable under section 48AA(1) in relation to the assessed proposal.

[Section 45A inserted: No. 40 of 2020 s. 28.]

45B. Implementation of derived proposal

(1) In this section —

section 38E declaration means a declaration under section 38E that a proposal is a derived proposal.

(2) Subject to subsection (3), when the Minister is notified under section 38E(6)(b) of a section 38E declaration, the previous Ministerial statement relating to the derived proposal takes

effect and the Minister must cause written notice of the taking effect of the Ministerial statement to be served on —

(a) the Authority; and

(b) each decision-making authority that received the Ministerial statement under section 45(8)(a)(ii); and

(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 previous Ministerial statement relating 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 and 46A, the conditions and procedures so specified are the implementation conditions relating to the derived proposal.

[Section 45B inserted: No. 40 of 2020 s. 28.]

45C. Amending approved proposals or implementation conditions without inquiry or assessment

(1) The Minister, after receiving a written request from the proponent to do so, may —

(a) approve an amendment to an approved proposal; or

(b) amend implementation conditions relating to an approved proposal; or

(c) approve an amendment to an approved proposal and amend implementation conditions relating to the approved proposal.

(2) The Minister may, by written notice, request the proponent to provide the Minister with additional information about an amendment to which a request under subsection (1) applies to

enable the Minister to decide whether or not to approve or make the requested amendment.

(3) The Minister must not approve or make an amendment requested under subsection (1) if the Minister considers that the requested amendment is a significant amendment.

(4) Whether or not there has been a request under subsection (1), the Minister may amend an approved proposal if the Minister considers that the amendment is of a minor nature and is necessary and desirable in order to correct in the description of the proposal —

(a) a clerical mistake or unintentional error or omission; or

(b) a figure that has been miscalculated; or

(c) a misdescription of any person, thing or property.

(5) Whether or not there has been a request under subsection (1), the Minister may amend implementation conditions relating to an approved proposal if the Minister considers that the amendment is of a minor nature and is necessary and desirable in order to —

(a) standardise the implementation conditions applying to different proposals; or

(b) correct in the implementation conditions —

(i) a clerical mistake or unintentional error or omission; or

(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.

(6) The Minister must cause notice of amendments approved or made under subsection (1), (4) or (5) —

(a) to be given in writing to —

(i) the Authority; and

(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.

(7) If the Minister refuses to approve or make an amendment as requested under subsection (1), the Minister must give written notice of the refusal to the proponent and the proponent may refer the requested amendment to the Authority under section 38(1) as a significant amendment of an approved proposal.

(8) Without limiting this Division, where notice has been given under subsection (7) in relation to a requested amendment of implementation conditions —

(a) the Minister may make a request under section 46(1) whether or not the Minister considers that the implementation conditions, or any of them, should be amended; or

(b) the Minister may agree with any decision-making authority that was consulted under this Act in relation to the existing implementation conditions that the proposed amendment to conditions is a significant amendment that must be referred by the decision-making authority under section 38(4) as a significant proposal.

[Section 45C inserted: No. 40 of 2020 s. 28.]

45D. Division or consolidation of proposals and issue of separate or combined Ministerial statements

(1) Without limiting section 45C, an amendment approved or made under section 45C(1) may comprise or include —

(a) the division of an approved proposal into 2 or more proposals (the ***separate proposals***) and the division of the implementation agreement or decision for the approved proposal into implementation agreements or decisions for each of the separate proposals; or

(b) the consolidation of 2 or more approved proposals into 1 proposal (the ***consolidated proposal***) and the consolidation of the implementation agreements or decisions for the approved proposals to form an implementation agreement or decision for the consolidated proposal.

(2) If subsection (1)(a) applies, the notice given and published under section 45C(6) must be in the form of statements relating to each of the separate proposals and those statements supersede the previous Ministerial statement relating to the approved proposal.

(3) If subsection (1)(b) applies, the notice given and published under section 45C(6) must be in the form of a statement relating to the consolidated proposal and that statement supersedes the previous Ministerial statements relating to the approved proposals.

[Section 45D inserted: No. 40 of 2020 s. 28.]

46. Amending implementation conditions after inquiry

(1) If the Minister considers that the implementation conditions relating to an approved proposal, or any of them, should be amended (whether because of an amendment to the proposal approved under section 45C or for any other reason), the

Minister may request the Authority to inquire into and report on the matter within the period 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 38E(4) 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 amended.

(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 amended; 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 amended as if that question were the question of to what conditions and procedures, if any, the implementation of a proposal should be subjected, and sections 45 and 45A apply to the first-mentioned question accordingly.

(8A) Despite subsection (8), the Minister's obligations under section 45(3) or (4) as applied by subsection (8) do not extend to a decision-making authority unless the Minister considers that the report under subsection (6) recommends an amendment to an implementation condition that would, if made, affect the decision-making functions of that decision-making authority.

(9) A statement under section 45(8) as applied by subsection (8) may amend any of the implementation conditions to which the report under subsection (6) relates.

[(10) deleted]

[Section 46 inserted: No. 54 of 2003 s. 18; amended: No. 40 of 2020 s. 29.]

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(8)(b) 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; and

(ii) each decision-making authority that received the original Ministerial statement under section 45(8)(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.

[Section 46A inserted: No. 54 of 2003 s. 18; amended: No. 40 of 2020 s. 30.]

*[**46B, 46C.** Deleted: No. 40 of 2020 s. 31.]*

47. Duties of proponents after service of Ministerial statement

(1) If a Ministerial statement has been published 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) Subsection (1) does not apply to an implementation condition mentioned in section 45A(1)(a).

(3) In order to enable the CEO to assess compliance with the implementation conditions in a Ministerial statement, the CEO may by written notice given to the proponent —

(a) require the proponent to give the CEO reports and information about the implementation of the proposal to which the statement relates; and

(b) require the proponent to undertake tests, surveys, investigations, monitoring or other work and give the CEO reports and information about the tests, surveys, investigations, monitoring or work.

(4) If, without reasonable excuse, the proponent refuses or fails to comply with a requirement made under subsection (3), the proponent commits an offence.

(5) If a notification has been given under section 45(13) and the proponent does anything to implement the proposal to which the notification relates, the proponent commits an offence.

[Section 47 inserted: No. 40 of 2020 s. 31.]

47A. Duration and withdrawal of Ministerial statement

(1) The Ministerial statement relating to an approved proposal continues to have effect unless it is withdrawn or taken to have been withdrawn under this section.

(2) This subsection applies if —

(a) the Ministerial statement relating to an approved proposal contains a condition mentioned in section 45A(1)(a) (the ***commencement condition***); and

(b) the CEO gives the Minister and the proponent of the proposal written notice that, in the CEO's opinion, the commencement condition has not been complied with.

(3) This subsection applies if the proponent of an approved proposal requests the Minister, in writing, to withdraw the Ministerial statement relating to the proposal and the Minister is satisfied —

(a) that the proposal has been implemented and that the implementation conditions, if any, have been complied with or no longer need to be complied with; or

(b) that the impacts of the implementation of the proposal can be satisfactorily mitigated by way of licensing or some other form of regulatory control under this Act or another written law.

(4) If subsection (2) or (3) applies, the Minister may withdraw the Ministerial statement if the Minister considers that it is appropriate to do so.

(5) If under subsection (4) the Minister withdraws the Ministerial statement relating to an approved proposal, the Minister must cause notice of the withdrawal to be served on —

(a) the Authority and the CEO; and

(b) each decision-making authority that received the Ministerial statement under section 45(8)(a)(ii); and

(c) the proponent of the proposal; and

(d) the person who referred the proposal (if it was not referred by a person referred to in paragraph (b) or (c)).

(6) The Minister must cause notice of the withdrawal to be published as soon as is practicable after it is served under subsection (5).

(7) If the Ministerial statement relating to an approved proposal specifies that it has effect for a specified period, it is taken to have been withdrawn when that period ends.

(8) If a Ministerial statement is withdrawn or taken to have been withdrawn under this section, the statement has no further effect.

[Section 47A inserted: No. 40 of 2020 s. 31.]

48. Control of implementation of proposals

(1) The CEO may monitor the implementation of an approved proposal, or cause it to be monitored, for the purpose of determining whether the implementation conditions relating to the proposal are being complied with.

(2) 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, must report the non-compliance to the Minister.

(3) This subsection applies if, under implementation conditions, the implementation of the approved proposal is subject to requirements made by —

(a) a decision-making authority; or

(b) another public authority with functions or expertise relevant to the proposal.

(4) If subsection (3) applies, the decision-making authority or other public authority may monitor that implementation of the approved proposal, or cause it to be monitored, for the purpose of determining whether the implementation conditions of that kind are being complied with.

(5) If the decision-making authority or other public authority finds that any implementation conditions of that kind is not being complied with, it —

(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, must report the non-compliance to the Minister.

(6) The Minister may exercise one or more of the powers set out in subsection (7) in relation to the approved proposal if —

(a) the Minister receives any relevant report made under subsection (2)(b) or (5)(b); or

(b) the Minister is not satisfied with any relevant monitoring conducted under this section, any relevant exercise of power under this section or any relevant report made under this section.

(7) The powers of the Minister under subsection (6) are as follows —

(a) after making reasonable endeavours to consult the proponent of the approved proposal — power to cause to be served on that proponent a written notice issued by the Minister requiring that proponent —

(i) forthwith to stop the implementation of the proposal; and

(ii) not to resume the implementation of the proposal during a period specified in that notice being a period ending not more than 28 days after the day on which that notice is served;

(b) power to cause to be served on the proponent of the relevant proposal a written notice issued by the Minister requiring that proponent to take the steps specified in the notice within the period so specified for the purpose of —

(i) complying with the relevant implementation condition; or

(ii) preventing, controlling or abating any pollution or environmental harm caused by any non-compliance with the relevant implementation condition;

(c) power to cause the taking of steps necessary for the purpose of —

(i) complying with the relevant implementation condition; or

(ii) preventing, controlling or abating any pollution or environmental harm caused by any non-compliance with the relevant implementation condition;

(d) if the Minister considers that the relevant condition or procedure should be changed — power to make a request under section 46(1).

(8) Subject to section 101(4), the cost of taking any steps referred to in subsection (7)(c) is a debt due to the Crown by the proponent concerned and may be recovered from the proponent by the Minister by action in a court of competent jurisdiction and must, if so recovered, be credited to the Consolidated Account.

(9) A proponent who does not comply with a notice served on the proponent under subsection (7)(a) or (b) commits an offence.

(10) Subsection (9) does not apply to the resumption of the implementation of a proposal before the end of the period specified in a notice under subsection (7)(a)(ii) if the Minister

has served a written notice on the proponent authorising implementation to be resumed.

(11) It is not necessary to publish in the *Gazette* a notice served under subsection (7)(a) or (b) or (10).

[Section 48 inserted: No. 40 of 2020 s. 31.]

Division 2A — Supplementary provisions relating to proposals

[Heading inserted: No. 40 of 2020 s. 32; amended: No. 36 of 2024 s. 15.]

48AA. Fees and charges for referral and assessment of proposals

(1) Without limiting section 123(1) and (2), regulations may be made under section 123(1) prescribing, or providing for the determination of, fees or charges that are payable by proponents in prescribed circumstances in relation to the referral, assessment and implementation of proposals under Division 1 or 2.

(2) Moneys paid as fees and charges under subsection (1) are to be used for the purpose of defraying the costs incurred by the Department in receiving and assessing proposals and monitoring the implementation of proposals.

(3) To the extent that regulations to which subsection (1) applies prescribe or provide for the determination of a fee or charge that includes an amount that is a tax, the regulations may impose the tax.

(4) Nothing in this section is to be taken as limiting the operation of the *Interpretation Act 1984* section 45A.

[Section 48AA inserted: No. 40 of 2020 s. 32; amended: No. 41 of 2020 s. 4.]

48AB. Reporting on matters relating to proposals

(1) Regulations may require the Authority to report to decision-making authorities on matters relating to the referral, assessment or implementation of a proposal under Division 1 or 2.

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

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

[Section 48AB inserted: No. 36 of 2024 s. 16.]

Division 3 — Assessment of schemes

[Heading inserted: No. 23 of 1996 s. 20.]

48AAA. Certain schemes not required to be assessed

(1) In this section —

relevant scheme means a scheme of a kind referred to in section 3(1) the definition of ***scheme*** paragraph (d), (f), (g) or (i).

(2) The Governor may, on the recommendation of the Authority, make regulations prescribing classes of relevant schemes that are not required to be assessed under this Division.

(3) The Authority must not make a recommendation under subsection (2) unless the Authority is satisfied that the classes of relevant schemes to be prescribed will not have a significant effect on the environment.

[Section 48AAA inserted: No. 26 of 2020 s. 56; amended: No. 45 of 2020 s. 103.]

*[**48AAB.** Deleted: No. 34 of 2023 s. 26.]*

48A. Authority to decide whether or not schemes to be assessed

(1) When a scheme is referred to the Authority under the relevant scheme Act, the Authority shall, if it considers that the scheme —

(a) should not be assessed by it under this Division, so inform in writing the responsible authority within 28 days after that referral, but may nevertheless give advice and make recommendations to the responsible authority and any other relevant person on the environmental issues raised by the scheme; or

(b) should be assessed by it under this Division —

(i) so inform in writing the responsible authority within 28 days after that referral and send within 60 days after that referral any instructions issued by the Authority under section 48C(1)(a) concerning the scope and content of an environmental review of the scheme; and

(ii) assess under this Division changes in reservation and zoning proposed by the scheme;

or

(c) is by its nature incapable of being made environmentally acceptable, so inform in writing the responsible authority and the Minister within 28 days after that referral.

(2) On being informed under subsection (1)(c), the Minister may —

(a) under section 48E direct the Authority to assess the relevant scheme; or

(b) with the agreement of the responsible Minister, advise —

(i) the Authority; and

(ii) the responsible authority,

[(iii) deleted]

that the responsible authority cannot be informed under subsection (1)(a) and that a statement cannot be delivered and published under section 48F(2).

(3) If the Minister and the responsible Minister cannot agree on whether or not advice should be given under subsection (2)(b), section 48J applies.

[Section 48A inserted: No. 23 of 1996 s. 20; amended: No. 40 of 2020 s. 33.]

48B. Authority to keep public records of schemes referred to it

(1) The Authority must keep a public record of each scheme referred to it under the relevant scheme Act and shall in that public record set out —

(a) whether or not that scheme is to be assessed under this Division; and

(b) if that scheme is to be assessed under this Division, any instructions issued by the Authority under section 48C(1)(a) concerning the scope and content of an environmental review of that scheme.

[(2) deleted]

[Section 48B inserted: No. 23 of 1996 s. 20; amended: No. 40 of 2020 s. 35.]

48C. Authority's powers for assessing referred schemes

(1) The Authority may, for the purpose of assessing under this Division a scheme referred to it under the relevant scheme Act —

(a) require the responsible authority, if it wishes that scheme to proceed, to undertake an environmental review of that scheme and report on it to the Authority, and issue to the responsible authority instructions

concerning the scope and content of that environmental review; and

(aa) require the responsible authority, if it wishes that scheme to proceed, to provide to the Authority a contaminated sites auditor's report on that scheme, which complies with any relevant regulations made under the *Contaminated Sites Act 2003*; and

(b) require any person to provide it with such information as is specified in that requirement; and

(c) make such investigations and inquiries as it thinks fit; and

(d) consider existing reservations and zonings if the Authority is of the opinion that there is scientific or technical information that a proposal framed in accordance with one or more of those reservations or zonings is likely, if implemented, to have a significant effect on the environment.

(2) A responsible authority or person of which or whom a requirement is made under subsection (1) shall comply with that requirement.

(3) Subject to any direction given under section 48E, the Authority shall determine the form, timing and procedure of any environmental review required to be undertaken under subsection (1)(a).

(3A) The Authority may cause to be published —

(a) any report made in compliance with a requirement made under subsection (1)(a) or (aa); or

(b) any information provided in compliance with a requirement made under subsection (1)(b).

(4) When publishing a report or information under subsection (3A) the Authority may —

(a) declare the report or information to be available for public review; and

(b) specify the period within which, the extent to which and the manner in which public authorities or persons may make submissions to the Authority in respect of the report or information.

(5) When any report or information is declared to be available for public review under subsection (4)(a) or made available for public review under the relevant scheme Act —

(a) the responsible authority shall —

(i) at its own expense, publish notice that the report or information is available for public review; and

(ii) provide copies of the report or information to such persons at such places and times and at such prices as are prescribed;

and

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

(6) Despite subsections (3) to (5), if a scheme Act provides for the timing and procedure of the public review of a scheme —

(a) the responsible authority shall incorporate in the report on the scheme any environmental review undertaken in compliance with a requirement made under subsection (1)(a); and

(b) the provisions of the scheme Act relating to that public review shall apply to the scheme with that environmental review incorporated in that report and subsections (3) to (5) shall not so apply.

(7) In subsection (6) —

public review, in relation to a scheme which is —

[(a), (aa) deleted]

(ab) prepared under the *Hope Valley-Wattleup Redevelopment Act 2000*, means the procedure referred to in sections 13 and 14 of that Act, or in section 17 of that Act as read with those sections; or

(b) prepared under the *Swan Valley Planning Act 2020*, means the procedure referred to in sections 23 and 25(1) of that Act; or

(c) a region planning scheme, or an amendment to a region planning scheme, means the procedure referred to in the *Planning and Development Act 2005* section 43; or

(d) a local planning scheme, or an amendment to a local planning scheme, means the procedure referred to in sections 84 and 87(1) of the *Planning and Development Act 2005*; or

(e) a State planning policy, or an amendment to a State planning policy, to which regulations made under the *Planning and Development Act 2005* section 28(3)(a) apply, means the procedure prescribed under section 28(3)(b)(ii) of that Act; or

(ea) a planning code, or an amendment to a planning code, to which regulations made under the *Planning and Development Act 2005* section 32B(3)(a) apply, means the procedure prescribed under section 32B(3)(b)(ii) of that Act; or

(f) an improvement scheme, or an amendment to an improvement scheme, means the procedure referred to in the *Planning and Development Act 2005* sections 84 and 87(1) as read with section 122B(1) of that Act; or

(g) prepared under the *Metropolitan Redevelopment Authority Act 2011*, means a procedure referred to in

sections 43 and 44 of that Act, or in section 49 of that Act as read with those sections.

[Section 48C inserted: No. 23 of 1996 s. 20; amended: No. 38 of 1999 s. 71(3); No. 77 of 2000 s. 37(3); No. 25 of 2001 s. 69; No. 60 of 2003 s. 100; No. 38 of 2005 s. 15; No. 28 of 2010 s. 26; No. 45 of 2011 s. 137(7); No. 40 of 2020 s. 36; No. 45 of 2020 s. 104; No. 26 of 2020 s. 57 and 70; No. 34 of 2023 s. 27.]

48D. Authority to report to Minister on schemes

(1) Subject to subsection (2), the Authority shall, within a period of —

(a) 60 days after the end of the period of public review under the relevant scheme Act of a scheme referred to the Authority under that scheme Act; or

(b) 30 days after receiving a response to environmental issues raised in submissions made within the period of public review under the relevant scheme Act, but not more than 72 days after the end of the period referred to in paragraph (a),

whichever is the later, or such longer period as the Minister allows, report to the Minister on —

(c) the environmental factors relevant to that scheme; and

(d) the Authority's recommendations as to whether or not that scheme may be implemented and, if it recommends that the scheme be implemented, as to the conditions, if any, to which that scheme should be subject.

(2) The Minister may, after consulting the Authority in respect of a scheme and with the agreement of the responsible Minister, direct the Authority to report to the Minister on the matters referred to in subsection (1)(c) and (d) in relation to the scheme,

and to make such recommendations in that report as the Authority thinks fit —

(a) within such period commencing on the day on which the scheme was referred to the Authority under the relevant scheme Act or a direction was given to the Authority under section 48E(1), as the case requires; or

(b) before such date,

as the Minister specifies in that direction, and the Authority shall comply with that direction.

(3) The Minister shall, as soon as the Minister is reasonably able to do so after receiving a report and any recommendations made under subsection (1) or in compliance with a direction given under subsection (2), simultaneously cause —

(a) that report and any such recommendations to be published; and

(b) copies of that report and any such recommendations to be given to —

(i) the responsible Minister; and

(ii) any other Minister appearing to the Minister to be likely to be concerned in the outcome of the scheme to which that report relates; and

(iii) the responsible authority in respect of the scheme to which that report relates.

[Section 48D inserted: No. 23 of 1996 s. 20; amended: No. 40 of 2020 s. 37 and 111(1).]

48E. Minister may direct Authority to assess etc. referred schemes

(1) Having consulted the Authority and obtained the agreement of the responsible Minister, the Minister may —

(a) if the Authority decides not to assess a scheme referred to it under the relevant scheme Act, after that decision

but before the period of public review of that scheme begins; or

(b) if the Authority decides to assess a scheme referred to it under the relevant scheme Act, after that assessment has begun but before that scheme is finally approved,

direct the Authority to assess that scheme under this Division, or to reassess that scheme under this Division more fully or more publicly or both, as the case requires, in accordance with that direction, and the Authority shall comply with that direction.

(2) Sections 48A, 48B, 48C and 48D apply to the assessment or reassessment under this Division of a scheme under a direction given under subsection (1) as if that direction were a referral of the scheme under the relevant scheme Act.

[Section 48E inserted: No. 23 of 1996 s. 20.]

*[**48F, 48G.** Deleted: No. 40 of 2020 s. 38.]*

Division 4 — Implementation of schemes

[Heading inserted: No. 23 of 1996 s. 20.]

48EA. Terms used

In this Division —

implementation conditions means the conditions, if any, agreed or decided in relation to a scheme under section 48F or 48J(d);

implementation issue means —

(a) whether or not the scheme may be implemented; and

(b) the conditions, if any, to which the scheme, if implemented, should be subject;

scheme means the scheme to which a report published under section 48D(3) relates.

[Section 48EA inserted: No. 40 of 2020 s. 39.]

48F. Procedure for agreeing or deciding on conditions to which schemes are to be subject

(1) After causing a report to be published under section 48D(3) the Minister must consult and, if possible, agree with the responsible Minister on the implementation issues.

(2) If an agreement is made under this section, or a decision is made under section 48J(d), that the scheme may be implemented and as to the conditions, if any, to which the scheme should be subject, the Minister must —

(a) cause copies of a statement which sets out the implementation issues agreed or decided on to be delivered to —

(i) the Authority; and

(ii) the responsible Minister; and

(iii) any other Minister to whom a copy of the report has been given under section 48D(3)(b)(ii) and the responsible authority;

and

(b) cause that statement to be published as soon after the delivery referred to in paragraph (a) as is practicable.

(3) Despite anything in this section or section 48J —

(a) an agreement or decision on any of the implementation issues relating to the scheme cannot be made under this section or section 48J during the period of 21 days referred to in section 100(3a)(c); and

(b) if an appeal is lodged under section 100(1)(e) in respect of the report, an agreement or decision on any of the implementation issues relating to the scheme cannot be made under this section or section 48J while the appeal is pending except for the purposes of section 101(2d)(a).

[Section 48F inserted: No. 40 of 2020 s. 39.]

48G. Review of conditions in statements published under section 48F

(1) A responsible authority may, after the publication of a statement under section 48F(2)(b) that sets out implementation conditions and before the responsible Minister or the Governor grants final approval of the scheme to which that statement relates, request the responsible Minister to initiate a review of any implementation conditions.

(2) If the responsible Minister agrees to a request under subsection (1), the responsible Minister and the Minister must consult each other and attempt to agree on whether or not the implementation conditions should be altered and, if so, to what extent.

(3) If implementation conditions are altered by agreement under this section or a decision under section 48J(e), the Minister must —

(a) cause copies of a statement setting out those conditions as altered to be delivered to —

(i) the Authority; and

(ii) the responsible Minister; and

(iii) the responsible authority;

and

(b) cause that statement to be published as soon after the service referred to in paragraph (a) as is practicable.

(4) Conditions altered by agreement under this section or a decision under section 48J(e) are taken for the purposes of this Act to have been agreed under section 48F or decided under section 48J.

[Section 48G inserted: No. 40 of 2020 s. 39.]

48H. Control of implementation of assessed schemes

(1) A responsible authority shall monitor or cause to be monitored the implementation of its assessed schemes and of proposals under its assessed schemes insofar as those assessed schemes and proposals are subject to any implementation condition (referred to in this section as the ***condition***) for the purpose of determining whether or not the condition has been or is being complied with.

(2) If the responsible authority finds under subsection (1) that the condition has not been or is not being complied with, it shall —

(a) exercise such powers, if any, in respect of that non-compliance as are conferred on it by any written law as it thinks fit for the purpose of securing compliance with the condition; and

(b) report that non-compliance to the responsible Minister.

(3) If non-compliance with the condition is reported to the responsible Minister under subsection (2)(b) or otherwise becomes known to the responsible Minister, the responsible Minister shall —

(a) advise the Minister of that non-compliance; and

(b) cause such steps to be taken as are necessary to achieve compliance with the condition.

(4) If the Minister is not satisfied with any monitoring conducted, exercise of powers, report or advice made or received, or steps taken, under this section, the Minister may, after making reasonable endeavours to consult the responsible Minister, give the responsible Minister advice recommending the steps that the Minister considers to be necessary to achieve compliance with the condition.

[Section 48H inserted: No. 23 of 1996 s. 20; amended: No. 40 of 2020 s. 40 and 111(1).]

48I. Which proposals under assessed schemes to be referred to Authority

(1) Despite section 38, when a proposal under an assessed scheme that appears likely, if implemented, to have a significant effect on the environment comes to the notice of the responsible authority in respect of the assessed scheme, that responsible authority shall determine whether or not —

(a) the environmental issues raised by that proposal were assessed in any assessment of the assessed scheme under this Division; and

(b) that proposal complies with the assessed scheme and any conditions to which the assessed scheme is subject.

(2) If the responsible authority determines under subsection (1) that —

(a) the environmental issues raised by the proposal were assessed in any assessment of the assessed scheme under this Division; and

(b) the proposal complies with the assessed scheme and any conditions to which the assessed scheme is subject,

the responsible authority need not refer the proposal to the Authority under section 38.

(3) If the responsible authority determines under subsection (1) that —

(a) one or more of the environmental issues raised by the proposal was or were not assessed in any assessment of the assessed scheme under this Division; or

(b) the proposal does not comply with the assessed scheme or one or more of the conditions to which the assessed scheme is subject,

the responsible authority shall —

(c) in its capacity as a decision-making authority refer the proposal to the Authority under section 38; or

(d) refuse to approve the implementation of the proposal.

[Section 48I inserted: No. 23 of 1996 s. 20.]

48J. Disputes between Minister and responsible Ministers, Governor to decide

If the Minister and a responsible Minister cannot agree —

(a) on whether or not the Minister should give advice under section 48A(2)(b) in relation to a scheme; or

(b) under the relevant scheme Act on whether or not an environmental review has been undertaken in accordance with the relevant instructions issued under section 48C(1)(a); or

(c) on whether or not a direction should be given to the Authority under section 48D(2) or 48E(1) or, if a direction should be so given, what its content should be; or

(d) on an implementation issue; or

(e) on whether or not implementation conditions should be altered and, if so, to what extent,

the Minister and the responsible Minister shall refer the matter in dispute to the Governor and the decision of the Governor on that matter shall be final and without appeal.

[Section 48J inserted: No. 23 of 1996 s. 20; amended: No. 40 of 2020 s. 41.]

Part V — Environmental regulation

[Heading inserted: No. 54 of 2003 s. 35.]

Division 1 — Pollution and environmental harm offences

[Heading inserted: No. 54 of 2003 s. 35.]

49. Causing pollution and unreasonable emissions

(1) In this section —

unreasonable emission means an emission or transmission of noise, odour or electromagnetic radiation which unreasonably interferes with the health, welfare, convenience, comfort or amenity of any person.

(2) A person who intentionally or with criminal negligence —

(a) causes pollution; or

(b) allows pollution to be caused,

commits an offence.

(3) A person who causes pollution or allows pollution to be caused commits an offence.

(4) A person who intentionally or with criminal negligence —

(a) emits an unreasonable emission from any premises; or

(b) causes an unreasonable emission to be emitted from any premises,

commits an offence.

(5) A person who —

(a) emits an unreasonable emission from any premises; or

(b) causes an unreasonable emission to be emitted from any premises,

commits an offence.

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

(7) A person charged with committing an offence against subsection (4) may be convicted of an offence against subsection (5) which is established by the evidence.

[Section 49 inserted: No. 14 of 1998 s. 6; amended: No. 54 of 2003 s. 36.]

49A. Dumping waste

(1) In this section —

place includes water, a vehicle and a receptacle.

(2) A person who discharges or abandons, or causes or allows to be discharged or abandoned, any solid or liquid waste in water to which the public has access commits an offence.

(3) A person who discharges or abandons, or causes or allows to be discharged or abandoned, any solid or liquid waste on or in any place, other than water to which the public has access, commits an offence.

(4) It is a defence to a charge under subsection (3) for a person to show that the waste was discharged or abandoned in the place concerned with the consent of the person who controlled and managed that place.

(5) A person charged with committing an offence against subsection (2) or (3) may be convicted of an offence against the *Litter Act 1979* section 23 which is established by the evidence.

[Section 49A inserted: No. 48 of 2010 s. 4.]

50. Discharging waste in circumstances likely to cause pollution

(1) A person who intentionally or with criminal negligence —

(a) causes waste to be placed; or

(b) allows waste to be placed,

in any position from which the waste —

(c) could reasonably be expected to gain access to any portion of the environment; and

(d) would in so gaining access be likely to result in pollution,

commits an offence.

(2) A person who causes or allows waste to be placed in any position from which the waste —

(a) could reasonably be expected to gain access to any portion of the environment; and

(b) would in so gaining access be likely to result in pollution,

commits an offence.

(3) A person charged with committing an offence against subsection (1) may be convicted of an offence against subsection (2) or section 49A(2) or (3) which is established by the evidence.

(4) A person charged with committing an offence against subsection (2) may be convicted of an offence against section 49A(2) or (3) which is established by the evidence.

[Section 50 inserted: No. 14 of 1998 s. 6; amended: No. 48 of 2010 s. 5.]

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.

[Section 50A inserted: No. 54 of 2003 s. 37.]

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.

[Section 50B inserted: No. 54 of 2003 s. 37.]

50C. Court may find accused 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.

[Section 50C inserted: No. 54 of 2003 s. 37.]

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; or

(b) causing or allowing the nature or volume of anything discharged, emitted or transmitted to be changed; or

(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.

[Section 50D inserted: No. 54 of 2003 s. 37.]

51. Occupiers of premises, duties as to emissions

The occupier of any premises who does not —

(a) comply with any prescribed standard for an emission; and

(b) take all reasonable and practicable measures to prevent or minimise emissions,

from those premises commits an offence.

[Section 51 amended: No. 54 of 2003 s. 38.]

Division 2 — Clearing of native vegetation

[Heading inserted: No. 54 of 2003 s. 110(1).]

51A. Terms used

In this Division —

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

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

clearing means —

(a) the killing or destruction of; or

(b) the removal of; or

(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; or

(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;

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

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

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; and

(b) in relation to land that the Crown has lawfully agreed to alienate, the person who is entitled to the benefit of the agreement; and

(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;

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

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

soil conservation notice has the same meaning as it has in the SLC Act Part V.

[Section 51A inserted: No. 54 of 2003 s. 110(1); amended: No. 40 of 2020 s. 43.]

51B. Declaration of environmentally sensitive areas by regulation

(1) Regulations may declare as an environmentally sensitive area for the purposes of this Part —

(a) an area of the State specified in the regulations; or

(b) an area of the State of a class specified in the regulations.

(2) Before regulations are made declaring an area of the State as an environmentally sensitive area for the purposes of this Part —

(a) the CEO must, in a prescribed manner, notify each owner or occupier of land in that area of the State of the proposed regulations and invite comments about the proposed regulations to be made within the period specified in the notification; and

(b) the Minister must take into account any comments about the proposed regulations made by an owner or occupier of land in that area of the State pursuant to an invitation under paragraph (a).

(3) Subsection (1) does not apply to regulations proposing to declare an area of the State as an environmentally sensitive area if a declaration of that area as an environmentally sensitive area already has effect under subsection (1).

(4) The CEO must notify the agency (as defined in the *Public Sector Management Act 1994* section 3(1)) principally assisting the Minister administering the *Transfer of Land Act 1893* in its administration of the declaration or amendment of an environmentally sensitive area with a view to that agency including information as to the environmentally sensitive area in information disseminated by it as to property interests in land.

[Section 51B inserted: No. 40 of 2020 s. 44.]

51C. Unauthorised clearing of native vegetation

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

(a) the clearing is done in accordance with a clearing permit; or

(b) the clearing is of a kind set out in Schedule 6; or

(c) the clearing is of a kind prescribed for the purposes of this paragraph and is not done in an environmentally sensitive area; or

(d) the clearing is done after the person has received notice under section 51DA(5) that the CEO has decided that the person should not be required to obtain a clearing permit for the clearing.

[Section 51C inserted: No. 40 of 2020 s. 44.]

51D. Section 51C(a) does not apply to certain land

(1) In this section —

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.

(2) Section 51C(a) does not apply to clearing on land the subject of an agreement to reserve unless —

(a) the clearing permit was granted with the written approval of the Commissioner; or

(b) the clearing is done with the written approval of the Commissioner.

(3) Section 51C(a) does not apply to clearing —

(a) on land the subject of a conservation covenant; or

(b) on land the subject of an environmental protection covenant; or

(c) in contravention of a soil conservation notice.

[Section 51D inserted: No. 40 of 2020 s. 44.]

51DA. Referral of proposed clearing to CEO for decision on whether a clearing permit should be obtained

(1) This section applies to clearing unless —

(a) it is on land the subject of an agreement to reserve; or

(b) it is on land the subject of a conservation covenant; or

(c) it is on land the subject of an environmental protection covenant.

(2) A person who proposes to do clearing to which this section applies (the ***referrer***) may refer the proposed clearing to the CEO in the form and in the manner approved by the CEO.

(3) The CEO must consider proposed clearing referred under subsection (2) and decide whether or not the referrer should be required to obtain a clearing permit for the proposed clearing.

(4) In making a decision under subsection (3) the CEO must have regard to —

(a) whether the area proposed to be cleared (the ***area***) is small relative to the total remaining vegetation —

(i) within the region in which the area is situated; or

(ii) of the ecological community of which the vegetation proposed to be cleared forms part;

and

(b) whether there are any known or likely significant environmental values within the area; and

(c) whether the state of scientific knowledge about vegetation within the region in which the area is situated is adequate; and

(d) whether the issues that would arise as a result of the proposed clearing are likely to require conditions to manage or mitigate effects on the environment.

(5) The CEO must give the referrer notice in writing of a decision made by the CEO under subsection (3).

(6) If the CEO considers that the proposed clearing would contravene a soil conservation notice, no decision is to be made under subsection (3) and the CEO must give the referrer notice in writing that the proposed clearing cannot be done.

(7) The CEO must publish —

(a) the referral of proposed clearing under subsection (2); and

(b) the notice given under subsection (5) or (6).

(8) The referrer may, in writing, request the CEO to treat the referral of proposed clearing under subsection (2) as an application for a clearing permit under section 51E(1) if the referrer —

(a) receives notice under subsection (5) that the CEO has decided that the referrer should be required to obtain a clearing permit for the proposed clearing; or

(b) does not receive any notice under subsection (5) or (6) within the period of 21 days after referring the proposed clearing.

(9) If a request is made under subsection (8), the referral may be dealt with under section 51E as an application that complies with section 51E(1) and (2) if —

(a) the referral was made in the form and manner mentioned in subsection (2); and

(b) the referral met the requirements set out in section 51E(1)(b) and (d) and (2); and

(c) the request is accompanied by the fee referred to in section 51E(1)(c).

[Section 51DA inserted: No. 40 of 2020 s. 44.]

51E. How applications for clearing permits are made and dealt with

(1) An application for a clearing permit must —

(a) be made in the form and in the manner approved by the CEO; and

(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;

and

(c) be accompanied by the fee prescribed by or determined under the regulations; and

(d) contain or be accompanied by any information required as indicated in the form or in material accompanying the form.

(1A) If the CEO requires further information to determine the application, the CEO may, by written notice given to the applicant, require the applicant to give the CEO further specified information within a specified time.

(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 does not comply with subsections (1) and (2), or further information is not provided in accordance with subsection (1A), the CEO must decline to deal with the application and advise the applicant accordingly.

(4) If, under subsection (3), the CEO declines to deal with the application, the CEO does not have to perform any function under any of subsections (4A) to (12) in relation to the application.

(4A) The CEO must invite comments on the application within a period specified by the CEO from 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.

(4B) The CEO must publish —

(a) the application; and

(b) the information mentioned in subsection (1)(d).

(4C) When publishing the application and information under subsection (4B) the CEO must —

(a) invite any person who wishes to comment on the application and information to do so; and

(b) specify the period within which comments can be made.

(5) The CEO must, subject to this Division —

(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.

(5A) In determining whether to grant a clearing permit and the conditions to which the clearing permit is to be subject, the CEO must take into account any comments made pursuant to an invitation under subsection (4A) or (4C) in respect of the application.

(6) The CEO must 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; and

(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; and

(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.

(10A) The CEO must publish notice of —

(a) the grant of a clearing permit; or

(b) a refusal to grant a clearing permit.

(11) A reference in subsection (5), (5A), (6), (7)(a) or (10A) 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).

[Section 51E inserted: No. 54 of 2003 s. 110(1); amended: No. 40 of 2020 s. 45.]

51F. Decisions about clearing related to proposals

(1) In this section —

clearing decision means —

(a) a decision under section 51DA(3) as to whether or not a clearing permit is needed for proposed clearing; or

(b) a decision under section 51E(5) to grant or refuse to grant a clearing permit for proposed clearing.

(2) For the purposes of this section, proposed clearing is related to a proposal if the clearing —

(a) is part of the proposal; or

(b) is otherwise connected or associated with the proposal in such a way that the clearing would not need to be done if the implementation of the proposal did not proceed.

(3) Despite subsection (2), clearing that is proposed so that tests, surveys, investigations or other work —

(a) can be done to comply with a requirement made under section 40(2)(a), (aa) or (b); or

(b) can be done under section 40(2a),

for the purposes of assessing a referred proposal is not related to the referred proposal for the purposes of this section.

[(4) deleted]

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

(6) Subsection (5) does not apply if the proposed clearing is for the purpose of doing minor or preliminary work to which the Authority has consented under section 41A(3).

(7) If a decision-making authority makes a decision that has the effect of preventing the implementation of a proposal to which proposed clearing is related, the CEO does not have to make a clearing decision concerning the proposed clearing while the decision-making authority's decision has effect.

[Section 51F inserted: No. 40 of 2020 s. 46; amended: No. 36 of 2024 s. 17.]

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.

[Section 51G inserted: No. 54 of 2003 s. 110(1).]

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 directly or indirectly 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.

[Section 51H inserted: No. 54 of 2003 s. 110(1); amended: No. 40 of 2020 s. 47.]

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 other land in order to directly or indirectly offset the loss of the cleared vegetation;

(c) contribute moneys to be used for the purpose of establishing or maintaining vegetation on other land;

(ca) give an environmental undertaking in relation to specified other land;

(cb) arrange for an environmental protection covenant to be given by a specified person other than the permit holder in relation to specified other land;

(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.

(2A) If a condition of a clearing permit requires the holder of the permit to give or arrange the giving of an environmental undertaking as referred to in subsection (2)(ca) or (cb), the condition can require that the holder of the permit not cause or allow clearing on any land on which clearing is authorised by the permit until the environmental undertaking is given.

(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;

give includes enter into;

other land means land other than land cleared under the clearing permit;

specified means specified by the CEO in the clearing permit concerned.

[Section 51I inserted: No. 54 of 2003 s. 110(1); amended: No. 40 of 2020 s. 48.]

51J. Contravening 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)(ca), a reference in this Division to a

contravention of a condition includes a reference to a contravention of the environmental undertaking given or entered into by the permit holder.

[Section 51J inserted: No. 54 of 2003 s. 110(1); amended: No. 40 of 2020 s. 49.]

51K. Amending clearing permit

(1) The CEO may amend a clearing permit by —

(a) removing or varying any condition to which the clearing permit is subject; or

(b) subjecting the clearing permit to a new condition; or

(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), (ca) or (cb) applies; or

(ca) in the case of a purpose permit, adding, deleting, modifying or redescribing a purpose for which clearing may be done under the permit; or

(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; or

(e) correcting in the clearing permit —

(i) a clerical mistake or unintentional error or omission; or

(ii) a figure which has been miscalculated; or

(iii) the misdescription of any person, thing, area, property or activity;

or

(f) making an administrative change to the format of the clearing permit which does not alter the obligations of the permit holder; or

(g) amending the clearing permit in conformity with an approved policy or with an exemption conferred under this Act; or

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

(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 —

(a) on application by the holder of the permit; or

(b) on the initiative of the CEO.

[Section 51K inserted: No. 54 of 2003 s. 110(1); amended: No. 40 of 2020 s. 50; No. 36 of 2024 s. 18.]

51KA. Application to amend clearing permit

(1) An application under section 51K(2)(a) for an amendment to a clearing permit must —

(a) be made in the manner and form approved by the CEO; and

(b) be accompanied by the fee prescribed by or determined under the regulations; and

(c) contain or be accompanied by any information required as indicated in the form or in material accompanying the form.

(2) If the CEO requires further information to determine the application, the CEO may, by written notice given to the applicant, require the applicant to give the CEO further specified information within a specified time.

(3) If an application for an amendment to a clearing permit does not comply with subsection (1), or further information is not

provided in accordance with subsection (2), the CEO must decline to deal with the application and advise the applicant accordingly.

(4) On an application under section 51K(2)(a) for an amendment to a clearing permit the CEO must, subject to this Division —

(a) amend the clearing permit; or

(b) refuse to amend the clearing permit.

(5) The CEO must give the applicant written notice of the following actions under this section—

(a) an amendment of a clearing permit;

(b) a refusal to amend a clearing permit.

(6) Without limiting subsection (5)(a), notice of an amendment can be given in the form of a revised clearing permit.

(7) The CEO must publish notice of a decision under this section to —

(a) amend a clearing permit; or

(b) refuse to amend a clearing permit.

[Section 51KA inserted: No. 40 of 2020 s. 51.]

51KB. Amendments to clearing permits related to proposals

(1) For the purposes of this section, an amendment of a clearing permit (a ***proposed amendment***) is related to a proposal if the proposed amendment —

(a) concerns clearing, or proposed clearing, that is part of the proposal; or

(b) is otherwise connected or associated with the proposal in such a way that the proposed amendment would not need to be made if the implementation of the proposal did not proceed.

[(2) deleted]

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

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

(4) If a decision-making authority makes a decision that has the effect of preventing the implementation of a proposal to which a proposed amendment is related, the CEO does not have to make a decision as to the proposed amendment while the decision-making authority's decision has effect.

[Section 51KB inserted: No. 40 of 2020 s. 51; amended: No. 36 of 2024 s. 19.]

51L. Revoking or suspending 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 contravention of any of the conditions to which the clearing permit is subject; or

(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; or

(c) information contained in or supporting the application was false or misleading in a material respect.

[(d) deleted]

[Section 51L inserted: No. 54 of 2003 s. 110(1); amended: No. 40 of 2020 s. 52.]

51M. Procedure for CEO when amending, revoking or suspending clearing permit

(1) This section applies to the amendment of a clearing permit under section 51K(2)(b), or the revocation or suspension of a clearing permit under section 51L(1).

(2) Before amending, revoking or suspending a clearing permit (the ***proposed action***) the CEO must give the holder of the permit a written notice under this subsection.

(3) The notice must —

(a) state details of the proposed action; and

(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 advises the CEO in writing that the holder does not intend to make any representations or any further representations; or

(b) if such advice is not given, after the end of the period stated in the notice within which representations may be made.

(6) The CEO must 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) Subsections (1) to (7) do not apply to anything done by the CEO under section 110(1) to give effect to a decision of the Minister under section 107(2) or 109(3) on an appeal.

[(9) deleted]

(10) The CEO must 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.

(12) The CEO must publish notice of the amendment, revocation or suspension of a clearing permit.

[Section 51M inserted: No. 54 of 2003 s. 110(1); amended: No. 40 of 2020 s. 53.]

51MA. Surrendering clearing permit

(1) The holder of a clearing permit may apply to the CEO to surrender the permit.

(2) An application to surrender a clearing permit must —

(a) be made in the form and in the manner approved by the CEO; and

(b) contain or be accompanied by any information required as indicated in the form or in material accompanying the form; and

(c) be accompanied by the fee prescribed by or determined under the regulations.

(3) If the CEO requires further information to determine the application, the CEO may, by written notice given to the applicant, require the applicant to give the CEO further specified information within a specified time.

(4) If the application does not comply with subsection (2), or further information is not provided in accordance with subsection (3), the CEO must decline to deal with the application and advise the applicant accordingly.

(5) If, under subsection (4), the CEO declines to deal with the application, the CEO does not have to perform any function under subsections (6) to (10) in relation to the application.

(6) The CEO must publish the application.

(7) The CEO must consider the application and must —

(a) accept the surrender; or

(b) if not satisfied that the conditions of the clearing permit have been complied with, refuse to accept the surrender.

(8) The CEO must give the holder of the clearing permit written notice of the CEO's decision on the application.

(9) If the CEO accepts the surrender the clearing permit ceases to be in force when the notice under subsection (8) is given.

(10) The CEO must publish notice of —

(a) acceptance of the surrender; or

(b) refusal to accept the surrender.

[Section 51MA inserted: No. 40 of 2020 s. 54.]

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.

[Section 51N inserted: No. 54 of 2003 s. 110(1).]

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.

(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 under section 51Q.

(4) In considering a clearing matter the CEO shall have regard to any development approval, planning instrument, or other matter, that the CEO considers relevant.

[Section 51O inserted: No. 54 of 2003 s. 110(1); amended: No. 38 of 2005 s. 15; No. 40 of 2020 s. 55.]

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.

(4) Without limiting section 51F(5) or 51KB(3), subsection (3) does not authorise the imposition of a condition that is contrary to, or not in accordance with, a Ministerial statement.

[Section 51P inserted: No. 54 of 2003 s. 110(1); amended: No. 40 of 2020 s. 56.]

51Q. CEO to keep a record of clearing permits and related matters

The CEO must keep a public record of —

(a) such particulars of the following as are prescribed —

(i) applications for clearing permits and amendments of clearing permits;

(ii) clearing permits and amendments of clearing permits;

(iii) the surrender, suspension and revocation of clearing permits;

(iv) undertakings mentioned in section 51E(9);

(v) notifications received under section 51N(1);

(vi) environmental protection covenants;

and

(b) such other information and documents relating to clearing permits as are prescribed.

[Section 51Q inserted: No. 40 of 2020 s. 57.]

51R. Evidentiary matters

[(1), (2) deleted]

(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 prosecution notice 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; and

(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.

[Section 51R inserted: No. 54 of 2003 s. 110(1); amended: No. 84 of 2004 s. 80; No. 40 of 2020 s. 58.]

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; or

(b) inducing the contravention, whether by threats or promises or otherwise; or

(c) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(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; or

(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.

[Section 51S inserted: No. 54 of 2003 s. 110(1).]

51T. Other laws as to clearing vegetation not affected by this Division

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.

[Section 51T inserted: No. 54 of 2003 s. 110(1).]

Division 3 — Prescribed premises, works approvals and licences

[Heading inserted: No. 54 of 2003 s. 39.]

52. Changing premises to become prescribed premises requires approval

The occupier of any premises who carries out any work on or in relation to the premises which causes the premises to become, or to become capable of being, prescribed premises commits an offence unless he does so in accordance with a works approval.

[Section 52 amended: No. 54 of 2003 s. 70.]

53. Prescribed premises, restrictions as to changes to etc.

(1) Subject to this Act, the occupier of any prescribed premises who, if to do so may cause an emission, or alter the nature or volume of the waste, noise, odour or electromagnetic radiation emitted, from the prescribed premises —

(a) alters the method of operation of any trade, or of any process used in any trade, carried on at the prescribed premises; or

(b) constructs, installs or alters any equipment on the prescribed premises for —

(i) the storage, handling, transport or treatment of waste prior to, and for the purpose of, the discharge of waste; or

(ii) the control of noise, odour or electromagnetic radiation prior to, and for the purpose of, the emission or transmission of noise, odour or electromagnetic radiation,

into the environment; or

(c) alters the type of materials or products used or produced in any trade carried on at the prescribed premises; or

(d) alters the type of fuel used in any fuel burning equipment or industrial plant in any trade carried on at the prescribed premises; or

(e) installs, alters or replaces any fuel burning equipment or industrial plant on the prescribed premises or carries out any work on the prescribed premises which is the beginning of, or any subsequent step in, that installation, alteration, replacement or carrying out,

commits an offence unless he does so —

(f) in accordance with —

(i) a works approval; or

(ii) a licence; or

(iii) a requirement contained in a closure notice or an environmental protection notice,

as the case requires; or

(g) only in the course of and for the purpose of general maintenance required to maintain the efficient operation of any pollution control equipment or procedure.

(2) Subject to this Act, the occupier of any prescribed premises who in or on the prescribed premises —

(a) carries out any work which is the beginning of, or any subsequent step in, any work referred to in subsection (1)(a) to (e) if the completion of the alteration, construction, installation or replacement concerned might cause an emission, or alter the nature or volume of the waste, noise, odour or electromagnetic radiation emitted, from the prescribed premises; or

(b) constructs, relocates or alters any discharge or emission pipe, channel or chimney through which waste is or may be discharged into the environment from the prescribed premises or carries out any work which is the beginning

of, or any subsequent step in, any such construction, relocation or alteration,

commits an offence unless he does so —

(c) in accordance with —

(i) a works approval; or

(ii) a licence; or

(iii) a requirement contained in a closure notice or an environmental protection notice,

as the case requires; or

(d) only in the course of and for the purpose of general maintenance required to maintain the efficient operation of any pollution control equipment or procedure.

[Section 53 amended: No. 54 of 2003 s. 40 and 71.]

54. Works approvals, applying for, granting, refusing etc.

(1) An application for a works approval shall be —

(a) made in the form and in the manner approved by the CEO; and

(b) accompanied by such fee as is prescribed by or determined under the regulations; and

(c) supported by such plans, specifications and other documents and information, including a summary thereof, as the CEO requires.

(2) On receiving an application made under subsection (1), the CEO shall —

(a) if that application does not comply with that subsection, decline to deal with that application and advise the applicant accordingly; or

(b) if that application complies with that subsection, advise the applicant that his application has been received and seek comments thereon from any public authority or

person which or who has, in the opinion of the CEO, a direct interest in the subject matter of that application.

(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) Subject to subsections (4) and (5), the CEO shall, after having taken into account any comments received from any public authority or person from which or whom comments were sought under subsection (2)(b) or (2a) and subject to section 60 —

(a) grant a works approval subject to such of the conditions referred to in section 62 as the CEO specifies in the works approval; or

(b) refuse to grant a works approval.

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

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

(a) an application for a works approval made under subsection (1) is related to a referred proposal; and

(b) a Ministerial statement is in effect in respect of the referred proposal.

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

(5A) Subsection (4) does not apply if the application is for a works approval for the purpose of doing minor or preliminary work to which the Authority has consented under section 41A(3).

(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.

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

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

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

[Section 54 amended: No. 54 of 2003 s. 72 and 140(2); No. 40 of 2010 s. 16; No. 36 of 2024 s. 20.]

55. Contravening conditions of works approvals

(1) The occupier of any premises to which a works approval relates (in this section called the ***relevant premises***) who contravenes any condition to which the works approval, or a suspension of the works approval, is subject commits an offence.

(2) If —

(a) the relevant premises are shared by a corporation and a subsidiary or subsidiaries of the corporation; and

(b) the corporation or a subsidiary referred to in paragraph (a) is an occupier of the relevant premises; and

(c) a condition to which the works approval relating to the relevant premises is for the time being subject is contravened on the relevant premises,

the occupier referred to in paragraph (b) is deemed to have caused the contravention referred to in paragraph (c) unless the contrary is proved.

(3) In subsection (2) —

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.

[Section 55 amended: No. 10 of 2001 s. 71; No. 54 of 2003 s. 73.]

56. Occupiers of prescribed premises to be licensed for emissions etc.

(1) Subject to this Act, the occupier of any prescribed premises who —

(a) causes or increases, or permits to be caused or increased, an emission; or

(b) alters or permits to be altered the nature of the waste, noise, odour or electromagnetic radiation emitted,

from the prescribed premises commits an offence unless he is the holder of a licence issued in respect of the prescribed premises and so causes, increases, permits or alters in accordance with any conditions to which that licence is subject.

(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.

[Section 56 amended: No. 54 of 2003 s. 41 and 74.]

57. Licences, applying for, granting, refusing etc.

(1) An application for a licence shall be —

(a) made in the form and in the manner approved by the CEO; and

(b) accompanied by such fee as is prescribed by or determined under the regulations; and

(c) supported by such plans, specifications and other documents and information, including a summary thereof, as the CEO requires.

(2) On receiving an application made under subsection (1), the CEO shall —

(a) if that application —

(i) does not comply with that subsection; or

(ii) relates to a matter in respect of which a works approval —

(A) has been granted and, in the opinion of the CEO, the works concerned have not been completed satisfactorily in accordance with the conditions to which the works approval is subject (to the extent to which that completion and those conditions are relevant to that application); or

(B) is required to be, and has not been, granted and the works concerned have not been completed,

decline to deal with that application and advise the applicant accordingly; or

(b) if that application complies with that subsection and does not relate to a matter referred to in paragraph (a)(ii), advise the applicant that that application has been received and seek comments thereon from —

(i) any public authority or person which or who in the opinion of the CEO has a direct interest in the subject matter of that application; and

(ii) in the case of an application for a licence for the discharge of waste into a designated area, a

person nominated by the Minister (Water Resources).

(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) The CEO shall, after having taken into account any comments received from any public authority or person from which or whom comments were sought under subsection (2)(b) or (2a) and subject to section 60 —

(a) in the case of an application for a licence made under subsection (1) relating to a matter in respect of which a works approval has not been granted and subject to subsection (4) —

(i) grant a licence subject to such of the conditions referred to in section 62 as the CEO specifies in the licence; or

(ii) refuse to grant the licence;

or

(b) in the case of an application for a licence made under subsection (1) relating to a matter in respect of which a works approval has been granted —

(i) if, in the opinion of the CEO, the works concerned have been completed in accordance with the conditions to which the works approval is subject, grant the licence subject to such of the conditions referred to in section 62 as are not inconsistent with any conditions to which the works approval is for the time being subject and as are specified by the CEO in the licence; or

(ii) refuse to grant the licence.

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

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

(a) an application for a licence made under subsection (1) is related to a referred proposal; and

(b) a Ministerial statement is in effect in respect of the referred proposal.

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

(4AA) Subsection (4) does not apply if the application is for a licence for the purpose of doing minor or preliminary work to which the Authority has consented under section 41A(3).

(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.

(5) In this section —

designated area means —

(a) catchment area or water reserve constituted under the *Country Areas Water Supply Act 1947* or the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*; or

(b) Underground Water Pollution Control Area constituted under the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*; or

(c) watercourse or wetland to and in relation to which Division 1B of Part III of the *Rights in Water and Irrigation Act 1914* applies; or

(d) proclaimed area declared under section 26B, or irrigation district constituted under section 28, of the *Rights in Water and Irrigation Act 1914*;

Minister (Water Resources) means the Minister administering the *Water Agencies (Powers) Act 1984*.

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

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

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

[Section 57 amended: No. 73 of 1995 s. 188; No. 49 of 2000 s. 84; No. 54 of 2003 s. 75 and 140(2); No. 38 of 2007 s. 194; No. 40 of 2010 s. 17; No. 25 of 2012 s. 211; No. 36 of 2024 s. 21.]

58. Contravening licence conditions

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

(2) If a person contravenes on premises in respect of which a licence is in force a condition to which the licence is subject, the occupier of those premises is himself deemed to have contravened that condition whether or not the person acted contrary to the instructions of that occupier in contravening that condition.

(3) If —

(a) premises are shared by a corporation and a subsidiary or subsidiaries of the corporation; and

(b) the corporation or a subsidiary referred to in paragraph (a) is a licensee in respect of the premises referred to in that paragraph; and

(c) a condition to which the licence of the licensee referred to in paragraph (b) is subject is contravened on the premises referred to in paragraph (a),

the licensee referred to in paragraph (b) is deemed to have caused the contravention referred to in paragraph (c) unless the contrary is proved.

(4) In subsection (3) —

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.

[Section 58 amended: No. 10 of 2001 s. 72; No. 54 of 2003 s. 76.]

59. Amending 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; or

(b) subjecting the works approval or licence to a new condition; or

(c) redescribing the boundaries or area of the premises to which the works approval or licence applies; or

(d) redescribing the purpose for which the premises to which the works approval or licence applies are used; or

(e) correcting in the works approval or licence —

(i) a clerical mistake or unintentional error or omission; or

(ii) a figure which has been miscalculated; or

(iii) the misdescription of any person, thing or property;

or

(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; or

(g) adding a discharge point or emission point; or

(h) deleting any discharge point or emission point which is no longer in use; or

(i) amending the works approval or licence in conformity with an approved policy or prescribed standard or with an exemption conferred under this Act; or

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

(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.

[Section 59 inserted: No. 54 of 2003 s. 77; amended: No. 36 of 2024 s. 22.]

59A. Revoking or suspending 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;

or

(b) the premises to which the licence relates are exempted by the regulations from requiring a licence; or

(c) information contained in or supporting the application was false or misleading in a material respect; or

(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.

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

[Section 59A inserted: No. 54 of 2003 s. 77; amended: No. 36 of 2024 s. 44.]

59B. Procedure for amending, revoking or suspending works approval or licence

(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; and

(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; and

(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.

(6A) Subsection (7) applies if —

(a) a proposed amendment, revocation or suspension is related to a referred proposal; and

(b) a Ministerial statement is in effect in respect of the referred proposal.

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

(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.

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

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

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

[Section 59B inserted: No. 54 of 2003 s. 77; amended: No. 36 of 2024 s. 23.]

60. Relationship between works approvals or licences and approved policies

(1) The CEO shall in considering an amendment of a licence or an application for a works approval or a licence or for the transfer thereof ensure that the works approval or licence or amendment or transfer thereof is consistent with any approved policy.

(2) The CEO shall not amend or shall refuse to grant or transfer a works approval or licence if he considers that the emission concerned 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 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.

[Section 60 amended: No. 54 of 2003 s. 42, 78 and 140(2).]

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.

[Section 61 inserted: No. 54 of 2003 s. 79.]

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.

[Section 62 inserted: No. 54 of 2003 s. 79.]

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

(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.

[Section 62A inserted: No. 54 of 2003 s. 79.]

63. Duration of works approvals and licences

Subject to this Act, a works approval or licence shall continue in force for such period as is specified in the works approval or licence.

63A. CEO to keep and publish record of works approvals and licences

(1) The CEO is to keep a record of such particulars of —

(a) works approvals and licences; and

(b) applications for works approvals and licences; and

(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.

[Section 63A inserted: No. 54 of 2003 s. 43.]

64. Transfer of works approvals and licences

(1) An application for the transfer of a works approval or licence shall be —

(a) made by the person to whom it is sought to transfer the works approval or licence in the form and in the manner approved by the CEO; and

(b) accompanied by the fee prescribed by or determined under the regulations; and

(c) supported by such plans, specifications and other documents and information, including a summary thereof, as the CEO requires.

(2) On receiving an application made under subsection (1), the CEO shall, subject to section 60 —

(a) transfer the works approval or licence concerned to the applicant subject to such of the conditions referred to in section 62 as the CEO specifies in that works approval or licence; or

(b) refuse to transfer the works approval or licence concerned to the applicant.

[Section 64 amended: No. 54 of 2003 s. 80 and 140(2).]

Division 4 — Notices, orders and directions

[Heading inserted: No. 54 of 2003 s. 44.]

64A. CEO to keep records of notices

The CEO must keep a public record of such particulars of notices given under this Division as are prescribed.

[Section 64A inserted: No. 40 of 2020 s. 61.]

65. Environmental protection notices, issue and effect of

(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;

or

(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; or

(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; or

(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; or

(ii) prevent, control or abate the pollution; or

(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; and

(ii) the reason for which it is served; and

(iii) a description of the relevant premises and the location of the premises sufficient to identify both; and

(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; and

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

(iii) the measures to be taken; and

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

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

(3) An environmental protection notice —

(a) while it subsists, binds each owner or occupier to whom it is given; and

(b) while it remains registered under section 66, binds each successive owner or occupier of the land to which the environmental protection notice relates.

(4) The CEO may by notice in writing served on every person bound by an environmental protection notice revoke the environmental protection notice or, subject to subsections (6) and (7), amend it —

(a) by extending the period within which a requirement contained in the environmental protection notice is to be complied with if the CEO is satisfied that the circumstances of the case justify such an extension; or

(b) by revoking or amending any requirement contained in the environmental protection notice.

(4a) A person who —

(a) is bound by an environmental protection notice; and

(b) intentionally or with criminal negligence does not comply with a requirement contained in the environmental protection notice,

commits an offence.

(5) A person who is bound by an environmental protection notice and who does not comply with a requirement contained in the notice commits an offence.

(5a) A person charged with committing an offence against subsection (4a) may be convicted of an offence against subsection (5) which is established by the evidence.

(6) The CEO shall, before exercising in respect of a person the power of amendment conferred by subsection (4), afford the person a reasonable opportunity to show cause in writing why that power should not be exercised in respect of the person.

(7) An opportunity is not a reasonable opportunity within the meaning of subsection (6) unless the relevant person is informed in writing of the person's right to show cause under that subsection not less than 21 days before the day on which the CEO exercises the power in question.

(8) In this section —

specified means specified in the environmental protection notice concerned.

[Section 65 amended: No. 14 of 1998 s. 7; No. 54 of 2003 s. 45(1)-(3), 46 and 140(2); No. 40 of 2020 s. 111(1).]

66. Environmental protection notices, registration of etc. on land titles

(1) When an environmental protection notice is given under section 65, the CEO shall deliver a copy of the notice to the Western Australian Planning Commission and —

(a) in the case of an environmental protection notice relating to land which is under the operation of the *Transfer of Land Act 1893* or *Land Administration Act 1997*, to the Registrar of Titles; or

(b) in the case of an environmental protection notice relating to land which is alienated from the Crown but which is not under the operation of the *Transfer of Land Act 1893*, to the Registrar of Deeds and Transfers.

(2) On receiving a copy of an environmental protection notice delivered under subsection (1), the Registrar of Titles or the

Registrar of Deeds and Transfers, as the case requires, shall, without payment of a fee, register the environmental protection notice and endorse or note accordingly the appropriate Register or register or record in respect of the land to which that notice relates.

(3) When an environmental protection notice registered under subsection (2) is revoked under section 65, the CEO shall deliver to the Western Australian Planning Commission and to the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, a certificate signed by the CEO and certifying that that revocation took place on the date specified in that certificate.

(4) On receiving a certificate delivered under subsection (3), the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, shall cancel the registration of the relevant environmental protection notice and endorse or note accordingly the appropriate Register or register or record in respect of the land to which that certificate relates.

[(5) deleted]

[Section 66 amended: No. 84 of 1994 s. 46; No. 81 of 1996 s. 153(1); No. 31 of 1997 s. 27; No. 54 of 2003 s. 46, 47 and 140(2); No. 40 of 2020 s. 62.]

67. Duties of person ceasing to be owner etc. of land subject to notice registered under s. 66

While an environmental protection notice remains registered under section 66, each owner or occupier of the land to which the environmental protection notice relates who does not, as soon as practicable after ceasing to be such an owner or occupier, notify in writing —

(a) the CEO of that fact and of the name and address of each person who succeeds that owner or occupier in the ownership or occupation or both, as the case requires, of that land; and

(b) each person who succeeds that owner or occupier in the ownership or occupation or both, as the case requires, of that land of the content of the environmental protection notice and of the fact that the environmental protection notice is binding on that person,

commits an offence.

[Section 67 amended: No. 54 of 2003 s. 46 and 140(2); No. 40 of 2020 s. 111(1).]

68. Restriction on subdividing etc. land subject to notice registered under s. 66

While an environmental protection notice remains registered under section 66, the Western Australian Planning Commission shall not approve under section 135 of the *Planning and Development Act 2005* the subdivision of the land to which the environmental protection notice relates or the amalgamation of that land with any other land unless the CEO consents to that approval.

[Section 68 amended: No. 84 of 1994 s. 46; No. 54 of 2003 s. 46 and 140(2); No. 38 of 2005 s. 15.]

68A. Closure notices, issue and effect of

(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.

(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; and

(b) the reason for which it is given; and

(c) a description of the relevant premises and the location of the premises sufficient to identify both; and

(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 Account.

[Section 68A inserted: No. 54 of 2003 s. 81; amended: No. 77 of 2006 s. 4.]

69. Stop orders, issue and effect of

(1) If the Minister is satisfied that —

(a) a person who is bound by an environmental protection notice has not complied with a requirement contained in the notice; and

(b) the non-compliance referred to in paragraph (a) has caused, is causing or is about to cause conditions seriously detrimental to the environment or dangerous to human life or health,

he may by notice served on the person referred to in paragraph (a) order that person —

(c) to stop carrying on the whole or any part of the trade, process or activity, and to close down the whole or any part of the premises, to which the environmental protection notice referred to in that paragraph relates immediately; and

(d) to take such steps to deal with the conditions referred to in paragraph (b) as are specified in that notice within such period as is so specified.

(2) The Minister may, on serving a notice under subsection (1), cause to be taken such steps as the Minister considers are necessary —

(a) to stop the carrying on of the trade, process or activity, and to close down the premises, to which the environmental protection notice concerned relates; and

(b) to deal with the conditions referred to in subsection (1)(b).

(3) The cost of taking any steps under subsection (2) is a debt due to the Crown by the person referred to in subsection (1)(a) and may be recovered from the person by the Minister by action in a

court of competent jurisdiction and shall, if so recovered, be credited to the Consolidated Account.

(4) The Minister may by notice served on the person to whom an order made under subsection (1) applies amend or, if the Minister is satisfied that steps have been taken to ensure that the conditions referred to in subsection (1)(b) will not arise again, revoke that order.

(5) A person who does not comply with an order made against the person under subsection (1) commits an offence.

[Section 69 amended: No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 54 of 2003 s. 46 and 48; No. 77 of 2006 s. 4; No. 40 of 2020 s. 111(1).]

70. Vegetation conservation notices, issue and effect of

(1) In this section —

specified means specified by the CEO in the vegetation conservation notice concerned;

unlawful clearing means —

(a) anything constituting a contravention of section 51C or 51J; or

(b) anything constituting a contravention of an environmental protection covenant;

watercourse has the meaning given in Schedule 5 clause 2;

wetland has the meaning given in Schedule 5 clause 2.

(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 must specify —

(a) the name and address of the person to whom it is given; and

(b) the reason for which it is given.

(4A) A vegetation conservation notice given under subsection (2)(b) may require any person bound by it —

(a) to take, within or for the duration of a specified period, such specified measures (the ***required action***) 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, will not be damaged or detrimentally affected, or further damaged or detrimentally affected, by the clearing;

and

(b) to monitor, keep records of and report to the CEO on the required action.

(5) Before a vegetation conservation notice containing a requirement under subsection (4A)(a) is given to a person the CEO must, by written notice given to the person, invite the person to make submissions to the CEO within the period specified in the notice on any matter relevant to the determination of whether or not the person should have to take the required action.

(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 the required action, or any of it, 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 Account.

[Section 70 inserted: No. 54 of 2003 s. 111(1); amended: No. 77 of 2006 s. 4; No. 40 of 2020 s. 64.]

71. Environmental protection directions, issue and effect of

(1) Subject to this section, the CEO may —

(a) if the CEO is satisfied that pollution, material environmental harm or serious environmental harm is occurring or is likely to occur; and

(b) with the approval of the Minister,

direct by radio broadcast or in such other manner as the CEO considers expedient that —

(c) the carrying on of any specified industry, trade or activity be prohibited; or

(d) any specified industry, trade or activity be carried on subject to specified restrictions,

in a specified part of the State and during a specified period (whether definite or indefinite) or at a specified time.

(2) The CEO may —

(a) with the approval of the Minister, amend; or

(b) revoke,

a direction given under subsection (1) in the same manner as that in which that direction was given.

(3) A direction given under subsection (1) by radio broadcast shall be repeated by radio broadcast at least once on every day following the day on which that direction was given until that direction —

(a) is revoked under subsection (2); or

(b) is published in the *Gazette* under subsection (4),

whichever is the sooner.

(4) The CEO shall, if the period in respect of which a direction is given under subsection (1) exceeds 3 days, cause that direction to be published in the *Gazette*.

(5) A person who carries on a specified industry, trade or activity in contravention of a direction given under subsection (1) commits an offence.

(6) In this section —

specified means specified in the relevant direction given under subsection (1).

[Section 71 amended: No. 54 of 2003 s. 49 and 140(2); No. 40 of 2020 s. 111(1).]

72. Duty to notify CEO of discharges of waste

(1) Subject to subsection (2), if a discharge of waste —

(a) occurs as a result of an emergency, accident or malfunction; or

(b) occurs otherwise than in accordance with a works approval or licence or with a requirement contained in an environmental protection notice; or

(c) is of a prescribed kind or a kind notified in writing to the occupier concerned,

and has caused or is likely to cause pollution, material environmental harm or serious environmental harm, the occupier of the premises on or from which that discharge took place who does not, as soon as practicable after that discharge, give the CEO oral or electronic notification followed by written notification of the prescribed details of that discharge commits an offence.

(2) Subsection (1) does not apply to or in relation to a discharge of waste which is of a kind prescribed for the purposes of this subsection.

(3) The occupier of premises from which a discharge of waste of a kind specified in a relevant NEPM occurs is to notify the CEO in the prescribed manner of the prescribed details of that discharge.

(4) An occupier who contravenes subsection (3) commits an offence.

(5) In subsection (3) —

relevant NEPM means an NEPM that is —

(a) taken to be an approved policy under section 37A; or

(b) specified by regulation to be a relevant NEPM.

[Section 72 amended: No. 14 of 1998 s. 31; No. 54 of 2003 s. 46(2), 50 and 140(2).]

73. Powers to deal with etc. discharges of waste, pollution and environmental harm

(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; or

(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; or

(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) deleted]

(3) When an inspector or authorised person has incurred any cost in acting under subsection (1), 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); or

(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 and shall pay any cost so recovered into the Consolidated Account.

(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; or

(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; or

(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; or

(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 Account.

[Section 73 amended: No. 6 of 1993 s. 11; No. 73 of 1994 s. 4; No. 14 of 1998 s. 8; No. 54 of 2003 s. 51(1)-(5) and 140(2); No. 77 of 2006 s. 4.]

73A. Prevention notices, issue and effect of

(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; or

(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; or

(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); or

(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); or

(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 Account.

(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.

[Section 73A inserted: No. 54 of 2003 s. 52; amended: No. 77 of 2006 s. 4.]

73B. Breach of notice issued under s. 65, 70 or 73A, damages for

(1) In this section —

notice means —

(a) an environmental protection notice; or

(b) a vegetation conservation notice; or

(c) a prevention notice.

(2) If —

(a) a person bound by a notice fails to comply with it; and

(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.

[Section 73B inserted: No. 54 of 2003 s. 52.]

Division 5 — Miscellaneous

[Heading inserted: No. 54 of 2003 s. 53.]

74. Defences to certain offences

(1) Subject to section 58 and subsection (2), it shall be a defence to proceedings for an offence under this Part in respect of an emission or an act causing environmental harm if the person charged with that offence proves that —

(a) that emission or act occurred —

(i) for the purpose of preventing danger to human life or health or irreversible damage to a significant portion of the environment; or

(ii) as a result of an accident caused otherwise than by the negligence of that person,

and that the occupier of the premises, if any, from which that emission or act occurred took all reasonable precautions to prevent that emission or act; and

(b) as soon as was reasonably practicable after that emission or act that person notified particulars thereof in writing to the CEO.

(1AA) Subject to section 58 and subsection (2), it shall be a defence to proceedings for an offence under section 49A(2) or (3) if the person charged with the offence proves that —

(a) the waste was discharged or abandoned —

(i) for the purpose of preventing danger to human life or health or irreversible damage to a significant proportion of the environment; or

(ii) as a result of an accident caused otherwise than by the negligence of that person;

and

(b) as soon as was reasonably practicable after the waste was discharged or abandoned that person notified

particulars of the discharge or abandonment in writing to the CEO.

(1a) Subject to subsection (2), it shall be a defence to proceedings for a Tier 1 offence if the person charged with that offence proves that —

(a) the person took reasonable precautions and exercised due diligence to prevent the commission of the offence; and

(b) as soon as was reasonably practicable after the occurrence that gave rise to the charge the person notified particulars of the occurrence in writing to the CEO.

(2) The defence referred to in subsection (1), (1AA) or (1a) is not available to a person unless he notifies the CEO of his intention to rely on that defence within 21 days after the day on which —

(a) the relevant summons is served on him; or

(b) if no summons is served on him in respect of the relevant offence, he is informed of the place and time at which he is alleged to have committed that offence and of the nature of that offence.

[Section 74 amended: No. 73 of 1994 s. 4; No. 14 of 1998 s. 9; No. 54 of 2003 s. 54 and 140(2); No. 48 of 2010 s. 6.]

74A. Defences to offences of causing pollution etc.: 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, or for discharging or abandoning waste in water to which the public has access if the person charged with that offence proves that

the pollution, emission, environmental harm, discharge or abandonment occurred —

(a) in the implementation of a proposal in accordance with an implementation agreement or decision; or

(b) in accordance with —

(i) a prescribed standard; or

(ii) a clearing permit; or

(iii) a works approval; or

(iv) a licence; or

(v) a requirement contained in a closure notice, an environmental protection notice, a vegetation conservation notice or a prevention notice; or

(vi) an approved policy; or

(vii) a declaration under section 6; or

(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.

[Section 74A inserted: No. 54 of 2003 s. 55; amended: No. 48 of 2010 s. 7.]

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; or

(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; or

(c) an act of a kind that the chief executive officer of the department of the Public Service principally assisting in the administration of the *Biosecurity and Agriculture Management Act 2007* has specified, by order published in the *Gazette*, to be a normal agricultural activity for the purposes of this paragraph; or

(d) an agricultural activity (including the management or harvesting of a plantation) done in compliance with a code of practice relating to an activity of that kind —

(i) issued under section 122A; or

(ii) made or approved under any other written law;

or

(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.

[Section 74B inserted: No. 54 of 2003 s. 55; amended: No. 54 of 2011 s. 4.]

75. Discharges or emissions in emergencies

(1) The CEO may, if there is, or is about to be, an emission from any premises for the purposes of —

(a) meeting a temporary emergency; or

(b) the temporary relief of a public nuisance or community hardship resulting from the commissioning of any item of fuel-burning equipment or industrial plant,

on the CEO's own initiative or at the instance of another person exempt the occupier of those premises from compliance with this Part for such period not exceeding 14 days, and subject to such conditions, as the CEO specifies in that exemption.

(2) A person who is exempted under subsection (1) from compliance with this Part and who does not comply with any condition to which that exemption is subject commits an offence, and that exemption ceases to be in force on the occurrence of that non-compliance.

(3) Subject to subsection (4), the CEO may grant an exemption under subsection (1) orally or in writing.

(4) If the CEO grants an exemption under subsection (1) orally, the CEO shall within a period of 24 hours of so granting it serve on the recipient of that exemption confirmation thereof in writing setting out the period and conditions specified in that exemption.

(5) Subject to this section, an exemption granted under subsection (1) remains in force until withdrawn by notice in writing served on the recipient of that exemption by the CEO.

[Section 75 amended: No. 54 of 2003 s. 56 and 140(2); No. 40 of 2020 s. 111(1).]

76. Miscellaneous offences

(1) A person who constructs, manufactures, assembles or sells a vehicle or vessel capable of discharging into the atmosphere or any waters any matter that does not comply with any standard prescribed for the purposes of this subsection commits an offence unless the person is exempted under the regulations from compliance with this subsection and so constructs,

manufactures, assembles or sells in accordance with any condition to which that exemption is subject.

(2) A person who constructs, manufactures, assembles, sells or installs or offers to install any equipment required by or under this Act to be fitted or equipped with any device so as to prevent or minimise discharges of any matter into the atmosphere or any waters without that equipment being so fitted or equipped commits an offence.

[Section 76 amended: No. 40 of 2020 s. 111(1).]

77. Vehicles and vessels, duties of owners etc. of

(1) A person who is the owner or driver of a vehicle or vessel to which is fitted a device referred to in section 78(1) and who does not maintain that device, or cause it to be maintained, in an efficient condition commits an offence.

(2) A person who is the owner or driver of a vehicle which is at the time of its use on a road, public place or reserve capable of discharging into the atmosphere or any waters any matter that does not comply with any standard prescribed for the purposes of this subsection commits an offence.

(3) A person who is the owner of a vessel which is capable of discharging into the atmosphere or any waters any matter that does not comply with a standard prescribed for the purposes of this subsection commits an offence.

78. Interfering with anti-pollution devices on vehicles or vessels

(1) A person who —

(a) removes, disconnects or impairs, or causes or allows to be removed, disconnected or impaired, a device fitted to a vehicle or vessel for the purpose of preventing the discharge of matter from, or controlling or dispersing matter discharged by, the vehicle or vessel into the atmosphere or any waters or of controlling noise emitted by the vehicle or vessel; or

(b) adjusts or modifies, or causes or allows to be adjusted or modified, a device fitted to, or a part of, a vehicle or vessel, if that adjustment or modification results in the discharge into the atmosphere or any waters by the vehicle or vessel of any matter or in the emission of any noise by the vehicle or vessel that does not comply with the prescribed standard,

commits an offence.

(2) Subsection (1) does not prohibit the removal, disconnection, impairment, adjustment or modification of a device, or the adjustment or modification of a part, referred to in that subsection —

(a) for the purpose of servicing, repairing or replacing that device or part or of improving its efficiency in minimising —

(i) pollution of the atmosphere or any waters; or

(ii) the discharge of matter or the emission of noise;

or

(b) as a temporary measure for the purpose of facilitating the service or repair of a vehicle or vessel.

(3) A person who services or repairs, or causes or allows to be serviced or repaired, a vehicle or vessel in a manner prohibited by the regulations commits an offence.

79. Unreasonable noise emissions from premises

(1) A person who on any premises uses or causes or allows to be used any equipment in such a way as to cause or allow it to emit, or otherwise emits or causes or allows to be emitted, unreasonable noise from those premises commits an offence.

(2) Subject to subsection (3), a prosecution for an alleged offence under subsection (1) may be instituted only by —

(a) any 3 or more persons, each of whom is the occupier of premises and claims to be directly affected by that alleged offence; or

(b) an authorised person; or

(c) a police officer.

(3) A prosecution for an alleged offence under subsection (1) may be instituted by less than 3 persons if a person who is the occupier of premises and claims to have been directly affected by that alleged offence satisfies the court in which that prosecution is sought to be instituted before the accused is required to enter a plea that the circumstances are such that —

(a) less than 3 persons were affected by that alleged offence; or

(b) other persons affected by that alleged offence are unable or unwilling to join in the institution of that prosecution for economic or other reasons not related to the question of whether or not that alleged offence was committed; or

(c) the enjoyment of the premises occupied by the person was affected by that alleged offence in a degree substantially greater than was the case with other premises so affected,

and that the prosecution is not of a frivolous, vexatious or unreasonable nature.

[Section 79 amended: No. 84 of 2004 s. 80 and 82; No. 40 of 2020 s. 111(1).]

80. Installing equipment emitting unreasonable noise

(1) A person who installs on or in any premises any equipment which, when operated, emits unreasonable noise and which the person knows or, if the person had exercised reasonable care,

would have known so to emit when so installed and operated, commits an offence.

(2) If the occupier of any premises is convicted of committing an offence under this Act in respect of the emission of unreasonable noise by any equipment which was installed on or in those premises by another person in circumstances in which the other person committed an offence under subsection (1), that occupier may recover the cost of that installation, together with the amount of any penalty imposed on the occupier in respect of the first-mentioned offence, from the other person by action in a court of competent jurisdiction.

[Section 80 amended: No. 40 of 2020 s. 111(1).]

81. Noise abatement, powers for

(1) If an authorised person or police officer considers that any unreasonable noise has been or is being emitted from any premises, the authorised person or police officer may —

(a) direct, either orally or in writing as the authorised person or police officer considers appropriate —

(i) the person whom the authorised person or police officer believes to be the occupier of those premises to cause the emission of that unreasonable noise to cease; or

(ii) any person whom the authorised person or police officer believes to be making or contributing to the making of that unreasonable noise to cease making or contributing to the making of that unreasonable noise;

or

(b) take such measures or cause such measures to be taken as the authorised person or police officer considers necessary to abate the emission of that unreasonable noise or to remove the likelihood of any unreasonable noise being emitted.

(2) A person who does not without reasonable excuse comply with a direction given by an authorised person or police officer under subsection (1) commits an offence.

(3) A person shall not be convicted of an offence under subsection (2) unless it is proved that the noise to which the relevant direction relates was an unreasonable noise.

(4) A direction given under subsection (1) shall have effect for such period not exceeding 7 days as is specified in that direction, but may within that period be revoked by —

(a) the authorised person or police officer who gave it; or

(b) a person prescribed for the purposes of this subsection.

[Section 81 amended: No. 40 of 2020 s. 111(1).]

81A. Seizing noisy equipment

(1) Where an authorised person or a police officer —

(a) has given a direction under section 81(1)(a) in relation to any premises which has not been complied with; or

(b) has reason to believe that although a direction could be given under section 81(1)(a) in relation to any premises such a direction would not be complied with,

that person or officer may enter the premises and seize any equipment, or part of any equipment, which is or has been emitting, or contributing to the emission of, noise which the person or officer considers to be unreasonable.

(2) Subject to subsection (2a), any equipment seized under subsection (1) is to be delivered, not later than 7 days after the seizure, to a person who appears to an authorised person or police officer to be entitled to possession of it, but in the event of any doubt or dispute as to that entitlement the equipment may be retained until the doubt or dispute is settled or determined.

(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 the person 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.

(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.

(3) An authorised person or police officer who seizes any equipment under this section or a person who otherwise performs any function under this section in relation to equipment seized is not liable for any loss, damage or injury of or to the equipment unless it is shown that the person deliberately failed to take reasonable care of the equipment.

(4) The regulations may make provision as to the seizure and storage of equipment under this section and the manner in which it is to be dealt with.

[Section 81A inserted: No. 50 of 1996 s. 9; amended: No. 54 of 2003 s. 127; No. 40 of 2020 s. 111(1).]

82. Ancillary powers for s. 81 and 81A

(1) An authorised person or police officer may, for the purpose of enabling the authorised person or police officer to give a direction, or to take or cause to be taken any measures, under section 81(1) or 81A in respect of noise emitted from any

premises or to ascertain whether or not an offence under section 81(2) has been committed on any premises —

(a) enter those premises, with the aid of such other authorised persons or police officers as the authorised person or police officer considers necessary and, subject to subsection (3), with the use of reasonable force, at any time when the authorised person or police officer considers on reasonable grounds that an unreasonable noise has been or is being emitted from those premises; and

(b) whether or not the authorised person or police officer enters those premises, require any person —

(i) who the authorised person or police officer considers on reasonable grounds was or is present in or on those premises at any time during which noise was or is being emitted from those premises; and

(ii) to whom the authorised person or police officer has given an oral or written warning of the obligation of that person to furnish the authorised person or police officer with the name and address of that person and with the name and address of the occupier of those premises,

to furnish the authorised person or police officer with the names and addresses referred to in subparagraph (ii).

(2) A person who does not comply with a requirement made under subsection (1)(b) commits an offence.

(3) An authorised person shall not, if the authorised person exercises the power referred to in subsection (1)(a), use force in so doing unless the authorised person is, or is accompanied by, a police officer.

[Section 82 amended: No. 50 of 1996 s. 10; No. 40 of 2020 s. 111(1).]

83. Duty to give assistance and information to officials

The occupier of any premises and any person in charge or apparently in charge of any premises or public place who does not furnish to an authorised person or police officer all reasonable assistance and all information that —

(a) the authorised person or police officer requires of that occupier or person; and

(b) that occupier or person is capable of furnishing with respect to the exercise of the powers, and the discharge of the duties, of the authorised person or police officer under this Part commits an offence.

[Section 83 amended: No. 50 of 1996 s. 11; No. 40 of 2020 s. 111(1).]

84. Excessive noise emissions from vehicles or vessels

(1) A person who is the owner or driver of a vehicle or vessel which does not comply with any noise emission standard prescribed for the purposes of this subsection commits an offence.

(2) In any proceedings for an alleged offence under subsection (1), evidence that a vehicle or vessel was found on inspection, measurement or test made by an inspector not more than 6 weeks after the date of that alleged offence not to comply with any noise emission standard prescribed for the purposes of subsection (1) is evidence that the vehicle or vessel did not so comply on that date.

85. Excessive noise emissions from equipment

(1) A person who is the owner of any equipment, other than a vehicle or vessel, which is at the time of its use capable of emitting noise that does not comply with any noise emission standard prescribed for the purposes of this subsection commits an offence.

(2) In any proceedings for an alleged offence under subsection (1) evidence that any equipment was found on inspection, measurement or test made by an inspector not more than 6 weeks after the date of that alleged offence to be capable of emitting noise that did not comply with any noise emission standard prescribed for the purposes of subsection (1) is evidence that the equipment was so capable on that date.

86. Manufacture, sale etc. of products emitting excessive noise

(1) The occupier of any premises where there is manufactured, assembled, supplied, distributed, stored or sold —

(a) any new equipment, other than a vehicle or vessel, which is powered by internal combustion or electricity or operated by hydraulic or pneumatic means; or

(b) any vehicle or vessel,

which when operated under prescribed test conditions emits noise that does not comply with the noise emission standard prescribed for the purposes of this subsection in respect of the type of equipment, vehicle or vessel to which that equipment, vehicle or vessel belongs commits an offence.

(2) The occupier of any premises where there is sold any equipment which is required by or under this Act —

(a) to be fitted or equipped with any device so as to prevent or minimise the emission of noise, without that device being so fitted or equipped; or

(b) to be fitted with a prescribed plate, label or other marking stating such information as is prescribed, without that plate, label or marking being so fitted,

commits an offence.

(3) The occupier of any premises on which there is sold any noise control device which, when fitted to any equipment in accordance with the fitting instructions of the manufacturer of that device and operated under prescribed test conditions, does

not prevent the equipment from emitting noise that does not comply with the noise emission standard prescribed for the purposes of this subsection in respect of the type of equipment to which the equipment belongs commits an offence.

(4) A person who is convicted of an offence under subsection (1) in respect of any equipment, vehicle or vessel may, if the person did not cause the deficiency in the equipment, vehicle or vessel which led to that conviction, recover from the person who supplied the equipment, vehicle or vessel to the person so convicted the cost to the person so convicted of being supplied with the equipment, vehicle or vessel, together with the amount of the penalty imposed on the person so convicted in respect of that offence, by action in a court of competent jurisdiction.

[Section 86 amended: No. 40 of 2020 s. 111(1).]

Part VA — Financial assurances

[Heading inserted: No. 54 of 2003 s. 87.]

86A. Terms used

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; or

(b) as a condition of an authorisation; or

(c) under section 86B(2);

responsible person means —

(a) in relation to a proposal, the proponent; or

(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; or

(c) in relation to a closure notice, the person bound by the notice; or

(d) in relation to an environmental protection notice, the person bound by the notice; or

(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.

[Section 86A inserted: No. 54 of 2003 s. 87.]

86B. Financial assurance requirements, imposition and effect of

(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; or

(b) a person bound by an environmental protection notice; or

(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).

[Section 86B inserted: No. 54 of 2003 s. 87.]

86C. Minister's consent needed to impose etc. 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; and

(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; and

(e) the environmental record of the responsible person or proposed responsible person; and

(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; and

(d) the environmental record of the responsible person; and

(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.

[Section 86C inserted: No. 54 of 2003 s. 87.]

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.

[Section 86D inserted: No. 54 of 2003 s. 87.]

86E. Claim on or realising of financial assurance

(1) This section applies if —

(a) the Minister incurs costs in taking action under section 48(7) or 69(2); or

(b) an authorised person or inspector incurs costs in taking action under section 73(1); or

(c) the CEO incurs costs in taking action under section 68A(11)(a), 70(10)(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; and

(b) state the amount of the financial assurance to be claimed or realised; and

(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 Account.

[Section 86E inserted: No. 54 of 2003 s. 87; amended: No. 77 of 2006 s. 4; No. 40 of 2020 s. 69.]

86F. Lapsing of financial assurance requirement

(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.

[Section 86F inserted: No. 54 of 2003 s. 87.]

86G. Use of 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(8), 68A(11)(b), 69(3), 70(10)(b), 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), 70(10)(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

(b) to call on or use a financial assurance in respect of costs which have been recovered under section 68A(11)(b), 70(10)(b), 73(4a) or 73A(4).

[Section 86G inserted: No. 54 of 2003 s. 87; amended: No. 40 of 2020 s. 70.]

Part VI — Enforcement

87. Authorised persons, appointment of

(1) The CEO may appoint persons or members of classes of persons to be authorised persons for the purposes of this Act and may, when making such an appointment and without limiting the generality of section 52 of the *Interpretation Act 1984*, limit the powers conferred on the persons or members so appointed by specifying in the authorities issued to those persons or members under subsection (2) —

(a) which of those powers those persons or members are entitled to exercise; or

(b) during which portions of each day of 24 hours those persons or members may exercise those powers which they are entitled to exercise,

or both, and that limitation shall have effect according to its tenor.

(2) The CEO shall cause to be issued to each authorised person an authority in writing signed by the CEO and bearing a photograph of that authorised officer.

(3) An authorised person shall produce the authority issued to the authorised person under subsection (2) whenever required to do so —

(a) by a person in respect of whom the authorised person has exercised, is exercising, or is about to exercise any of the powers —

(i) conferred on the authorised person by or under this Act; and

(ii) which the authorised person is entitled to exercise;

or

(b) on applying for admission to any premises or place which an authorised person is empowered by this Act to enter.

(4) The appointment of a person under subsection (1) does not —

(a) render Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to the person; or

(b) affect or prejudice the application to the person of any Act referred to in paragraph (a) if it applied to the person at the time of the appointment.

[Section 87 amended: No. 32 of 1994 s. 19; No. 54 of 2003 s. 140(2); No. 40 of 2020 s. 111(1).]

88. Inspectors, appointment and purposes of

(1) The CEO may appoint a person to be an inspector for the purposes of this Act and, in particular, for the purposes of —

(a) taking measurements and collecting samples of any waste before, during or after its discharge into the environment; and

(b) inspecting, evaluating and analysing the records of monitoring and other equipment and installations approved for detecting the presence, quantity and nature of any waste and the effects of that waste on the portion of the environment approved for receiving that waste; and

(c) recording, measuring, testing or analysing noise, odour and electromagnetic radiation emissions; and

(d) inspecting, evaluating and analysing the records of monitoring and other equipment and installations approved for detecting the presence, level and other characteristics of noise, odour and electromagnetic radiation; and

(e) ascertaining whether or not any circumstances, conditions, procedures or requirements imposed by or under this Act are being complied with; and

(f) performing such other functions as are conferred or imposed on the CEO by or under this Act.

(2) Notwithstanding anything in this Act but without limiting the generality of section 52 of the *Interpretation Act 1984*, the CEO may, when appointing an inspector under subsection (1), limit the powers conferred on the inspector by or under this Act by specifying in the authority issued to the inspector under subsection (3) which of those powers the inspector is entitled to exercise, and that limitation shall have effect according to its tenor.

(3) The CEO shall cause to be issued to each inspector an authority in writing signed by the CEO and bearing a photograph of that inspector.

(4) An inspector shall produce the authority issued to the inspector under subsection (3) whenever required to do so —

(a) by a person in respect of whom the inspector has exercised, is exercising or is about to exercise any of the powers —

(i) which are conferred on the inspector by or under this Act; and

(ii) which the inspector is entitled to exercise;

or

(b) on applying for admission to any premises or place which an inspector is empowered by this Act to enter.

(5) The appointment of a person under subsection (1) does not —

(a) render Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to the person; or

(b) affect or prejudice the application to the person of any Act referred to in paragraph (a) if it applied to the person at the time of the appointment.

(6) In subsection (1) —

approved means approved by the CEO.

[Section 88 amended: No. 32 of 1994 s. 19; No. 54 of 2003 s. 140(2); No. 40 of 2020 s. 111(1).]

89. Entry powers of inspectors

(1) An inspector may with such assistance as he may require enter —

(a) at any time any premises used as a factory or any premises in which an industry, trade or process is being carried on; or

(aa) at any time, any site classified as *contaminated — remediation required* under the *Contaminated Sites Act 2003*; or

(b) at any time, premises at or from which the inspector has reasonable grounds to believe that an offence against this Act has been, is being or is likely to be committed; or

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

and may therein or thereon do any act or thing, including the collection and removal of samples, which in the opinion of the inspector is necessary to be done for —

(d) the prescribing of any matter under this Act or for the preparation of a draft policy; or

(e) the assessment of a proposal or scheme and the preparation of a report thereon; or

(f) determining whether or not there has been compliance with or contravention of —

(i) any requirement made by or under this Act; or

(ii) any conditions agreed or decided under Part IV, any clearing permit, works approval or licence or condition specified therein or any requirement contained in a closure notice, environmental protection notice, vegetation conservation notice, prevention notice, exemption given under section 75(1) or any condition specified in that exemption or any other requirement, by whatever name called, made by or under this Act.

(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; or

(aa) reasonably believes that the house or land is contaminated; or

(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.

(3) Without limiting the generality of subsection (1), an inspector may with such assistance as he may require enter on any land and drill boreholes for the purpose of taking and removing samples of rock, soil or water and making geological studies —

(a) to assess the effect of a proposed discharge of waste; or

(b) to monitor the effect of a discharge of waste; or

(c) if the inspector believes on reasonable grounds that the land or water is contaminated, to investigate whether contamination is present or to monitor or assess any contamination that is present,

and to do all such acts and things as may be necessary therefor or in relation thereto.

(4) Before exercising in relation to any land which —

(a) is occupied by a person or persons; or

(b) if it is not occupied by a person or persons, has been alienated from the Crown for any estate of freehold,

the power of entry conferred by subsection (3), an inspector shall not less than 14 days before the proposed exercise of that power give notice to the occupier of that land or, if there is no such occupier, to any person who appears to be the owner of that land specifying —

(c) the part of that land on which entry is to be made; and

(d) the work proposed to be carried out on the part referred to in paragraph (c); and

(e) the name and, in the case of a person who is not self-employed, the employer of every person who is to enter on that land to carry out the work referred to in paragraph (d).

[Section 89 amended: No. 23 of 1996 s. 21; No. 14 of 1998 s. 10 and 32; No. 54 of 2003 s. 22 and 57; No. 60 of 2003 s. 100 (as amended: No. 40 of 2005 s. 13(4) and (5)); No. 40 of 2020 s. 111(1).]

89A. Use of assistance and force

(1) An inspector may use assistance and force that is reasonably necessary in the circumstances when exercising a power under section 89 but cannot use force against a person.

(2) If the use of reasonable force is likely to cause significant damage to property, the inspector is not entitled to use force without the prior authority of the CEO in the particular case.

(3) An inspector may request a police officer or other person to assist the inspector in exercising a power under this Part, and that person may assist the inspector in the exercise of the power.

(4) A person while assisting an inspector at the request of the inspector and in accordance with this Act —

(a) has the same powers as are conferred on an inspector under this Part; and

(b) is subject to the same responsibilities as an inspector under this Part but is not required to give notice under section 89(4); and

(c) has the same protection from liability as an inspector.

(5) Nothing in this section derogates from the powers of a police officer.

[Section 89A inserted: No. 40 of 2020 s. 73.]

90. Powers of inspectors to obtain information

(1) An inspector may —

(a) direct the occupier of any premises from which there has been, is, or is likely to be, an emission, or onto which any waste has been or is being discharged, 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;

or

(b) direct any person to produce to the inspector any books or other sources of information in the custody or possession of that person relating to —

(i) any emission; or

(ii) the manufacture, sale or distribution for sale of any prescribed equipment or material.

(2) An inspector may direct a person to produce to the inspector any licence, registration, permit, approval, certificate or authority granted and issued under this Act to the person or alleged by the person to have been so granted and issued.

(3) An inspector may —

(a) conduct any examination or inquiry the inspector considers necessary to ascertain whether there has been compliance with the Act; and

(b) question any person to ascertain whether or not there has been compliance with this Act and direct that person to do either or both of the following —

(i) answer any question put to the person;

(ii) produce any books or other sources of information in the custody or possession of that person relating to compliance with the Act.

(4) A direction given under subsection (1), (2) or (3)(b)(ii) —

(a) must be given in writing to the person required to produce the document, books or other sources of information or data; and

(b) must specify the time at which, or the period within which, the document, books or other sources of information or data are to be produced to the inspector; and

(c) may require that the document, books or other sources of information or data be produced to the inspector —

(i) at a place specified in the direction; and

(ii) by a means specified in the direction.

(5) A direction under subsection (3)(b)(i) —

(a) may be given orally or in writing; and

(b) must specify the time at which, or period within which, the answer must be given to the inspector; and

(c) may require any of the following —

(i) that the answer be given orally or in writing;

(ii) if the answer is directed to be given in writing, be given by means specified in the direction;

(iii) that the answer be verified by a statutory declaration.

(6) A person who does not comply with a direction given to the person under subsection (1), (2) or (3) commits an offence.

(7) An inspector may do any of the following in relation to any books or other sources of information or data produced to the inspector in compliance with a direction under this section —

(a) examine them;

(b) take copies of or data or extracts from them;

(c) download or print them out.

(8) An inspector may record an answer given orally under this section, including by making an audiovisual recording.

[Section 90 inserted: No. 40 of 2020 s. 73.]

91. Entry powers of inspectors for s. 86

(1) An inspector may at any reasonable time enter any premises used wholly or principally for or in connection with —

(a) the manufacture, assembly, supply, distribution, storage or sale of any new equipment or any vehicle or vessel to which section 86(1) applies; or

(b) the sale of any equipment to which section 86(2) applies,

for the purpose of determining whether or not that equipment, vehicle or vessel complies with any requirement made by or under this Act and may for that purpose make any inspection, measurement or test in respect of any such equipment, vehicle or vessel in or on those premises.

(2) When a vehicle or vessel is in or on any premises for the purposes of maintenance or repair to the vehicle or vessel and the owner of the vehicle or vessel is not present at those premises with the vehicle or vessel, an inspector shall take all reasonable steps to notify that owner of the inspector's intention to make any inspection, measurement or test under subsection (1) of the vehicle or vessel before doing so.

(3) A person who sells any new equipment or any vehicle or vessel to which section 86(1) applies or any equipment to which section 86(2) applies or any other vehicle or vessel and who prevents an inspector from buying any such equipment, vehicle or vessel for the purpose of making any inspection, measurement or test to determine whether or not it complies with any requirement made by or under this Act commits an offence.

[Section 91 amended: No. 40 of 2020 s. 111(1).]

91A. Stopping etc. vehicles and vessels, powers of inspectors and authorised persons as to

(1) An inspector or an authorised person may at any time stop, enter, search and inspect any vehicle or vessel if the inspector or authorised person has reasonable grounds for believing that an offence under this Act is being, has been or is likely to be committed.

(2) A person who, being in charge of a vehicle or vessel and being informed by a person that the person is an inspector or an

authorised person, fails to stop the vehicle or vessel when so required by that person commits an offence.

[Section 91A inserted: No. 48 of 2010 s. 8; amended: No. 40 of 2020 s. 111(1) and (2).]

92. Inspectors may require details of certain occupiers and others

(1) An inspector may by notice in writing require any person who appears to the inspector to be the occupier of any premises —

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

(b) on which any waste is being or is likely to be stored; or

(c) at or from which prescribed equipment or material is manufactured, sold or distributed for sale,

to furnish to the inspector orally or, if so requested in that notice, in writing the name and address of any person who on a date specified in that notice was the occupier of those premises or any part thereof so specified or was in control of any equipment, trade, process, activity or material in those premises so specified.

(2) An inspector who finds a person committing an offence or who on reasonable grounds suspects that an offence has been committed or is about to be committed by a person may require the person —

(a) to give the name and address of the person to the inspector; and

(b) if the inspector suspects on reasonable grounds that a name or address so given is false, to produce evidence that the particulars are correct.

(3) If a person fails or refuses to comply with a requirement under subsection (2)(a), or gives a name or address that the inspector reasonably believes to be false, the inspector may require the

person to stay with the inspector until the person can be delivered to a police officer to be dealt with according to law and, for that purpose, may detain the person.

(4) A person who —

(a) does not comply with a requirement made under subsection (1), (2) or (3); or

(b) gives a false name or address to an inspector,

commits an offence.

[Section 92 amended: No. 14 of 1998 s. 12 and 34; No. 54 of 2003 s. 59.]

92A. Seizing evidence etc.

(1) An inspector may seize any thing that the inspector suspects on reasonable grounds —

(a) is, or is intended to be, involved in the commission of an offence against this Act; or

(b) may afford evidence of the commission of such an offence.

(2) As soon as practicable after the thing is seized, the inspector is to give a receipt for it to the person from whom it was seized.

(3) If for any reason, it is not practicable to comply with subsection (2), the inspector is to —

(a) leave the receipt at the place of seizure; and

(b) ensure the receipt is left in a reasonably secure way and in a conspicuous position.

(4) Nothing in this section restricts the power of an authorised person or police officer to seize equipment under section 81A.

[Section 92A inserted: No. 14 of 1998 s. 13.]

92B. Dealing with seized things

(1) If any thing is seized under section 92A and, in the opinion of the CEO, the thing is likely to cause pollution or environmental harm or perish if no action is taken to deal with it, the CEO may sell, treat, preserve, destroy, dispose of or otherwise deal with the thing in the prescribed way.

(2) Except as provided in subsection (3), proceeds of the sale of any thing under subsection (1) are to be paid into the Consolidated Account.

(3) If —

(a) any thing is seized by an inspector in connection with a suspected offence; and

(b) the thing is sold under subsection (1); and

(c) a decision is subsequently made not to commence a prosecution in respect of the offence or, after the prosecution has been completed, no person is convicted of the offence,

the proceeds of the sale of the thing (less any costs and expenses incurred by the CEO in dealing with the thing) are to be paid to the person from whom the thing was seized.

(4) The CEO may recover all costs and expenses incurred by the CEO in respect of action taken under subsection (1).

(5) The costs and expenses referred to in subsection (4) may be —

(a) awarded by order under section 99Y; or

(b) recovered as a debt due from the owner of the thing or the person from whom the thing was seized in a court of competent jurisdiction, despite proceedings not having been taken for an offence involving the seized thing.

[Section 92B inserted: No. 14 of 1998 s. 13; amended: No. 54 of 2003 s. 60 and 140(2); No. 77 of 2006 s. 4.]

92C. Returning seized things

(1) The CEO may at any time before a prosecution involving the thing seized is started authorise the return of the thing seized to its owner or person entitled to the possession of the thing or the person from whom the thing was seized.

(2) The CEO may authorise the return of the thing on such conditions as the CEO thinks fit, including a condition that the person give security to the CEO for payment of the value of the thing if it is forfeited.

(3) A person must not contravene a condition imposed under subsection (2).

(4) If a court convicts a person of an offence against subsection (3), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

(5) Subject to section 92B, subsection (1) and any order for forfeiture made under this Act, the CEO is to order the return of the seized thing to its owner or the person entitled to the possession of the thing or the person from whom the thing was seized at the end of —

(a) 12 months from the time it was seized; or

(b) if a prosecution for an offence involving the thing is started within that 12 months — the prosecution for the offence and any appeal from the prosecution.

[Section 92C inserted: No. 14 of 1998 s. 13; amended: No. 54 of 2003 s. 140(2).]

92D. Forfeiture of abandoned property

(1) If any thing is seized under this Act and a person to whom the thing can be returned under section 92C cannot be found, the CEO is to give notice in the prescribed manner that the thing is being held by the Department and may be claimed by its owner.

(2) If after the expiration of 3 months from the day on which notice has been given under subsection (1) the thing has not been claimed by its owner the thing is forfeited to the Crown.

[Section 92D inserted: No. 14 of 1998 s. 13; amended: No. 54 of 2003 s. 140(2).]

92E. Person not to interfere with seized things

(1) A person must not remove, damage or interfere with any thing seized under this Act unless the person is authorised to do so by the CEO or an inspector.

(2) If a court convicts a person of an offence against subsection (1), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation to the CEO or to any other person for any damage or loss caused by the offence.

[Section 92E inserted: No. 14 of 1998 s. 13; amended: No. 54 of 2003 s. 140(2).]

*[**92F.** Deleted: No. 40 of 2020 s. 74.]*

92G. Inspector to try to minimise damage

In exercising any power under this Part, an inspector is to try, as far as is practicable, to minimise damage to any property.

[Section 92G inserted: No. 14 of 1998 s. 13.]

92H. Compensation for loss etc. due to enforcement action

(1) A person who suffers loss or damage as a result of the exercise of —

(a) the power of entry conferred on an inspector by section 89(1) or (3); or

(b) the powers in respect of seizure conferred on an inspector by section 92A or 92B,

may within one year of the exercise of that power apply to the CEO for compensation for that loss or damage.

(2) No compensation is payable pursuant to an application under subsection (1) unless the CEO is of the opinion that, in the circumstances of the case, it is just to pay compensation.

(3) The amount of compensation payable is to be determined by agreement between the person applying for that compensation and the CEO or, in default of any such agreement, by the Magistrates Court on the application of the person so applying or of the CEO.

[Section 92H inserted: No. 14 of 1998 s. 13; amended: No. 54 of 2003 s. 140(2); No. 59 of 2004 s. 141; No. 40 of 2020 s. 75.]

93. Obstructing etc. inspectors or authorised persons

A person who —

(a) delays or obstructs a police officer, inspector or authorised person; or

(b) does not comply with any reasonable requirement made by a police officer, inspector or authorised person; or

(c) being the occupier of any premises, refuses to permit a police officer, inspector or authorised person to do anything on those premises,

in the exercise by the police officer, inspector or authorised person of any power conferred by this Act commits an offence.

[Section 93 amended: No. 40 of 2020 s. 111(1).]

94. Analysts, appointment of

(1) The CEO may appoint analysts for the purpose of making analyses for the purposes of this Act.

(2) The appointment of a person under subsection (1) does not —

(a) render Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to the person; or

(b) affect or prejudice the application to the person of any Act referred to in paragraph (a) if it applied to the person at the time of the appointment.

[Section 94 amended: No. 32 of 1994 s. 19; No. 54 of 2003 s. 140(2); No. 40 of 2020 s. 111(1).]

95. CEO may require information about industrial processes etc.

(1) The CEO may, if the CEO has reason to believe that any requirement made by or under this Act is not being complied with in respect of any premises, by notice in writing served on the occupier of the premises require that occupier to furnish to the CEO within such period, being a period of not less than 14 days from the day on which that notice was served, as is specified in that notice such information concerning —

(a) any manufacturing, industrial or trade process carried on in or on those premises; or

(b) any waste or noise, odour or electromagnetic radiation which has been, is being or is likely to be emitted from, or any waste which is being or is likely to be stored on, those premises,

as is specified in that notice.

(2) Any person who does not comply with any requirement made to the person under subsection (1) commits an offence.

[Section 95 amended: No. 54 of 2003 s. 61 and 140(2); No. 40 of 2020 s. 111(1).]

96. CEO may require information about vehicles or vessels

(1) Subject to subsection (2), the CEO may by notice in writing served on any person —

(a) who constructs, manufactures, assembles or sells any new vehicle or vessel; and

(b) who may reasonably be expected to be in possession of any information relating to any emission from vehicles or vessels, including information —

(i) relating to any such emission obtained by the use of any equipment; or

(ii) required by the CEO for the making of any inspection, measurement or test of any such emission by a prescribed method,

require that person to furnish the information referred to in paragraph (b) to the CEO within such period, being a period of not less than 14 days from the day on which that notice was served, as is specified in that notice.

(2) The CEO may at the request of a person on whom a notice is served under subsection (1) extend by notice in writing served on that person the period within which the relevant information is required to be furnished to the CEO, and the notice served on that person under subsection (1) is thereupon deemed to be amended accordingly.

(3) A person who does not comply with a requirement made to the person under subsection (1) commits an offence.

[Section 96 amended: No. 57 of 1997 s. 54(4); No. 54 of 2003 s. 62 and 140(2); No. 40 of 2020 s. 111(1).]

97. CEO may require vehicles, vessels and equipment to be made available for testing

(1) The CEO may by notice in writing served on any person who —

(a) is the owner of or apparently in lawful possession of any vehicle or vessel; or

(b) is the occupier of any premises referred to in section 91 and has possession of any equipment to which section 86(2) applies,

require that person to make that vehicle, vessel or equipment available within the period specified in that notice for the making of any inspection, measurement or test to determine whether or not that vehicle, vessel or equipment complies with any requirement made by or under this Act.

(2) A person who does not comply with a requirement made to the person under subsection (1) commits an offence.

[Section 97 amended: No. 54 of 2003 s. 140(2); No. 40 of 2020 s. 111(1).]

98. Police officers' powers for inspecting etc. vehicles and vessels

A police officer may for the purposes of inspecting, measuring or testing a vehicle or vessel to ascertain whether or not it complies with any requirement made by or under this Act remove or cause to be removed the vehicle or vessel to a place where that inspecting, measuring or testing can be or is carried out.

99. Police officers may stop audible alarms

(1) If a police officer is satisfied that an alarm —

(a) has been sounding in or on any premises or a vehicle for not less than such period as is prescribed; and

(b) is emitting unreasonable noise,

the police officer may —

(c) enter the premises or vehicle referred to in paragraph (a); and

(d) take all such steps as appear to the police officer to be reasonably necessary for or in connection with stopping the alarm from sounding,

with the aid of such assistants as the police officer considers necessary and with the use of reasonable force.

(2) A police officer who has exercised the powers conferred by subsection (1) shall cause such persons or public authorities as appear to the police officer to be appropriate in the circumstances to be informed promptly of that exercise.

(3) The CEO shall pay to an assistant referred to in subsection (1) the amount of any reasonable fee charged by that assistant in respect of aid rendered by that assistant under that subsection.

[(4) deleted]

[Section 99 amended: No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 57 of 1997 s. 54(5) and (6); No. 54 of 2003 s. 128 and 140(2); No. 77 of 2006 s. 4; No. 40 of 2020 s. 76 and 111(1).]

Part VIA — Legal proceedings and penalties

[Heading inserted: No. 14 of 1998 s. 14.]

Division 1 — Prescribed offences and modified penalties

[Heading inserted: No. 40 of 2020 s. 77.]

99AA. Term used: prescribed offence

In this Division —

prescribed offence means —

(a) a Tier 1 offence under a section listed in the Table; or

(b) a Tier 2 offence.

Table

s. 6(7)	s. 41A(1)
s. 47(1)	s. 47(4)
s. 48(9)	s. 49(3)
s. 50(2)	s. 50A(2)
s. 51C	s. 69(5)
s. 71(5)	

[Section 99AA inserted: No. 40 of 2020 s. 78; amended: No. 36 of 2024 s. 38.]

99A. Modified penalty notice, issue of

(1) This section applies to a person if the CEO is of the opinion that —

(a) the person has committed a prescribed offence; and

(b) there is sufficient evidence to support the allegation of the offence; and

(c) having regard to the nature and particulars of the alleged offence and to the particulars of the circumstances relating to the alleged offence, the alleged offence can adequately be dealt with under this Division.

(1A) For the purposes of subsection (1)(c), the CEO must have regard to —

(a) the potential or actual effect on the environment of any occurrence giving rise to the allegation of the offence; and

(b) in the case of a prescribed offence other than an offence under section 49A(2) or (3), whether, as soon as was reasonably practicable after the occurrence giving rise to the allegation of the offence, the alleged offender notified particulars of the occurrence in writing to the CEO; and

(c) in the case of a prescribed offence other than an offence under section 49A(2) or (3), whether, after the occurrence giving rise to the allegation of the offence, the alleged offender took all reasonable and practicable steps to minimise and remedy any adverse environmental effects of that occurrence; and

(d) whether the alleged offender cooperated with officers and employees of the Department and provided information and assistance when so requested; and

(e) whether the alleged offender has taken reasonable steps to ensure that the circumstances giving rise to the allegation of the offence do not reoccur.

(2) If the CEO makes a determination that a person alleged to have committed a prescribed offence is a person to whom this section applies, the CEO is to —

(a) issue a certificate —

(i) stating the determination; and

(ii) specifying how the criteria in subsection (1) on which the determination was made were met;

and

(b) give a modified penalty notice, and the certificate referred to in paragraph (a), to the person.

(3) A modified penalty notice may be served personally or by registered post.

(4) A determination by the CEO that a person is, or is not, a person to whom this section applies, or the fact that the CEO has not made such a determination, cannot be the subject of appeal or judicial review or otherwise be called in question in any proceedings.

[Section 99A inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 129 and 140(2); No. 48 of 2010 s. 9; No. 40 of 2020 s. 79.]

99B. Content of modified penalty notice

(1) A modified penalty notice is to be in the prescribed form and is to —

(a) contain a description of the alleged offence; and

(b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to a designated person within a period of 28 days after the service of the notice; and

(c) inform the alleged offender as to who are designated persons for the purposes of receiving payment of modified penalties.

(2) In a modified penalty notice the amount specified as the modified penalty for the alleged offence referred to in the notice is to be the amount that was —

(a) if the alleged offender has not previously been convicted of an offence of that kind and has not previously paid a modified penalty under this Division in respect of an alleged offence of that kind, 10% of the maximum fine that could be imposed for that offence by a court; and

(b) if the alleged offender has previously been convicted of an offence of that kind, or has previously paid a modified penalty under this Division in respect of an alleged offence of that kind, 20% of the maximum fine that could be imposed for that offence by a court,

at the time the alleged offence is believed to have been committed.

(3) The CEO may, in writing, appoint persons or classes of persons to be designated persons for the purposes of this section.

[Section 99B inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2); No. 84 of 2004 s. 80.]

99C. Extending time to pay modified penalty

The CEO may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

[Section 99C inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2).]

99D. Withdrawing modified penalty notice

(1) Within one year after a modified penalty notice was given to an alleged offender in respect of an offence the CEO may, if —

(a) the CEO is no longer of the opinion that the alleged offender is a person to whom section 99A applies in respect of that offence; and

(b) the modified penalty has not been paid,

withdraw the modified penalty notice by sending to the alleged offender a notice in the prescribed form stating that the modified penalty notice has been withdrawn.

(2) A notice under this section may be served personally or by registered post.

[Section 99D inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2).]

99E. Consequence of paying modified penalty

(1) Subsections (2) and (3) apply if the modified penalty specified in a modified penalty notice has been paid within 28 days or such further time as is allowed.

(2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(3) If this subsection applies, the CEO must publish —

(a) a notice of payment of the modified penalty; and

(b) such particulars as are prescribed.

(4) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

[Section 99E inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2); No. 77 of 2006 Sch. 1 cl. 59(1); No. 40 of 2020 s. 80.]

99F. Register of modified penalty notices etc.

(1) The CEO is to maintain a register of —

(a) certificates and modified penalty notices issued under section 99A(2); and

(b) withdrawal forms sent under section 99D; and

(c) such particulars in relation to modified penalty notices and payments as the CEO considers appropriate or as are prescribed.

(2) The register is to be available for public inspection under such conditions and at such places and times as are prescribed.

[Section 99F inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2).]

99G. Application of penalties collected

An amount paid as a modified penalty is to be dealt with as if it were a fine imposed by a court as a penalty for an offence.

[Section 99G inserted: No. 14 of 1998 s. 14.]

Division 2 — Infringement notice offences

[Heading inserted: No. 14 of 1998 s. 14.]

99H. Terms used

In this Division —

designated person, in section 99K, 99M or 99N, means a person appointed under section 99I to be a designated person for the purposes of the section in which the term is used;

infringement notice offence means a Tier 3 offence, or an offence against the regulations, that is prescribed by the regulations for the purposes of this Division.

[Section 99H inserted: No. 14 of 1998 s. 14.]

99I. Designated persons for s. 99K, 99M or 99N, appointment of

(1) The CEO may, in writing, appoint persons or classes of persons to be designated persons for the purposes of section 99K, 99M or 99N or for the purposes of 2 or more of those sections.

(2) A person who is authorised to give infringement notices under section 99J is not eligible to be a designated person for the purposes of section 99K, 99M or 99N.

[Section 99I inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2).]

99J. Infringement notice, issue of

(1) 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 who has reason to believe that a person has committed an infringement notice offence may give an infringement notice to the alleged offender.

(2) An infringement notice may be served personally or by registered post.

(3) The infringement notice must be served within 12 months after the day on which the alleged infringement notice offence is believed to have been committed.

[Section 99J inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 130; No. 40 of 2020 s. 81.]

99K. Content of infringement notice

(1) An infringement notice is to be in the prescribed form and is to —

(a) contain a description of the alleged offence; and

(b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to a designated person within a period of 28 days after the service of the notice; and

(c) inform the alleged offender as to who are designated persons for the purposes of receiving payment of modified penalties.

(2) In an infringement notice the amount specified as the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

(3) The modified penalty that may be prescribed for an infringement notice offence is not to exceed —

(a) if the alleged offender has not previously been convicted of an offence of that kind and has not previously paid a modified penalty under this Division in respect of an alleged offence of that kind, 10% of the maximum fine that could be imposed for that offence by a court; and

(b) if the alleged offender has previously been convicted of an offence of that kind, or has previously paid a modified penalty under this Division in respect of an alleged offence of that kind, 20% of the maximum fine that could be imposed for that offence by a court.

[Section 99K inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 131; No. 84 of 2004 s. 80.]

99L. Some prior convictions and payments of modified penalties to be disregarded for s. 99K(3)

For the purposes of section 99K(3), a prior conviction or payment of a modified penalty in respect of an alleged offence is not to be taken into account for the purposes of determining whether the alleged offender has previously been convicted of an offence or has previously paid a modified penalty notice unless —

(a) the prior conviction was recorded within the period of 5 years immediately prior to the giving of an infringement notice in respect of the present alleged offence; or

(b) the modified penalty was paid in respect of the prior alleged offence within the period of 5 years immediately prior to the giving of an infringement notice in respect of the present alleged offence.

[Section 99L inserted: No. 14 of 1998 s. 14.]

99M. Extending time to pay modified penalty

A designated person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

[Section 99M inserted: No. 14 of 1998 s. 14.]

99N. Withdrawing infringement notice

(1) Within one year after the notice was given a designated person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

(2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

(3) A notice under this section may be served personally or by registered post.

[Section 99N inserted: No. 14 of 1998 s. 14.]

99O. Consequence of paying modified penalty

(1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.

(2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

[Section 99O inserted: No. 14 of 1998 s. 14.]

99P. Application of penalties collected

An amount paid as a modified penalty is, subject to section 99N(2) —

(a) if issued by an inspector employed by a local government, to be paid to the local government; and

(b) otherwise, to be dealt with as if it were a fine imposed by a court as a penalty for an offence.

[Section 99P inserted: No. 14 of 1998 s. 14.]

Division 3 — Penalties

[Heading inserted: No. 14 of 1998 s. 14.]

99Q. Penalties

(1) An individual who is convicted of an offence under a section specified in —

(a) column 2 of Division 1 of Part 1 of Schedule 1; or

(b) column 2 of Division 1 of Part 2 of Schedule 1,

is liable to a penalty not exceeding the penalty specified opposite to that section in column 3 of that Division.

(2) A body corporate which is convicted of an offence under a section specified in —

(a) column 2 of Division 2 of Part 1 of Schedule 1; or

(b) column 2 of Division 2 of Part 2 of Schedule 1,

is liable to a penalty not exceeding the penalty specified opposite to that section in column 3 of that Division.

(3) A person, being either an individual or a body corporate, who or which is convicted of an offence under a section specified in —

(a) column 2 of Division 3 of Part 2 of Schedule 1; or

(b) column 2 of Part 3 of Schedule 1,

is liable to a penalty not exceeding the penalty specified opposite to that section in column 3 of that Division or Part.

[Section 99Q inserted: No. 14 of 1998 s. 14.]

99R. Daily penalty

(1) Without limiting section 71 of the *Interpretation Act 1984*, where an offence is committed by a person by reason of the contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is taken to continue so long

as the act or thing so required or directed remains undone, or continues to be done, as the case may be.

(2) In addition to a penalty specified in column 3 of Schedule 1, a person, being either an individual or a body corporate, who or which is convicted of an offence under a section specified in column 2 of any Part of Schedule 1 is liable to a daily penalty not exceeding the daily penalty specified opposite to that section in column 4 of the Part for each day or part of a day during which the offence continues after written notice of the alleged offence has been given by the CEO to the offender.

(3) In addition to a penalty specified in column 3 of Schedule 1, a person, being either an individual or a body corporate, who or which is convicted of an offence under a section specified in column 2 of any Part of Schedule 1 is liable to a daily penalty not exceeding the daily penalty specified opposite to that section in column 4 of the Part for each day or part of a day during which the offence continues after the offender is convicted.

[Section 99R inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2).]

99S. Attempt and accessory after the fact

A person who attempts to commit, or becomes an accessory after the fact to, an offence (in this section called the ***principal offence***) commits —

(a) if the principal offence is a Tier 1 offence, a Tier 1 offence;

(b) if the principal offence is a Tier 2 offence, a Tier 2 offence;

(c) if the principal offence is a Tier 3 offence, a Tier 3 offence,

and is liable on conviction, unless the Act specifies otherwise, to the penalty to which a person convicted of the principal offence is liable.

[Section 99S inserted: No. 14 of 1998 s. 14.]

Division 4 — Additional powers available to the court

[Heading inserted: No. 14 of 1998 s. 14.]

99T. Term used: convicted

For the purposes of this Division —

(a) ***convicted*** has the same meaning as in the *Sentencing Act 1995*; and

(b) a person is convicted of an offence notwithstanding that a spent conviction order is made under section 39 of the *Sentencing Act 1995* in respect of the conviction.

[Section 99T inserted: No. 14 of 1998 s. 14.]

99U. Orders generally

(1) One or more orders may be made under this Division against a person convicted of an offence against this Act.

(2) Orders may be made under this Division in addition to any penalty that may be imposed in relation to the offence.

(3) Orders made under this Division in relation to an offence are not limited by the monetary penalty that may be imposed in respect of the offence.

(4) Nothing in this Division limits the court's powers under the *Sentencing Act 1995* or the *Criminal Property Confiscation Act 2000*.

[Section 99U inserted: No. 14 of 1998 s. 14; amended: No. 69 of 2000 s. 13(1).]

99V. Orders for forfeiture

(1) If a court convicts a person of an offence against this Act, the court may, in addition to any other penalty imposed under this

Act, order the forfeiture to the Crown of any thing used, or intended to be used, in the commission of the offence.

(2) A court is not to make an order for the forfeiture of any thing under subsection (1) unless the prosecutor applies for the order.

(3) If a thing is forfeited to the Crown, any security given to the CEO under section 92C in lieu of the thing is taken to be forfeited to the Crown in lieu of the thing.

[Section 99V inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2).]

99W. Disposal of forfeited things

(1) Any thing forfeited to the Crown under this Act may be sold, destroyed or otherwise disposed of or dealt with in the prescribed way.

(2) Proceeds of the sale of any thing forfeited to the Crown under this Act are to be paid into the Consolidated Account.

(3) If the thing is not sold, or if the proceeds of the sale are insufficient to defray the costs and expenses of seizing, storing, treating, selling, destroying, disposing of or otherwise dealing with the thing and an order for costs or expenses incurred in respect of the thing has not been made under section 99Y(1)(a)(i) —

(a) those costs and expenses or the unsatisfied balance of them; and

(b) the costs of and incidental to the proceedings for recovery from the former owner,

may be recovered from the offender as a debt due in a court of competent jurisdiction.

[Section 99W inserted: No. 14 of 1998 s. 14; amended: No. 77 of 2006 s. 4.]

99X. Orders for prevention, restoration etc.

(1) If a court convicts a person of an offence against this Act, the court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow) —

(a) to prevent, control, abate or mitigate any harm to the environment caused by the commission of the offence; or

(b) to make good any resulting environmental damage; or

(c) to prevent the continuance or recurrence of the offence.

(2) A court is not to make an order under subsection (1) unless the prosecutor applies for the order.

(3) The court may, in an order under this section, impose any other requirements the court considers necessary or expedient for enforcement of the order.

(4) A person who without lawful excuse, proof of which is on the person, does not comply with an order under this section commits an offence punishable after summary conviction by the court that imposed the order.

(5) If a court convicts a person under subsection (4) of failing to comply with an order, the court may order that the act required to be done may be done so far as is practicable by the CEO, or some other person appointed by the court, at the cost of the offender.

(6) Expenses and costs incurred, or to be incurred, by a person under an order under subsection (5) are to be ascertained in such manner as the court may direct and are to be paid by, or recovered from, the offender in such manner as the court orders.

[Section 99X inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2).]

99Y. Orders for costs, expenses and compensation

(1) If a court convicts a person of an offence against this Act, the court may, if it appears to the court that —

(a) the CEO or a public authority has reasonably incurred costs and expenses in connection with —

(i) seizing, storing, treating, selling, destroying, disposing of or otherwise dealing with a thing seized under this Act in relation to the offence; or

(ii) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence; or

(iii) making good any resulting environmental damage;

or

(b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has reasonably incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the CEO, public authority or person the reasonable costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as does not exceed the prescribed amount and is fixed by the order.

(2) The court may make an order under subsection (1) at the time of imposing a penalty for the offence or upon application at a later time.

[Section 99Y inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2).]

99Z. Orders regarding monetary benefits

(1) If a court convicts a person of any offence against this Act, the court may order the offender to pay an additional penalty of an amount not exceeding the court's estimation of the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.

(2) In this section —

monetary benefits means —

(a) monetary, financial or economic benefits of any kind; and

(b) monetary savings, or a reduction in expenditure, achieved by the avoidance of charges, fees or other costs that would have been incurred by the offender if the offender had not committed the offence.

[Section 99Z inserted: No. 14 of 1998 s. 14; amended: No. 40 of 2020 s. 82.]

99ZA. Orders requiring public notice to be given etc.

(1) If a court convicts a person of any offence against this Act, the court may do any one or more of the following —

(a) order the offender to take specified action to publicise the offence and its environmental and other consequences and any other orders made against the person;

(b) order the offender to take specified action to notify specified persons or classes of persons of the offence and its environmental and other consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct);

(c) order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit.

(2) The court is not to make an order under subsection (1)(c) unless the prosecutor applies for the order.

(3) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

(4) If the offender fails to comply with an order under subsection (1)(a) or (b), the CEO may take action to carry out the order as far as may be practicable, including action to publicise or notify —

(a) the original contravention, its environmental and other consequences, and any other penalties imposed on the offender; and

(b) the failure to comply with the order.

(5) The reasonable cost of taking action referred to in subsection (4) is recoverable by the CEO as a debt due in a court of competent jurisdiction.

[Section 99ZA inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2).]

99ZB. Enforcing orders to pay moneys

(1) If —

(a) the court orders the payment of moneys under this Division; and

(b) the amount payable under the order is not paid within 28 days after the date of the order,

the amount may be recovered as a judgment debt in a court of competent jurisdiction, unless an order is made under subsection (2).

(2) If the order is made by the Supreme Court or the District Court, that court may in addition make an order under section 59 of the *Sentencing Act 1995* and for that purpose that section, with any necessary changes, applies as if the order were a fine imposed on the offender.

(3) For the purposes of subsection (1), a certified copy of an order is on request to be issued (without payment of a fee) to the CEO and the copy may be registered (without payment of a fee) as a judgment in a court of competent jurisdiction.

[Section 99ZB inserted: No. 14 of 1998 s. 14; amended: No. 54 of 2003 s. 140(2).]

Part VII — Appeals

100. Appeals against Authority's decisions etc. as to proposals and schemes

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

[(a)-(c) deleted]

(d) the content of, or any recommendation in, the report prepared under section 44 in respect of a proposal; or

(e) the content of, or any recommendation in, the report prepared under section 48D in respect of a scheme,

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

[(1a), (2) deleted]

(3) Any proponent that disagrees with any conditions or procedures agreed under section 45(3) or (4) (or under section 45(3) or (4) 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) deleted]

(b) under subsection (1)(d), within 21 days of the publication of the report under section 44(3)(a); or

(c) under subsection (1)(e), within 21 days of the publication of the report under section 48D(3)(a); or

(d) under subsection (3), within 14 days after the publication of the Ministerial statement setting out the agreement.

[(e) deleted]

(4) A proponent who is aggrieved by —

(a) a notice served on the proponent under section 48(7)(b); or

(b) the taking of any steps under section 48(7)(c) or (d),

may, within 14 days of the service of that order or the taking of the last of those steps, as the case requires, lodge with the Minister an appeal in writing setting out the grounds of that appeal.

[Section 100 amended: No. 73 of 1994 s. 4; No. 23 of 1996 s. 22; No. 54 of 2003 s. 23; No. 40 of 2010 s. 6; No. 40 of 2020 s. 84; No. 36 of 2024 s. 35.]

101. Minister's powers on appeals under s. 100

(1) When an appeal is lodged under section 100(1) or (4), the Minister may —

(a) in the case of any appeal so lodged but subject to section 109(3)(a), dismiss the appeal; or

[(b), (c) deleted]

(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;

or

[(da) deleted]

(db) in the case of an appeal referred to in section 100(1)(e), deal with that appeal under subsections (2d) and (2e); or

(e) in the case of an appeal against a notice served under section 48(7)(b), set aside or alter that notice; or

(f) in the case of an appeal against the taking of any steps under section 48(7)(c) or (d), prohibit the taking of any

one or more of those steps, alter any of those steps or substitute a different step for any of those steps,

and the decision of the Minister under this subsection is final and without appeal.

(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.

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

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

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

[(2a)-(2c) deleted]

(2d) When an appeal is lodged under section 100(1)(e), the Minister shall —

(a) if the Minister considers that the decision of the appeal could affect the content of any condition to which the relevant scheme might be subject, having consulted the responsible Minister under section 48F(1) in respect of that condition and, if possible, agreed with the responsible Minister on that condition, decide the appeal in accordance with that agreement or, in the absence of any such agreement, with the relevant decision under section 48J; or

(b) if the Minister does not consider that the decision of the appeal could affect the content of any such condition, decide the appeal without consulting the responsible Minister under section 48F(1).

(2e) A decision of the Minister under subsection (2d) is final and without appeal.

(3) The lodging of an appeal —

[(a) deleted]

(b) referred to in section 100(1)(d) or (e) has the effect described in section 45(10) or 48F(3), as the case requires; or

(c) referred to in section 100(3) as to conditions or procedures agreed under section 45(3) or (4) otherwise than as applied by section 46(8) prevents the implementation of the proposal concerned; or

(d) referred to in section 100(3) as to conditions or procedures agreed under section 45(3) or (4) as applied by section 46(8) does not prevent the implementation, or continued implementation, of the proposal concerned subject to the implementation conditions; or

(e) against a notice served under section 48(7)(b) suspends the operation of that notice; or

(f) against the taking of any steps under section 48(7)(c) or (d) does not prevent the taking of those steps,

during the period commencing with that lodging and ending with the decision of the Minister under subsection (1) or (2d) or section 107(2).

(4) In giving a decision under subsection (1)(f), the Minister may order that section 48(8) does not apply to any steps to which the decision relates and that order has effect according to its tenor.

[Section 101 amended: No. 23 of 1996 s. 23; No. 57 of 1997 s. 54(7) and (8); No. 54 of 2003 s. 24; No. 40 of 2010 s. 7; No. 40 of 2020 s. 85 and 111(1); No. 36 of 2024 s. 36.]

101A. Appeals against decisions as to 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 21 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 21 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 specification referred to in that subsection; or

(b) not being a holder referred to in subsection (2), disagrees with an amendment referred to in that subsection,

may within the period within which the applicant or holder can lodge an appeal about that specification 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.

[Section 101A inserted: No. 54 of 2003 s. 112; amended: No. 40 of 2010 s. 10.]

102. Appeals against decisions as to works approvals and licences

(1) Subject to section 105, an applicant for —

(a) a works approval or licence who is aggrieved by the refusal of the CEO to grant the works approval or licence under section 54(3) or 57(3), as the case requires; or

(b) the transfer of a works approval or licence who is aggrieved by the refusal of the CEO to transfer the works approval or licence under section 64(2); or

(c) a works approval or licence or transfer of a works approval or licence who is aggrieved by the specification by the CEO of any condition in the works approval or licence under section 54(3), 57(3) or 64(2),

may within 21 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 works approval or licence who is aggrieved by the 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), may within 21 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 specification referred to in that subsection; or

(b) not being a holder referred to in subsection (2), disagrees with an amendment referred to in that subsection,

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

(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.

[Section 102 amended: No. 54 of 2003 s. 82, 99 and 140(2); No. 40 of 2010 s. 11.]

103. Appeals against decisions as to notices issued under s. 65, 68A, 70 or 73A

(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.

(2) A person (other than a person referred to in subsection (1)) who disagrees with a requirement or amendment referred to in that subsection may within 21 days of the making of that requirement or amendment lodge with the Minister an appeal in writing setting out the grounds of that appeal.

(3) Pending the determination of an appeal lodged under subsection (1) or (2), the relevant requirement or amendment shall continue to have effect.

[Section 103 amended: No. 54 of 2003 s. 63.]

104. Appeals against CEO's requirements under s. 96 or 97

(1) A person who is aggrieved by a requirement contained in a notice served on the person under section 96(1) or 97(1) may within 21 days of that service lodge with the Minister an appeal in writing setting out the grounds of that appeal.

(2) Pending the determination of an appeal lodged under subsection (1), a requirement referred to in that subsection shall be deemed not to have been made.

[Section 104 amended: No. 40 of 2020 s. 111(1).]

105. Matters that cannot be appealed

An appeal shall not be lodged —

(a) under section 101A, 102 or 103 in respect of anything done by the CEO under section 110 to give effect to recommendations referred to in section 109; or

(aa) under section 101A(2) in respect of the amendment of a clearing permit by correcting it under section 51K(1)(e), (f), (g), (ga) or (h); or

(b) under section 102(2) in respect of the amendment of a licence by correcting it under section 59(1)(e), (f), (h), (i), (ia) or (j).

[Section 105 amended: No. 54 of 2003 s. 83, 113 and 140(2); No. 36 of 2024 s. 24.]

106. Preliminary procedure on 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; and

(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; and

(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(2d).

(4) Subsection (1) does not apply if an appeals committee has been appointed.

(5) If an appeal is lodged under section 100 by a person other than a decision-making authority and the decision-making authority has made submissions to the Minister in respect of the proposal to which the appeal relates —

(a) the Appeals Convenor must have regard to those submissions when reporting on, and otherwise dealing with, the appeal; and

(b) if an appeals committee has been appointed, it must have regard to those submissions when considering and reporting to the Minister on the appeal.

[Section 106 inserted: No. 54 of 2003 s. 100; amended: No. 40 of 2010 s. 8; No. 40 of 2020 s. 88(2).]

107. Minister's powers on appeal

[(1) deleted]

(2) On receiving a report or reports mentioned in section 106(1)(a), (b) or (d), the Minister may allow or dismiss the appeal to which that report relates and the decision of the Minister under this subsection shall be final and without appeal.

(3) Subsection (2) does not apply to an appeal referred to in section 101(2d).

[Section 107 amended: No. 23 of 1996 s. 25; No. 14 of 1998 s. 24; No. 54 of 2003 s. 101; No. 40 of 2010 s. 9; No. 40 of 2020 s. 89.]

107A. Appeals Convenor, appointment of

(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.

[Section 107A inserted: No. 54 of 2003 s. 102.]

107B. Functions 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 the Appeals Convenor's functions.

(4) If an appeal under section 100, 101A, 101B(1), 102, 103 or 104(1), as enacted at any time, is lodged with the Appeals Convenor, it is taken to have been lodged with the Minister.

(5) Subsection (4) extends, and is taken to have always extended, to appeals lodged before the coming into operation of the *Environmental Protection Amendment Act 2020* section 90.

[Section 107B inserted: No. 54 of 2003 s. 102; amended: No. 40 of 2020 s. 90 and 111(1).]

107C. Appeals panel, appointment of

(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.

[Section 107C inserted: No. 54 of 2003 s. 102.]

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;

and

(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.

[Section 107D inserted: No. 54 of 2003 s. 102.]

108. Appeals committees, composition and remuneration of

(1) An appeals committee shall consist of one person who has, or 2 or more persons at least one of whom has, expertise in environmental matters.

(2) A member of an appeals committee shall be paid such remuneration and travelling and other allowances as the Minister on the recommendation of the Public Sector Commissioner from time to time determines in respect of the member, but the Minister shall not make such a determination in respect of a person to whom Part 3 of the *Public Sector Management Act 1994* applies except with the prior approval in writing of the Public Sector Commissioner.

[Section 108 amended: No. 32 of 1994 s. 19; No. 57 of 1997 s. 54(9); No. 14 of 1998 s. 37; No. 39 of 2010 s. 89; No. 40 of 2020 s. 111(1).]

109. Procedure of appeals committees

(1) In considering an appeal, an appeals committee —

(a) shall consult —

(i) the CEO in the case of an appeal against a decision of the CEO; and

(ii) the Authority in the case of an appeal against a decision of the Minister or the Authority; and

(iii) the appellant;

and

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

(b) shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms, shall not be bound by any rules of evidence and may conduct its inquiries in whatever manner it considers appropriate.

(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.

(2) In relation to an appeal lodged under section 102(2) in respect of the amendment of a licence under section 59(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.

(3) On completing its consideration of an appeal, an appeals committee shall, subject to subsection (4), report to the Minister on its findings and recommendations in respect of the appeal, and the Minister shall allow or dismiss the appeal —

(a) if the appeal is from a decision of the Minister, in accordance with; or

(b) if the appeal is from a decision other than a decision of the Minister, having regard to,

those recommendations and the decision of the Minister under this subsection shall be final and without appeal.

(4) An appeals committee shall not in reporting to the Minister under subsection (3) make any recommendation that conflicts with any approved policy or with any standard prescribed by or under this Act.

[Section 109 amended: No. 54 of 2003 s. 84, 103 and 114.]

110. Minister's decisions on appeals, implementation and publication of

(1) The CEO shall, as soon as is practicable, give effect to each decision of the Minister under section 101, 107(2) or 109(3) on an appeal.

(2) The Minister shall cause such details of decisions under this Part in respect of appeals to be published in such manner as is prescribed.

(3) If implementation conditions are changed on an appeal under section 100(3), a statement setting out the implementation conditions as changed must be published by the Minister and section 45(8)(b) applies.

[Section 110 amended: No. 23 of 1996 s. 26; No. 54 of 2003 s. 140(2); No. 40 of 2020 s. 91.]

Part VIIA — Landfill levy

[Heading inserted: No. 14 of 1998 s. 20.]

Division 1 — Collection of levy imposed under *Environmental Protection (Landfill) Levy Act 1998*

[Heading inserted: No. 14 of 1998 s. 20.]

110A. Terms used

In this Part —

Account means the Waste Management and Recycling Account established under section 110H;

levy means a levy imposed under the *Environmental Protection (Landfill) Levy Act 1998*.

[Section 110A inserted: No. 14 of 1998 s. 20; amended: No. 77 of 2006 Sch. 1 cl. 59(2).]

110B. Payment of levy

(1) A levy is due and payable at such time or times, and in such manner, as is prescribed.

(2) A levy is payable to the Minister.

(3) The regulations may provide for the refund or deduction of amounts overpaid by way of levy and the payment of rebates.

[Section 110B inserted: No. 14 of 1998 s. 20.]

110C. Financial assurance

The regulations may make provision —

(a) empowering the CEO to require a licensee to provide a financial assurance for the purpose of securing or guaranteeing payment of a levy; and

(b) with respect to the form, amount, maintenance and termination of the financial assurance; and

(c) with respect to the conditions and procedures under which the financial assurance may be called on or used; and

(d) with respect to matters necessary for, or incidental to, the effective operation of a financial assurance.

[Section 110C inserted: No. 14 of 1998 s. 20; amended: No. 54 of 2003 s. 140(2).]

110D. Payment by instalments

(1) The regulations may provide for the payment of an amount of a levy to be made by instalments, and, subject to subsection (2), each instalment is due and payable at a time ascertained in accordance with the regulations.

(2) If —

(a) the regulations provide for the payment of an amount of a levy to be made by instalments; and

(b) an instalment is not paid at or before the time due for the payments of the instalment,

the whole of the amount of the levy unpaid becomes due and payable at that time.

[Section 110D inserted: No. 14 of 1998 s. 20.]

110E. Penalty for non-payment

(1) If an amount of a levy remains unpaid after the day on which it becomes due for payment, there is payable to the Minister by way of penalty, in addition to the amount of the levy, an amount calculated at the rate of 20% per annum upon the amount of the levy from time to time remaining unpaid.

(2) The amount by way of penalty referred to in subsection (1) is to be calculated from the time when the amount of the levy becomes payable.

[Section 110E inserted: No. 14 of 1998 s. 20.]

110F. Recovery of levy

The following amounts may be recovered by the Minister in a court of competent jurisdiction as debts due to the Minister —

(a) a levy that is due and payable; and

(b) an amount payable under section 110E.

[Section 110F inserted: No. 14 of 1998 s. 20.]

110G. Evading levy

(1) A person who, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, evades or attempts to evade payment of all or any amount of a levy commits an offence.

Penalty: $5 000 and treble the amount evaded or attempted to be evaded.

(2) The imposition on a person of a fine under subsection (1) does not affect the liability of the person to pay the levy and penalty under section 110E.

[Section 110G inserted: No. 14 of 1998 s. 20.]

Division 2 — Waste Management and Recycling Account

[Heading inserted: No. 14 of 1998 s. 20; amended: No. 77 of 2006 Sch. 1 cl. 59(3).]

110H. Waste Management and Recycling Account

(1) An account called the Waste Management and Recycling Account is to be established —

(a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or

(b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.

(2) The Account is to be administered by the Minister.

(3) The Account is to be credited with —

(a) any levy paid; and

(b) any amount paid by way of penalty under section 110E; and

(c) income derived from the investment of moneys forming part of the Account; and

(d) any other moneys lawfully payable to the credit of the Account.

(4) Moneys held in the Account may be applied by the Minister —

(a) to fund programmes relating to the management, reduction, reuse, recycling, monitoring or measurement of waste that are approved by the Minister; and

(b) in payment of the costs of administering the Account (including the costs of collecting levies and penalties and support and evaluation services).

(5) Moneys held in the Account may be paid by the Minister to a person or body to conduct a programme relating to the management, reduction, reuse, recycling, monitoring or measurement of waste promoted by that person or body.

(6) A person or body to whom moneys are paid under subsection (5) who fails to ensure that —

(a) the moneys are only expended for the purposes of the programme and in accordance with any terms or conditions imposed by the Minister; or

(b) a performance evaluation in respect of the programme for which the moneys are paid is carried out in accordance with any written direction of the Minister; or

(c) at such time or times as are prescribed, a special purpose audit is carried out by a registered company auditor of the allocation and expenditure of the moneys; or

(d) a report on the audit is prepared by the auditor and a copy of the report is provided to the Minister as soon as is practicable after it is prepared,

commits an offence.

(7) The Minister is to —

(a) seek the advice of such persons and bodies as the Minister thinks fit as to the setting and variation of a levy and the development of policy for the application of money from the Account; and

(b) from time to time develop and publish a statement of the objectives to be achieved by programmes funded under this section.

(8) The annual report of the Department prepared for the purposes of Part 5 of the *Financial Management Act 2006* is to include a summary of any written performance evaluation carried out pursuant to a direction of the Minister by a person or body to whom moneys are paid under subsection (5).

[Section 110H inserted: No. 14 of 1998 s. 20; amended: No. 28 of 2006 s. 211; No. 77 of 2006 Sch. 1 cl. 59(4)-(6).]

110I. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

(1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in relation to the Account.

(2) The administration of the Account is for the purposes of section 52 of the *Financial Management Act 2006* to be regarded as a service of the Department.

[Section 110I inserted: No. 14 of 1998 s. 20; amended: No. 77 of 2006 Sch. 1 cl. 59(7)-(9).]

110J. Review of Part VIIA

The Minister shall carry out a review of the operation and effectiveness of this Part as soon as practicable after the expiry of 3 years from the coming into operation of section 20 of the *Environmental Protection Amendment Act 1998* and cause a report based on the review to be prepared and laid before each House of Parliament as soon as practicable after the review is completed.

[Section 110J inserted: No. 14 of 1998 s. 20.]

[Part VIIB (s. 110K-110T) deleted: No. 36 of 2007 s. 100.]

Part VIII — General

111. Saving of rights at law to prevent etc. pollution etc.

Nothing in this Act in any way affects any right any person has at law to prevent, control or abate pollution or environmental harm or to obtain damages.

[Section 111 amended: No. 54 of 2003 s. 64.]

111A. Victimisation of informants etc.

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

(a) prejudices, or threatens to prejudice, the safety or career of another person; or

(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.

(3) In subsection (1) —

detrimental action includes action causing, comprising or involving —

(a) damage or loss; or

(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.

[Section 111A inserted: No. 54 of 2003 s. 132(1).]

112. False information

A person who, in purporting to comply with a requirement or request under this Act to give information to the Minister, the Authority, the CEO, a police officer, an inspector or an authorised person, gives or causes to be given information that to the person's knowledge is false or misleading in a material particular commits an offence.

[Section 112 inserted: No. 40 of 2020 s. 93.]

112A. Self-incrimination

(1) An individual is not excused from answering a question or producing a document when required to do so under Part VI on the ground that to do so might tend to incriminate the individual or make the individual liable to a penalty.

(2) An answer given, or document produced, by an individual when required to do so under Part VI is not admissible in evidence against the individual in any criminal proceeding (other than

proceedings in respect of giving false or misleading information).

(3) Further information obtained as the result of an answer given, or document produced, by an individual when required to do so under Part VI is not inadmissible on the ground that —

(a) the answer or document was required to be given; or

(b) the answer or document might incriminate the individual.

[Section 112A inserted: No. 14 of 1998 s. 15; amended: No. 40 of 2020 s. 94.]

*[**113.** Deleted: No. 14 of 1998 s. 16.]*

114. Prosecutions, who may institute

(1) Proceedings in respect of a Tier 1 offence, whether by way of —

(a) giving a modified penalty notice under section 99A(2)(b); or

(b) prosecution for the offence,

as determined by the CEO, are not to be instituted otherwise than by the CEO.

(1a) Subject to subsections (3) and (4), proceedings in respect of a Tier 2 offence, whether by way of —

(a) giving a modified penalty notice under section 99A; or

(b) prosecution for the offence,

as determined by the CEO, are not to be instituted otherwise than by the CEO.

(1b) Subject to section 79(2) and (3), a prosecution for a Tier 3 offence or an offence under a regulation is not to be instituted otherwise than by —

(a) the CEO; or

(b) an authorised person acting under a power which that person is entitled by an authority issued under section 87 to exercise.

(1c) The Minister is not to give a direction or instruction to the CEO in respect of the giving of a modified penalty notice or an infringement notice or the institution of a prosecution.

[(2) deleted]

(3) A prosecution for an offence under section 49A(2) or (3), 81(2), 82(2), 83 or 93 may be instituted by any of the following —

(a) the CEO;

(b) a police officer, acting with the consent of the CEO;

(c) the chief executive officer of a local government, acting with the consent of the CEO.

(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 CEO or the chief executive officer of the local government.

[Section 114 amended: No. 50 of 1996 s. 12; No. 14 of 1998 s. 17; No. 54 of 2003 s. 133 and 140(2); No. 48 of 2010 s. 10; No. 40 of 2020 s. 95.]

114A. Prosecutions, limitation periods for

(1) A prosecution for a Tier 1 offence may be commenced at any time.

(2) A prosecution for any other offence under this Act may be commenced within 24 months after the date on which the alleged offence was committed.

(3) Despite subsection (2), if a prosecution notice alleging 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 —

(a) the prosecution may be commenced within 24 months after that day; and

(b) the prosecution notice 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 prosecution notice, unless the contrary is shown.

[Section 114A inserted: No. 54 of 2003 s. 134; amended: No. 59 of 2004 s. 141; No. 84 of 2004 s. 80.]

115. Investigation expenses

The court by or before which a person is convicted of an offence under this Act may, whether or not it imposes any other punishment, order that the person convicted pay the reasonable costs of and incidental to any inspection, measurement, test, analysis or other action made or taken by or on behalf of the prosecution towards the investigation of the offence and the giving of evidence relating thereto, and may make such order as that court thinks just as to those costs.

116. Disputes between Authority and other public authority

Any question, difference or dispute arising or about to arise between the Authority and any public authority with respect to the exercise or performance of any rights or functions by either or both of them may be finally and conclusively determined by the Governor.

116A. Proof not required of certain matters

In proceedings for an offence under this Act, each of the following matters is taken to have been proved in the absence of proof to the contrary —

(a) that the prosecutor is authorised to institute the prosecution;

(b) that a signature on the prosecution notice alleging the offence is the signature of a person authorised to institute the prosecution;

(c) that at a specified time a specified person was the CEO, an authorised officer or an inspector or a person assisting an inspector under section 89A;

(d) that at a specified time a specified authorised person or a specified inspector was authorised to do a specified thing.

[Section 116A inserted: No. 40 of 2020 s. 96.]

116B. Proof of remotely sensed images

(1) In this section —

captured includes taken;

image includes —

(a) a photograph; and

(b) a digital image;

image data source means a website, database, data storage facility or other body or source of information —

(a) containing or including either or both of the following —

(i) remotely sensed images;

(ii) digital or electronic information from which remotely sensed images can be produced;

and

(b) declared by the regulations to be an image data source for the purposes of this section;

official document means a document purporting to be signed by the CEO or a person appointed under the *Land Administration Act 1997* section 30 to be an authorised land officer;

remotely sensed image means an aerial photograph or any other image of land captured using airborne equipment or equipment mounted in or on a satellite.

(2) In this section a reference to the ***capture*** of an image includes a reference to the capture of digital or electronic information from which the image was produced.

(3) For the purposes of this section, a remotely sensed image derived from an image data source —

(a) is taken to have been captured on the date recorded or shown in the image data source as being the date on which the image was captured; and

(b) is taken to be an image of the land recorded or shown in the image data source as being the land to which the image relates.

(4) In proceedings under this Act a remotely sensed image of land is evidence of the vegetation on the land, and its condition, on the date on which the image was captured.

(5) Subsection (4) applies to an image even if it, or the information from which it was produced, has been modified or enhanced so that colours, tones or brightness more accurately represent what would be visible with the naked eye.

(6) In proceedings under this Act an official document certifying the matters set out in subsection (7) or any of those matters is, in the absence of proof to the contrary, taken to be proof of the matters certified.

(7) The matters that may be certified are —

(a) that an image comprising or specified in the document is, or is a true copy of, a remotely sensed image of land; and

(b) that an image comprising or specified in the document is derived from an image data source; and

(c) that the image data source from which an image comprising or specified in the document is derived records or shows a date specified in the document as being the date on which the image was captured; and

(d) that the image data source from which an image comprising or specified in the document is derived records or shows land specified in the document as being the land to which the image relates; and

(e) that a remotely sensed image of land comprising or specified in the document has been marked to correctly identify, and correctly show the boundaries of, the land according to records held by the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5.

(8) In subsection (7)(e) a reference to the marking of an image is a reference to the marking or modification of the image, or the information from which it was produced, by the application of computer software or by other means.

(9) An image, or a document comprising or specifying an image, must not be admitted pursuant to this section as evidence that the land has been cleared unless the court is satisfied that, after the time at which the image was captured, 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.

[Section 116B inserted: No. 40 of 2020 s. 96.]

117. Proof of documents

(1) In all proceedings in which any notice, order or other document required or authorised to be given to or served on a party to the proceedings under this Act has to be proved, the party is deemed to have received notice to produce it, and, until the contrary is shown, that document and its due giving or service may be sufficiently proved by the production of what purports to be a copy, bearing what purports to be a certificate under the hand of the person authorised to issue the original that that copy is a true copy of the original and that the original was served on the date specified in the certificate.

(2) The validity of any notice, order or other document or of its giving or service is not affected by any error, misdescription or irregularity which —

(a) is not calculated to mislead; and

(b) in fact does not mislead.

[Section 117 amended: No. 84 of 2004 s. 80.]

118. Establishing state of mind of body corporate

[(1)-(3) deleted]

(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 that capacity) had, at any particular time, a particular state of mind, is evidence that the body corporate had that state of mind.

[Section 118 inserted: No. 54 of 2003 s. 135; amended: No. 40 of 2020 s. 111(1); No. 9 of 2023 s. 63.]

118A. Liability of officers for offence by body corporate

The Criminal Code section 41 (which provides for the criminal liability of officers of a body corporate) applies to Tier 1 offences and Tier 2 offences.

[Section 118A inserted: No. 9 of 2023 s. 64.]

119. Averment of occupation or control

In a prosecution for an offence under this Act, an averment in the prosecution notice to the effect that —

(a) a person was the occupier of or in control of any premises or of any part of any premises is deemed to be proved in the absence of proof to the contrary; or

(b) in relation to any matter the subject of the prosecution notice, a works approval or licence was not held or any other form of authorisation had not been given is deemed to be proved in the absence of proof to the contrary.

[Section 119 amended: No. 84 of 2004 s. 80.]

120. Disclosing certain information restricted

A person who discloses any information relating to any manufacturing process or trade secret used in carrying on or operating any particular undertaking or equipment that has been furnished to the person or obtained by the person under this Act, or in connection with the execution of this Act, unless the disclosure is made —

(a) with the consent of the person carrying on or operating that undertaking or equipment; or

(b) under or in connection with the execution of this Act; or

[(ba) deleted]

(c) with the prior permission in writing of the Minister; or

(d) for the purposes of any legal proceedings arising out of this Act or of any report of such proceedings,

commits an offence.

[Section 120 amended: No. 54 of 2003 s. 108; No. 40 of 2020 s. 97 and 111(1).]

121A. Authority to perform certain functions in relation to Crown land for purposes of this Act

(1) If, under a provision of this Act, the owner or occupier of Crown land or freehold land in the name of the State may give, or is required to give, notice or may make an application or representation, give comments or authority, show cause, provide information or do any other thing, that thing may be done by —

(a) the Minister as defined in the *Land Administration Act 1997* section 3(1) (the ***Minister for Lands***); or

(b) a public service officer of the Department, as defined in the *Land Administration Act 1997* section 3(1), who is authorised in writing by the Minister for Lands to do so.

(2) Nothing in this section limits the ability of the Minister for Lands to otherwise perform a function through an officer or agent.

(3) Nothing in this section affects —

(a) a right or obligation that any other person has under Part V Division 2 in relation to land mentioned in subsection (1) if the person is an ***owner*** or ***occupier*** of that land because of the meaning of those terms in that Division; or

(b) a right or obligation that any other person has under any other provision of this Act in relation to land mentioned in subsection (1) if the person is an ***occupier*** of that land because of the meaning of occupier in section 3(1); or

(c) how that right may be exercised or that obligation may be satisfied.

[Section 121A inserted: No. 8 of 2010 s. 10.]

121. Protection from personal liability

(1) An action in tort does not lie against —

(a) a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act; or

(b) a person acting under an authority mentioned in section 121A(1) for anything that the person has done, in good faith, in the performance or purported performance of a function to which the authority applies.

(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.

[Section 121 inserted: No. 54 of 2003 s. 136; amended: No. 8 of 2010 s. 11.]

122. Administrative procedures, Authority may establish

(1) The Authority may from time to time —

(a) draw up administrative procedures for the purposes of this Act and in particular for the purpose of establishing the principles and practices of environmental impact assessment; and

(b) amend or revoke administrative procedures drawn up under this section; and

(c) publish in the *Gazette* any 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 regulations made under item 34 of Schedule 2, those regulations shall prevail to the extent of that inconsistency.

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; and

(b) such State authorities as the CEO considers appropriate; and

(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*.

[Section 122A inserted: No. 54 of 2003 s. 65.]

122B. Forms and other matters relating to documentation

(1) In this section —

approved means approved by the CEO;

documentation includes a document, application, report, return, certificate, decision, statement or recommendation and information or data;

publish includes keep a public record of and make available for public inspection;

submit includes make, provide or produce.

(2) Forms may be prescribed or approved for use in submitting documentation under this Act.

(3) If a form is prescribed or approved for use in submitting documentation, the documentation must be submitted in, and in accordance with, that form but deviations from the form not materially affecting the substance, nor likely to mislead, do not invalidate the form used.

(4) Regulations may make provision with respect to —

(a) publishing documentation submitted or obtained under, or created for the purposes of, this Act; and

(b) measures and procedures for maintaining confidentiality in respect of documentation, including —

(i) the making of a request that documentation not be published; and

(ii) the manner in which a request of that kind is to be made, received and dealt with.

(5) Without limiting subsection (4)(a), regulations may require or authorise the publication of documentation that is not otherwise required or authorised under this Act to be published.

(6) Subject to the measures or procedures referred to in subsection (4)(b) —

(a) documentation must or can be published if this Act requires or authorises it to be published; and

(b) if a manner is prescribed for use in publishing documentation, it must be published in that manner.

[Section 122B inserted: No. 40 of 2020 s. 99.]

123. Regulations

(1) The Governor may make regulations —

(a) prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act; and

(b) if any act, matter or thing required or authorised to be done under or in relation to an NEPM for the purpose of implementing the NEPM cannot conveniently be required or authorised under the provisions of this Act, requiring or authorising the doing of such act, matter or thing.

(2) Without limiting the generality of subsection (1), regulations may be made under that subsection in respect of the matters set out in Schedule 2.

(3) Regulations made under subsection (1) may —

(a) adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, standards, regulations, local laws, by-laws, codes, instructions, specifications or administrative procedures prescribed or published by any person or public authority, including the Authority and the CEO, either as in force at the time of prescription or publication or as amended from time to time thereafter; or

(b) without derogating from section 43 of the *Interpretation Act 1984*, be general or be restricted in operation in respect of time, place, persons or circumstances, whether or not any such time, place, persons or circumstances is or are determined or ascertainable before, at or after the making of those regulations.

(4) Regulations made under subsection (1)(b) are valid and have effect even if they are inconsistent with or repugnant to a provision contained elsewhere in this Act.

[Section 123 amended: No. 14 of 1996 s. 4; No. 14 of 1998 s. 35; No. 54 of 2003 s. 137 and 140(2).]

124. Review of Act

(1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement, and in the course of that review the Minister shall consider and have regard to —

(a) the effectiveness of the operations of the Authority and any group, committee, council or panel established under section 25(1); and

(b) the need for the continuation of the functions of the Authority and any group, committee, council or panel established under section 25(1); and

(c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on the review made under subsection (1) and shall, as soon as practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

[Section 124 amended: No. 40 of 2020 s. 111(1).]

Part VIIIA — Bilateral agreements with the Commonwealth

[Heading inserted: No. 40 of 2020 s. 100.]

124A. Terms used

In this Part, unless the contrary intention appears —

bilateral agreement means an agreement referred to in the Commonwealth Environment Act section 45(2) to which the State is a party;

bilateral matter means a matter in respect of which an application has been made in accordance with regulations referred to in section 124D;

guidelines includes policies, plans and information;

State entity means the Minister, the CEO or the Authority.

[Section 124A inserted: No. 40 of 2020 s. 100.]

124B. Effect of Part

This Part has effect despite any other provision of this Act.

[Section 124B inserted: No. 40 of 2020 s. 100.]

124C. Additional function of Authority

(1) It is a function of the Authority to facilitate the implementation of bilateral agreements.

(2) A reference in any enactment to the Authority's functions includes a reference to its function under subsection (1).

[Section 124C inserted: No. 40 of 2020 s. 100.]

124D. Application for a matter to be dealt with as a bilateral matter

Regulations may provide for procedures under which a person may apply for a matter to be dealt with under this Act as a

bilateral matter where, under a bilateral agreement, the performance of functions in respect of the matter by a State entity will or may have effect for the purposes of the Commonwealth Environment Act.

[Section 124D inserted: No. 40 of 2020 s. 100.]

124E. Performance of functions in respect of bilateral matters

(1) A State entity may perform functions under this Act in respect of a bilateral matter in a manner that is consistent with, and enables the implementation of, a bilateral agreement.

(2) When performing functions under this Act in respect of a bilateral matter a State entity may have regard to guidelines in accordance with a bilateral agreement.

(3) Without limiting subsection (1) or section 17, for the purposes of performing functions under Part IV in respect of a bilateral matter the Authority may, in relation to a proposal —

(a) have regard to requirements made by a bilateral agreement when making requirements or taking other action under section 40; and

(b) prepare guidelines and publish material as required under a bilateral agreement; and

(c) require the proponent to do anything necessary to give effect to a bilateral agreement; and

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

(4) Without limiting subsection (1), when consulting with other Ministers and decision-making authorities or making decisions for the purposes of Part IV in respect of a bilateral matter, the Minister may —

(a) rely on a report of the Authority, including any part of the report relating to matters of national environmental significance under the Commonwealth Environment Act; and

(b) impose implementation conditions for the purpose of the implementation of a bilateral agreement.

(5) Without limiting subsection (1), when performing functions under Part V Division 2 in respect of a bilateral matter the CEO may —

(a) have regard to requirements made by a bilateral agreement; and

(b) prepare guidelines and publish material as required under a bilateral agreement; and

(c) require a person to do anything necessary to give effect to a bilateral agreement; and

(d) make any assessment and report required by a bilateral agreement in a manner that satisfies the requirements of a bilateral agreement; and

(e) attach conditions to a clearing permit for the purpose of the implementation of a bilateral agreement.

(6) When performing functions under Part VII in relation to an appeal in respect of a bilateral matter the following are to have regard to the effect of subsections (1) to (5) on the performance of functions —

(a) the Minister;

(b) the Authority;

(c) the CEO;

(d) the Appeals Convenor;

(e) an appeals panel;

(f) an appeals committee.

[Section 124E inserted: No. 40 of 2020 s. 100.]

124F. Fees in relation to bilateral matters

(1) Regulations may prescribe, or provide for the determination of, fees payable to a State entity, or a delegate of a State entity, in respect of things done, or to be done, by or on behalf of the State entity or delegate in respect of a bilateral matter.

(2) Regulations relating to a fee in respect of a matter may prescribe, or provide for the determination of, a greater or additional fee if the matter is, or is to be, dealt with as a bilateral matter.

(3) Schedule 2 items 2 and 2A apply in relation to fees mentioned in this section.

[Section 124F inserted: No. 40 of 2020 s. 100.]

124G. Disclosure of information for the purposes of bilateral agreements

(1) Subject to this section, the provisions of this Act in relation to the confidentiality and disclosure of information apply to information obtained in or for the purposes of the performance of functions in accordance with this Part.

(2) To facilitate the implementation of a bilateral agreement information that a State entity has may be disclosed to a person that performs functions under the Commonwealth Environment Act.

(3) A person does not commit an offence under section 120 if the disclosure of information referred to in that section is made under, or for the purposes of the implementation of, a bilateral agreement.

[Section 124G inserted: No. 40 of 2020 s. 100.]

124H. Regulations

Without limiting section 123(1) and (2), regulations may prescribe all matters that are required or permitted by this Part to be prescribed or that are necessary or convenient to be prescribed for —

(a) giving effect to the purposes of this Part; or

(b) facilitating the implementation of bilateral agreements.

[Section 124H inserted: No. 40 of 2020 s. 100.]

Part IX — Transitional

Division 1 — Transitional provisions for *Environmental Protection Act 1986*

[Heading inserted: No. 40 of 2010 s. 12.]

125. *Interpretation Act 1984* not affected

Nothing in this Part shall be construed so as to limit the operation of the *Interpretation Act 1984*.

126. Transitional provisions for *Environmental Protection Act 1971* [2]

The transitional provisions set out in Schedule 3 shall have effect in relation to the repealed Act.

127. Transitional provisions not related to *Environmental Protection Act 1971* [2]

The transitional provisions set out in Schedule 4 shall have effect in relation to the Acts referred to in that Schedule.

128. General saving

Subject to this Act, all acts, matters and things which immediately before the coming into operation of the relevant provision of the *Acts Amendment and Repeal (Environmental Protection) Act 1986* [3] were in existence or in operation under an Act amended by that provision shall, insofar as is consistent with that Act as so amended, subsist and enure as if at the time when they originated or were done that Act as so amended had been in operation and they had originated or been done thereunder.

Division 2 — Transitional provisions for *Approvals and Related Reforms (No. 1) (Environment) Act 2010* Part 2

[Heading inserted: No. 40 of 2010 s. 13.]

129. Term used: amending Act

In this Division —

amending Act means the *Approvals and Related Reforms (No. 1) (Environment) Act 2010*.

[Section 129 inserted: No. 40 of 2010 s. 13.]

130. Appeals in respect of proposals

(1) In this section —

former EP Act means the *Environmental Protection Act 1986* as in force immediately before the amending Act Part 2 Division 1 comes into operation.

(2) The former EP Act continues to apply in respect of a decision of the Authority made before the day on which the amending Act Part 2 Division 1 comes into operation.

[Section 130 inserted: No. 40 of 2010 s. 13.]

131. Appeals in respect of clearing permits

(1) In this section —

former EP Act means the *Environmental Protection Act 1986* as in force immediately before the amending Act Part 2 Division 2 comes into operation.

(2) The former EP Act continues to apply in respect of a decision of the CEO made before the day on which the amending Act Part 2 Division 2 comes into operation.

[Section 131 inserted: No. 40 of 2010 s. 13.]

132. Appeals in respect of works approvals and licences

(1) In this section —

former EP Act means the *Environmental Protection Act 1986* as in force immediately before the amending Act Part 2 Division 3 comes into operation.

(2) The former EP Act continues to apply in respect of a decision of the CEO made before the day on which the amending Act Part 2 Division 3 comes into operation.

[Section 132 inserted: No. 40 of 2010 s. 13.]

Division 3 — Transitional provisions for *Approvals and Related Reforms (No. 1) (Environment) Act 2010* Part 3

[Heading inserted: No. 40 of 2010 s. 18.]

133. Minor or preliminary work that has Authority's consent

(1) In this section —

amended EP Act means the *Environmental Protection Act 1986* as amended by the *Approvals and Related Reforms (No. 1) (Environment) Act 2010* Part 3.

(2) The amended EP Act applies —

(a) in respect of a proposal irrespective of when the proposal was or is referred to the Authority; and

(b) in respect of an application irrespective of when the application was or is made to the CEO.

[Section 133 inserted: No. 40 of 2010 s. 18.]

Division 4 — Transitional provisions for *Environmental Protection Amendment Act 2020*

[Heading inserted: No. 40 of 2020 s. 101.]

Subdivision 1 — General provision

[Heading inserted: No. 40 of 2020 s. 101.]

133A. Term used: amending Act

In this Division —

amending Act means the *Environmental Protection Amendment Act 2020.*

[Section 133A inserted: No. 40 of 2020 s. 101.]

Subdivision 2 — Transitional provisions relating to clearing matters

[Heading inserted: No. 40 of 2020 s. 101.]

133B. Declaration of environmentally sensitive areas

(1) In this section —

former section means section 51B of this Act as in force before the coming into operation of section 44 of the amending Act;

new section means section 51B as in force after the coming into operation of section 44 of the amending Act;

regulations means regulations made under the new section.

(2) Until regulations come into operation the declaration of an environmentally sensitive area by notice made under the former section continues to have effect as if it had been made by regulations.

[Section 133B inserted: No. 40 of 2020 s. 101.]

133C. Clearing permit applications

(1) In this section —

commencement means the coming into operation of section 45 of the amending Act;

existing application means an application for a clearing permit made under section 51E before the commencement that has neither been withdrawn nor dealt with under section 51E(3) or (5) before the commencement.

(2) On and from the commencement an existing application is taken to have been the referral under and in accordance with section 51DA(2) (the ***deemed referral***) of a proposal for the clearing specified in the existing application.

(3) If the CEO did not comply with section 51E(4)(c) in relation to an existing application before the commencement, section 51DA(3) to (6) apply to the deemed referral, and if the person who made the existing application —

(a) receives notice under section 51DA(5) that the CEO has decided that a clearing permit is needed for the proposed clearing; or

(b) does not receive any notice under section 51DA(5) within the period of 21 days beginning on the commencement,

the person may, in writing, request the CEO to treat the deemed referral as an application for a clearing permit under section 51E(1).

(4) If the CEO complied with section 51E(4)(c) in relation to an existing application before the commencement, the person who made the existing application is taken to have —

(a) received notice under section 51DA(5) that the CEO has decided that a clearing permit is needed for a proposed clearing; and

(b) requested the CEO under section 51DA(8) to treat the deemed referral as an application for a clearing permit under section 51E(1).

(5) If a request is made under subsection (3), or if subsection (4) applies, the deemed referral is to be treated as an application for a clearing permit under section 51E, and section 51DA(9) does not apply.

[Section 133C inserted: No. 40 of 2020 s. 101.]

133D. Clearing injunctions

(1) In this section —

clearing injunction has the meaning given in section 51S(2) of this Act as in force before the commencement;

commencement means the coming into operation of sections 59 and 83 of the amending Act;

conduct injunction has the meaning given in section 99ZC(2);

existing application means an application for a clearing injunction made under section 51S of this Act as in force before the commencement that has neither been withdrawn nor finally determined before the commencement.

(2) A clearing injunction in force immediately before the commencement has effect on and after the commencement as if it were a conduct injunction.

(3) An existing application has effect on and after the commencement as if it were an application for a conduct injunction made under section 99ZC(3).

[Section 133D inserted: No. 40 of 2020 s. 101.]

Subdivision 3 — Transitional provisions relating to works approvals and licences

[Heading inserted: No. 40 of 2020 s. 101.]

133E. Terms used

In this Subdivision —

commencement means the coming into operation of section 60 of the amending Act;

existing Act means this Act as in force immediately before being amended by section 60 of the amending Act;

former provisions means Part V Division 3 of this Act as in force before the commencement;

new licence means a licence granted under the new provisions;

new provisions means Part V Division 3 as in force after the commencement.

[Section 133E inserted: No. 40 of 2020 s. 101; amended: No. 36 of 2024 s. 41.]

133F. Works approvals

(1) Despite section 60 of the amending Act a works approval in effect under the former provisions immediately before the commencement (the ***works approval***) continues to have effect on and after the commencement.

(2) The provisions of the existing Act are to be taken to continue in force to the extent necessary to give effect to subsection (1).

(3) Subsection (1) has effect subject to subsection (4) and to the former provisions as continued in force by subsection (2).

(4) The CEO may, by notice in writing to the occupier, amend the works approval so that it conforms with the new provisions and the form of licences issued under the new provisions and, from the service of that notice, the works approval as so amended is taken to be a new licence granted to the occupier in respect of

the works specified in the works approval as so amended and has effect accordingly.

(5) Without limiting subsection (4), a works approval may be amended under that subsection to specify emissions authorised by the works approval.

[Section 133F inserted: No. 40 of 2020 s. 101.]

133G. Licences

(1) Despite section 60 of the amending Act a licence in effect under the former provisions immediately before the commencement (the ***licence***) continues to have effect on and after the commencement.

(2) The provisions of the existing Act are to be taken to continue in force to the extent necessary to give effect to subsection (1).

(3) Subsection (1) has effect subject to subsection (4) and to the former provisions as continued in force by subsection (2).

(4) Despite subsection (1) the licence may be amended under Part V Division 3 Subdivisions 3 and 4 and, from the giving of notice of the amendment under section 58, the licence as so amended is taken to be a new licence granted to the occupier in respect of the prescribed activities specified in the conditions of the licence as so amended and has effect accordingly.

[Section 133G inserted: No. 40 of 2020 s. 101.]

133H. Existing applications for works approvals or licences

(1) In this section —

existing application means an application for a works approval or licence made under the former provisions that has neither been withdrawn nor finally determined before the commencement.

(2) An existing application has effect on and after the commencement as if it were an application for a new licence made under the new provisions.

[Section 133H inserted: No. 40 of 2020 s. 101.]

133I. Existing applications as to existing works approvals

(1) In this section —

existing application means an application for the amendment, surrender or transfer of a works approval (the ***works approval***) made under the former provisions that has neither been withdrawn nor finally determined before the commencement.

(2) Without limiting section 133F(1) and (2), those provisions apply in relation to an existing application.

(3) If an existing application has neither been withdrawn nor finally determined before the time at which the works approval becomes a new licence under section 133F(4), the existing application has effect from that time as if it were an application under the new provisions for the amendment, surrender or transfer of the new licence as the case requires.

[Section 133I inserted: No. 40 of 2020 s. 101.]

133J. Existing applications as to existing licences

(1) In this section —

existing application means an application for the amendment, surrender or transfer of a licence (the ***licence***) made under the former provisions that has neither been withdrawn nor finally determined before the commencement.

(2) Without limiting section 133G(1) and (2), those provisions apply in relation to an existing application.

(3) If an existing application has neither been withdrawn nor finally determined before the time at which the licence becomes a new licence under section 133G(4), the existing application has

effect from that time as if it were an application under the new provisions for the amendment, surrender or transfer of the new licence as the case requires.

[Section 133J inserted: No. 40 of 2020 s. 101.]

133K. Appeals in respect of refusal to grant works approvals and licences

(1) In this section —

pending appeal means an appeal against the refusal of the CEO to grant a works approval or licence made under the former provisions that has neither been withdrawn nor finally determined before the commencement.

(2) A decision made before the commencement to uphold an appeal against the refusal of the CEO to grant a works approval or licence under the former provisions is taken on and after the commencement to be a decision to uphold an appeal against the refusal of the CEO to grant a licence under the new provisions.

(3) The provisions of the existing Act are to be taken to continue in force on and after the commencement to the extent necessary to enable —

(a) any pending appeal to be withdrawn or finally determined; and

(b) an appeal against the refusal of the CEO, before the commencement, to grant a works approval or licence under the former provisions to be lodged and dealt with.

(4) If under the provisions of the existing Act as continued in force by subsection (3) the Minister makes a decision to uphold an appeal against the refusal of the CEO to grant a works approval or licence under the former provisions, that decision is taken to be a decision to uphold an appeal against the refusal of the CEO to grant a licence under the new provisions.

[Section 133K inserted: No. 40 of 2020 s. 101.]

133L. Other appeals in respect of works approvals and licences

(1) In this section —

pending appeal means an appeal against a specified decision that has neither been withdrawn nor finally determined before the commencement;

specified decision means a decision of the CEO under the former provisions —

(a) to refuse to transfer a works approval or licence; or

(b) to specify a condition in a works approval or licence; or

(c) to amend, revoke or suspend a works approval or licence.

(2) The provisions of the existing Act are to be taken to continue in force on and after the commencement to the extent necessary to enable —

(a) any pending appeal to be withdrawn or finally determined; and

(b) an appeal against a specified decision made before the commencement to be lodged and dealt with.

(3) If under the provisions of the existing Act as continued in force by subsection (2) the Minister makes a decision as to an appeal, the provisions of the existing Act are to be taken to continue in force to the extent necessary to enable the CEO to do anything necessary to implement and give effect to the Minister's decision.

(4) If —

(a) under the provisions of the existing Act as continued in force by subsection (2) the Minister makes a decision to uphold an appeal against a specified decision relating to a works approval or licence; and

(b) under section 133F(4) or 133G(4) the works approval or licence is taken to be a new licence,

the decision on the appeal has effect, subject to any necessary modifications, in relation to the new licence.

[Section 133L inserted: No. 40 of 2020 s. 101.]

Subdivision 4 — Other matters

[Heading inserted: No. 40 of 2020 s. 101.]

133M. Referred proposals

(1) In subsection (2) —

referral means referral to the Authority under section 38.

(2) Each of the following is taken to be a referral of a significant amendment of an approved proposal —

(a) the referral by the proponent, before the coming into operation of section 28 of the amending Act (the ***commencement***), of a revised proposal after the publication of a statement under section 45(5) of this Act as in force before the commencement in relation to a proposal;

(b) the referral, before the coming into operation of section 31 of the amending Act (the ***commencement***), of a new proposal as required by section 46B(2) of this Act as in force before the commencement;

(c) the referral by the proponent, after the coming into operation of section 28 of the amending Act, of a revised proposal in respect of a proposed change if, when it is dealt with in accordance with subsection (6), the proposed change is not approved.

(3) In subsection (4) —

commencement means the coming into operation of section 26 of the amending Act;

proposed change means a change to a proposal to which section 43A of this Act as in force before the commencement applied.

(4) If at the commencement the Authority has yet to determine whether to consent to a proposed change, the proposed change is taken to have been requested under section 43A(1)(b).

(5) In subsection (6) —

commencement means the coming into operation of section 28 of the amending Act;

proposed change means a change to a proposal to which section 45C of this Act as in force before the commencement applied.

(6) If at the commencement the Minister has yet to determine whether to approve of a proposed change, the proposed change must be dealt with as if section 45C of this Act as in force before commencement had not been repealed.

(7) In subsection (8) —

commencement means the coming into operation of section 16 of the amending Act;

section 39 means section 39 of this Act as in force before the commencement.

(8) If a request made under section 39(2) has not been dealt with before the commencement, the request must be dealt with as if section 39(3) and (4) had not been repealed.

[Section 133M inserted: No. 40 of 2020 s. 101.]

133N. Chair and Deputy Chair

(1) In this section —

commencement means the coming into operation of section 6 of the amending Act.

(2) Subject to this Act —

(a) a person holding office as Chairman of the Authority immediately before the commencement holds office after the commencement as Chair of the Authority; and

(b) a person holding office as Deputy Chairman of the Authority immediately before the commencement holds office after the commencement as Deputy Chair of the Authority.

[Section 133N inserted: No. 40 of 2020 s. 101.]

133O. Transitional regulations

(1) In this section —

publication day, for regulations made under subsection (2), means the day on which those regulations are published in the *Gazette*;

specified means specified or described in regulations made under subsection (2);

transitional matter —

(a) means a matter that needs to be dealt with for the purpose of effecting the transition required because of the enactment of the amending Act; and

(b) includes a saving or application matter.

(2) If there is no sufficient provision in this Division for dealing with a transitional matter, the Governor may make regulations prescribing matters —

(a) required to be prescribed for the purpose of dealing with the transitional matter; or

(b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.

(3) Regulations made under subsection (2) may provide that specified provisions of this Act —

(a) do not apply to or in relation to a specified matter; or

(b) apply with specified modifications to or in relation to a specified matter.

(4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than publication day for those regulations but not earlier than the day on which the relevant provision of the amending Act came into operation, the regulations have effect according to their terms.

(5) If regulations made under subsection (2) contain a provision referred to in subsection (4), the provision does not operate so as —

(a) to affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before publication day for those regulations; or

(b) to impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day for those regulations.

[Section 133O inserted: No. 40 of 2020 s. 101.]

133P. *Interpretation Act 1984* not affected

Except to the extent that this Division or regulations made under section 133O expressly provide differently, the *Interpretation Act 1984* Part V applies in relation to the amendments effected by the amending Act.

[Section 133P inserted: No. 40 of 2020 s. 101.]

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

[Heading inserted: No. 36 of 2024 s. 42.]

Subdivision 1 — Preliminary

[Heading inserted: No. 36 of 2024 s. 42.]

133Q. Terms used

In this Division —

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

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

[Section 133Q inserted: No. 36 of 2024 s. 42.]

133R. Application of *Interpretation Act 1984*

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

[Section 133R inserted: No. 36 of 2024 s. 42.]

Subdivision 2 — Main provisions

[Heading inserted: No. 36 of 2024 s. 42.]

133S. Transitional regulations

(1) In this section —

publication day, for transitional regulations, means the day on which the regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a);

specified means specified or described in transitional regulations;

transitional matter means a matter or issue of a transitional, savings or application nature.

(2) Regulations may prescribe anything required, necessary or convenient to be prescribed in relation to a transitional matter in connection with the enactment of, or any amendment made by, the amending Act.

(3) Without limiting subsection (2), transitional regulations may provide for specified provisions of this Act or another written law —

(a) not to apply to, or in relation to, a specified matter or thing; or

(b) to apply with specified modifications to, or in relation to, a specified matter or thing.

(4) Without limiting subsection (2), if sections 20, 21, 22, 23 and 24 of the amending Act do not come into operation under section 2(2) of the amending Act, transitional regulations may, for the purposes of Division 4 Subdivision 3, provide for the former provisions (as defined in section 133E) to be taken to be amended in accordance with sections 20, 21, 22, 23 and 24 of the amending Act.

(5) If transitional regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than publication day but not earlier than the day on which Part 5 of the amending Act comes into operation, the transitional regulations have effect according to their terms.

(6) If transitional regulations contain a provision referred to in subsection (5), the provision does not operate so as —

(a) to affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before publication day; or

(b) to impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day.

[Section 133S inserted: No. 36 of 2024 s. 42.]

133T. Existing Authority members

(1) In this section —

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

existing Authority member means a person who is an Authority member immediately before amendment day.

(2) Despite the amendments made to section 7 by section 4 of the amending Act, on and after amendment day, an existing Authority member continues to hold office —

(a) for a term equal to the unfinished part of their term of office as specified in their instrument of appointment; and

(b) otherwise in accordance with their instrument of appointment.

(3) Subsection (2) does not affect the application of section 7(7) or (8) to an existing Authority member.

[Section 133T inserted: No. 36 of 2024 s. 42.]

133U. Parallel decision-making: section 41

(1) In this section —

amendment day means the day on which section 13 of the amending Act comes into operation.

(2) Subsection (3) applies to a decision that, immediately before amendment day, a decision-making authority is precluded from making by section 41.

(3) On and after amendment day, the decision-making authority is not precluded by section 41 from making the decision unless the decision is a restricted decision under the definition of that term in section 41(1A) as inserted by section 13(1) of the amending Act.

[Section 133U inserted: No. 36 of 2024 s. 42.]

133V. Parallel decision-making: Part V

(1) In this section —

amendment day, in relation to amendments made by a provision of the amending Act, means the day on which that provision comes into operation.

(2) The amendments made to section 51F by section 17 of the amending Act apply in relation to a referral under section 51DA(2) or an application for a clearing permit that —

(a) is made before amendment day; and

(b) is still in progress immediately before amendment day.

(3) The amendments made to section 51KB by section 19 of the amending Act apply in relation to either of the following that is made or arises before amendment day and is still in progress immediately before amendment day —

(a) an application for an amendment to a clearing permit;

(b) an initiative of the CEO to amend a clearing permit.

(4) The amendments made to section 54 by section 20 of the amending Act apply in relation to an application for a works approval that —

(a) is made under section 54(1) before amendment day; and

(b) is still in progress immediately before amendment day.

Note for this subsection:

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

(5) The amendments made to section 57 by section 21 of the amending Act apply in relation to an application for a licence that —

(a) is made under section 57(1) before amendment day; and

(b) is still in progress immediately before amendment day.

Note for this subsection:

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

(6) The amendments made to section 59B by section 23 of the amending Act apply in relation to any of the following that is made or arises before amendment day and is still in progress immediately before amendment day —

(a) an application for an amendment to a works approval or licence;

(b) an initiative of the CEO to amend a works approval or licence;

(c) an application to surrender a works approval or licence;

(d) an initiative of the CEO to revoke or suspend a works approval or licence.

Note for this subsection:

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

[Section 133V inserted: No. 36 of 2024 s. 42.]

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

(1) In this section —

amendment day means the day on which Part 4 Division 3 of the amending Act comes into operation;

existing appeal means an appeal under section 100(1)(a), as in force before amendment day, that is lodged with the Minister before amendment day.

(2) On and after amendment day, this Act continues to apply in relation to an existing appeal as if Part 4 Division 3 of the amending Act had not come into operation.

(3) Without limiting subsection (2), the amendment made to section 41 by section 33 of the amending Act does not apply in a case where an appeal against the decision that the proposal not be assessed is lodged before amendment day.

(4) The amendments made by Part 4 Division 3 of the amending Act apply in relation to a decision made before amendment day that a proposal is not to be assessed if —

(a) there is no existing appeal in respect of the decision; and

(b) the period for lodging an appeal in respect of the decision under section 100(1)(a), as in force before amendment day, does not expire before amendment day.

[Section 133W inserted: No. 36 of 2024 s. 42.]

133X. Exemption order

(1) In the *Environmental Protection (Darling Range Bauxite Mining Proposals) Exemption Order 2023*, a reference to this Act, or a provision of this Act, includes a reference to this Act, or the provision, as it may be amended by the amending Act.

(2) This section does not limit or otherwise affect any power to amend, revoke or replace the *Environmental Protection (Darling Range Bauxite Mining Proposals) Exemption Order 2023*.

[Section 133X inserted: No. 36 of 2024 s. 42.]

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

The *Environmental Protection Regulations 1987* may be amended or repealed by regulations as if the amendment made

to regulation 5DA by section 49 of the amending Act had been made by regulations.

[Section 133Y inserted: No. 36 of 2024 s. 42.]

Part X — Validation

[Heading inserted: No. 27 of 2014 s. 4.]

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

[Heading inserted: No. 36 of 2024 s. 45.]

134. Terms used

(1) In this Division —

decision date means 19 August 2013, which is the date on which the decision in *The Wilderness Society v Minister for Environment* was delivered;

ground of invalidity means a ground of invalidity set out in section 135;

The Wilderness Society v Minister for Environment means the decision of the Supreme Court of Western Australia in *The Wilderness Society of WA (Inc) v Minister for Environment* [2013] WASC 307.

(2) In this Division, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 134 inserted: No. 27 of 2014 s. 4; amended: No. 36 of 2024 s. 46.]

135. Grounds of invalidity

These are the grounds of invalidity —

(a) the participation (whether by taking part in the consideration or discussion of a matter, or voting on a matter or participating in any other way), in any purported proceedings of the Authority, by Authority members who were disqualified from participation because of —

(i) their direct or indirect pecuniary interest in a matter, whether or not that interest was disclosed in accordance with section 12(1) or determined under section 12(3) and whether or not a decision was purportedly made under section 13 in relation to the interest; or

(ii) a reasonable apprehension of bias;

(b) the lack of a quorum at a meeting purportedly held by the Authority, where the lack of a quorum resulted from Authority members being disqualified from participation in the circumstances set out in paragraph (a)(i) or (ii);

(c) the failure of the Authority to decide a question at a meeting purportedly held by the Authority, where —

(i) the failure resulted from non-compliance with the requirements of section 11(2)(e) for at least 3 Authority members to vote on the question or with any other requirement of section 11(2) with respect to voting; and

(ii) that non-compliance resulted from Authority members being disqualified from participation in the circumstances set out in paragraph (a)(i) or (ii);

(d) the purported exercise of a power or duty of the Authority under a delegation made under section 19, where —

(i) the delegation was purportedly invoked in order to avoid the proceedings of the Authority being invalid on any of the grounds of invalidity set out in paragraphs (a) to (c); and

(ii) the delegation could not be invoked in the circumstances in which it was purportedly invoked, or did not authorise the exercise of the

power or duty in the circumstances in which they were purportedly exercised.

[Section 135 inserted: No. 27 of 2014 s. 4.]

136. Certain proceedings of Environmental Protection Authority and other things validated

(1) This section applies to anything done, or purportedly done, by or on behalf of the Authority before the decision date that, if this section had not been enacted, is or may be invalid on a ground of invalidity.

(2) The things to which this section applies are to be taken to be, and to have always been, valid and effective to the same extent as they would have been if they had not been invalidated by a ground of invalidity.

(3) The rights, obligations and liabilities of all persons are to be taken to be, and to have always been, the same as if the things to which this section applies had been validly done.

(4) Anything done, or purportedly done, before the *Environmental Protection Amendment (Validation) Act 2014* section 4 comes into operation as a result or consequence of, or in reliance on or in relation to, a thing to which this section applies (a ***validated thing***) is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if the validated thing had been valid at the time the other thing was done or purportedly done.

(5) This section is subject to section 137.

[Section 136 inserted: No. 27 of 2014 s. 4.]

137. Exclusions from validation

Section 136 does not validate —

(a) any of the following things that were held to be invalid by the Supreme Court of Western Australia in *The Wilderness Society v Minister for Environment* —

(i) the report and recommendations of the Environmental Protection Authority on the Browse Liquefied Natural Gas Precinct strategic proposal (Report 1444, July 2012);

(ii) the statement of the Minister for Environment, published on 19 November 2012, that, in the event of a declaration by the Environmental Protection Authority pursuant to section 39B of the *Environmental Protection Act 1986* that it is a derived proposal, a proposal to do one or more of the Developments, Activities, Operations or Changes in Land Use listed in Column 2 of Table 1 in Schedule 1 of the statement, and which was identified in the Strategic Proposal to which Report 1444 relates, may be implemented (Ministerial Statement No. 917);

(iii) the declaration made by the Environmental Protection Authority on 17 December 2012 that the proposal by Woodside Energy Ltd for the Browse LNG Downstream Development 25 Mtpa is a derived proposal identified in the Browse LNG Precinct strategic proposal, James Price Point, Shire of Broome;

(b) anything that is invalid as a consequence of the invalidity of the things listed in paragraph (a).

[Section 137 inserted: No. 27 of 2014 s. 4.]

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

[Heading inserted: No. 36 of 2024 s. 47.]

138. Terms used

In this Division —

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

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

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

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

[Section 138 inserted: No. 36 of 2024 s. 47.]

139. Validation

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

(2) Subsections (3) to (8) —

(a) supplement subsection (1); and

(b) are not to be construed as limiting the effect of subsection (1) or each other.

(3) A licence —

(a) is taken to have been, at all times before validation day, as lawful, valid and effective as it would have been if regulation 5DA(5) had had no effect before validation day; and

(b) if relevant — is taken to be, at all times on and after validation day, as lawful, valid and effective as it would be if regulation 5DA(5) had had no effect before validation day.

(4) Any written law (including this Act) in force at any time on or after 22 June 2004 is taken to have, or to have had, the same effect at that time as if regulation 5DA(5) had had no effect before validation day.

(5) Anything done, or purportedly done, on or after 22 June 2004 is taken to be, and to have always been, as lawful, valid and effective as it would be, or would have been, if regulation 5DA(5) had had no effect before validation day.

(6) In subsection (5), a reference to the doing of anything includes a reference to an omission to do anything.

(7) The functions, rights, obligations and liabilities of the State, and of all persons and bodies, are taken to be, and to have always been, the same as if regulation 5DA(5) had had no effect before validation day.

(8) An act or omission done or made on or after 22 June 2004 is taken to be, and to have always been —

(a) an offence, or other contravention of a written law (including this Act), if it would be, or would have been, an offence or other contravention if regulation 5DA(5) had had no effect before validation day; and

(b) subject to the same punishment or other penalty or consequences, whether criminal or civil, as it would be, or would have been, if regulation 5DA(5) had had no effect before validation day.

(9) This section has effect despite *The Criminal Code* section 11.

(10) Without limiting the effect of this section —

(a) if a person was convicted of an offence before validation day — this section has effect for the purposes of any appeal proceedings in respect of the conviction that —

(i) are commenced on or after validation day; or

(ii) were commenced, but not completed, before validation day;

and

(b) this section has effect for the purposes of any proceedings against a person for an offence that were commenced, but not completed, before validation day; and

(c) proceedings may be commenced on or after validation day against a person for an offence on the basis that the person is taken by virtue of this section to have committed the offence on or after 22 June 2004; and

(d) to the extent not covered by paragraphs (a) to (c), this section has effect for the purposes of any criminal or civil proceedings in or before a court (including appeal proceedings) that relate to an act or omission occurring, or other matter arising, on or after 22 June 2004 and that —

(i) are commenced on or after validation day; or

(ii) were commenced, but not completed, before validation day.

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

[Section 139 inserted: No. 36 of 2024 s. 47.]

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

(1) In this section (to avoid doubt) —

(a) references to a licence include a licence that, apart from this section, would be taken by virtue of section 139 to have been in effect before validation day; and

(b) references to a fee payable for a period under regulation 5DA(3) include a fee that, apart from this section, would be taken by virtue of section 139 to have been so payable before validation day.

(2) Subsection (3) applies (subject to subsection (4)) if, before validation day, the CEO gave written notice to the holder of a licence to the effect that the licence had ceased to have effect under regulation 5DA(5) because of the non-payment of a fee payable for a period under regulation 5DA(3).

(3) The licence is taken to have ceased to have effect under regulation 5DA(5) as notified by the CEO.

(4) Subsection (3) does not apply if, before validation day —

(a) the CEO issued to the holder of the licence an invoice setting out the amount of the fee as calculated by the CEO and the holder paid that amount to the CEO; or

(b) the holder of the licence otherwise paid an amount to the CEO and the CEO accepted the payment as payment of the fee; or

(c) there was a dispute between the holder of the licence and the CEO as to the amount of the fee and the holder paid the CEO the amount of the fee to the extent undisputed.

[Section 140 inserted: No. 36 of 2024 s. 47.]

141. Licence replaced by new licence before validation day

(1) Subsection (2) applies to a licence (the ***relevant licence***) if —

(a) apart from subsection (2), the relevant licence would be taken by virtue of section 139 to have been in effect in respect of any premises (the ***relevant premises***) at a time (the ***relevant time***) before validation day; and

(b) at the relevant time, a new licence was granted in respect of the relevant premises or in respect of premises that were substantially the same as the relevant premises.

(2) The relevant licence is taken to have been revoked under section 59A at the relevant time on the application of the holder of the relevant licence under section 59A(2)(e).

[Section 141 inserted: No. 36 of 2024 s. 47.]

Schedule 1 — Penalties

[s. 99Q and 99R]

[Heading inserted: No. 14 of 1988 s. 18; amended: No. 19 of 2010 s. 4.]

Part 1 — Tier 1 offences and penalties

[Heading inserted: No. 14 of 1988 s. 18.]

Division 1 — Individuals

[Heading inserted: No. 14 of 1988 s. 18.]

Column 1	Column 2	Column 3	Column 4
Item	**Section**	**Penalty — individual**	**Daily penalty**
1	6(7)	$250 000	$50 000
1A	41A(1)	$125 000	$25 000
2	47(1)	$125 000	$25 000
2A	47(5)	$500 000	$100 000
3	48(9)	$162 500	$32 500
4	49(2)	$500 000 or 5 years imprisonment or both	$100 000
5	49(3)	$250 000 or 3 years imprisonment or both	$50 000
6	49(4)	$125 000	$25 000
7	50(1)	$500 000	$100 000
8	50(2)	$250 000	$50 000
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
8D	51C	$250 000	$50 000

Column 1	Column 2	Column 3	Column 4
Item	**Section**	**Penalty — individual**	**Daily penalty**
9	65(4a)	$250 000	$50 000
10	69(5)	$162 500	$32 500
11	71(5)	$250 000	$50 000
12	73A(6)	$250 000	$50 000

[Division 1 inserted: No. 14 of 1998 s. 18; amended: No. 54 of 2003 s. 25(1), 66(1) and (2) and 115(1); No. 40 of 2020 s. 102; No. 36 of 2024 s. 39(1).]

Division 2 — Bodies corporate

[Heading inserted: No. 14 of 1988 s. 18.]

Column 1	Column 2	Column 3	Column 4
Item	**Section**	**Penalty — body corporate**	**Daily penalty**
1	6(7)	$500 000	$100 000
1A	41A(1)	$250 000	$50 000
2	47(1)	$250 000	$50 000
2A	47(5)	$1 000 000	$200 000
3	48(9)	$325 000	$65 000
4	49(2)	$1 000 000	$200 000
5	49(3)	$500 000	$100 000
6	49(4)	$250 000	$50 000
7	50(1)	$1 000 000	$200 000
8	50(2)	$500 000	$100 000
8A	50A(1)	$1 000 000	$200 000
8B	50A(2)	$500 000	$100 000
8C	50B(1)	$500 000	$100 000
8D	51C	$500 000	$100 000
9	65(4a)	$500 000	$100 000

Column 1 Item	Column 2 Section	Column 3 Penalty — body corporate	Column 4 Daily penalty
10	69(5)	$325 000	$65 000
11	71(5)	$500 000	$100 000
12	73A(6)	$500 000	$100 000

[Division 2 inserted: No. 14 of 1998 s. 18; amended: No. 54 of 2003 s. 25(1), 66(3) and (4) and 115(2); No. 40 of 2020 s. 103; No. 36 of 2024 s. 39(2).]

Part 2 — Tier 2 offences and penalties

[Heading inserted: No. 14 of 1988 s. 18.]

Division 1 — Individuals

[Heading inserted: No. 14 of 1988 s. 18.]

Column 1 Item	Column 2 Section	Column 3 Penalty — individual	Column 4 Daily penalty
[1 deleted]			
1B	49(5)	$62 500	$12 500
1CA	49A(2)	$62 500	Nil
1CB	49A(3)	$62 500	Nil
1C	50B(2)	$125 000	$25 000
1D	50D	$50 000	$10 000
1E	51J(1)	$62 500	$12 500
2	52	$50 000	$10 000
3	53(1)	$50 000	Nil
4	53(2)	$50 000	Nil
5	55(1)	$62 500	$12 500
5A	55(1a)	$62 500	$12 500
6	56	$50 000	$10 000

Column 1	Column 2	Column 3	Column 4
Item	**Section**	**Penalty — individual**	**Daily penalty**
7	58(1)	$62 500	$12 500
7A	58(1a)	$62 500	$12 500
8	61(4)	$62 500	$12 500
9	65(5)	$62 500	$12 500
10	73A(7)	$62 500	$12 500
11	75(2)	$62 500	$12 500
11A	86B(3)	$62 500	$12 500
12	92C(3)	$62 500	Nil
13	92E(1)	$62 500	Nil
14	99X(4)	$62 500	Nil
15	111A(1)	$62 500	$12 500

[Division 1 inserted: No. 14 of 1998 s. 18; amended: No. 54 of 2003 s. 25(2), 66(5)-(7), 85(1), (2) and (5), 88(1), 115(3) and 132(2); No. 48 of 2010 s. 11(1); No. 36 of 2024 s. 39(3).]

Division 2 — Bodies corporate

[Heading inserted: No. 14 of 1988 s. 18.]

Column 1	Column 2	Column 3	Column 4
Item	**Section**	**Penalty — body corporate**	**Daily penalty**
[1 deleted]			
1B	49(5)	$125 000	$25 000
1CA	49A(2)	$125 000	Nil
1CB	49A(3)	$125 000	Nil
1C	50B(2)	$250 000	$50 000
1D	50D	$100 000	$20 000
1E	51J(1)	$125 000	$25 000
2	52	$100 000	$20 000

Column 1 Item	Column 2 Section	Column 3 Penalty — body corporate	Column 4 Daily penalty
3	53(1)	$100 000	Nil
4	53(2)	$100 000	Nil
5	55(1)	$125 000	$25 000
5A	55(1a)	$125 000	$25 000
6	56	$100 000	$20 000
7	58(1)	$125 000	$25 000
7A	58(1a)	$125 000	$25 000
8	61(4)	$125 000	$25 000
9	65(5)	$125 000	$25 000
10	73A(7)	$125 000	$25 000
11	75(2)	$125 000	$25 000
11A	86B(3)	$125 000	$25 000
12	92C(3)	$125 000	Nil
13	92E(1)	$125 000	Nil
14	99X(4)	$125 000	Nil
15	111A(1)	$125 000	$25 000

[Division 2 inserted: No. 14 of 1998 s. 18; amended: No. 54 of 2003 s. 25(3), 66(8) and (9), 85(3)-(5), 88(2), 115(4) and 132(3); No. 48 of 2010 s. 11(2); No. 36 of 2024 s. 39(4).]

Division 3 — Individuals and bodies corporate

[Heading inserted: No. 14 of 1988 s. 18.]

Column 1 Item	Column 2 Section	Column 3 Penalty — individual or body corporate	Column 4 Daily penalty
1	47(4)	$50 000	Nil
[2 deleted]			

Column 1 Item	Column 2 Section	Column 3 Penalty — individual or body corporate	Column 4 Daily penalty
3	62A(2)	$25 000	$5 000
4	67	$10 000	Nil
5	72(1)	$50 000	$10 000
6	72(4)	$50 000	$10 000
7	76(1)	$25 000	$5 000
8	76(2)	$25 000	$5 000
9	81(2)	$25 000	Nil
10	82(2)	$25 000	$5 000
11	83	$25 000	Nil
12	86(1)	$10 000	$2 000
13	86(2)	$10 000	$2 000
14	86(3)	$10 000	$2 000
15	90(6)	$25 000	$5 000
16	91(3)	$25 000	$5 000
17	92(4)	$25 000	$5 000
18	93	$25 000	Nil
19	95(2)	$25 000	$5 000
20	96(3)	$10 000	$2 000
21	112	$100 000	Nil
22	120	$100 000	Nil

[Division 3 inserted: No. 14 of 1998 s. 18; amended: No. 54 of 2003 s. 85(6); No. 40 of 2020 s. 106(1), (2) and (4)-(6).]

Part 3 — Tier 3 offences and penalties

[Heading inserted: No. 14 of 1988 s. 18.]

Column 1 Item	Column 2 Section	Column 3 Penalty — individual or body corporate	Column 4 Daily penalty
1	77(1)	$5 000	Nil
2	77(2)	$5 000	Nil
3	77(3)	$5 000	Nil
4	78(1)	$5 000	Nil
5	78(3)	$5 000	Nil
6	79(1)	$5 000	Nil
7	80	$5 000	Nil
8	84(1)	$5 000	Nil
9	85(1)	$5 000	Nil
9A	90(6)	$5 000	$1 000
10A	91A(2)	$5 000	Nil
10	97(2)	$5 000	$1 000
11	110H(6)	$5 000	Nil

[Part 3 inserted: No. 14 of 1998 s. 18; amended: No. 48 of 2010 s. 11(3); No. 40 of 2020 s. 107.]

Schedule 2 — Matters in respect of which regulations may be made

[s. 123(2)]

[Heading amended: No. 19 of 2010 s. 4.]

1. In this Schedule —

fee includes charge;

specified means specified in regulations made under section 123.

2. The fees to apply under this Act, including, without limiting sections 43, 45 and 45A of the *Interpretation Act 1984*, the following —

(a) subject to this Act, 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;

(ca) when a fee submitted in respect of an application made under this Act is taken to have been received for the purposes of this Act;

(d) interest on unpaid fees;

(e) penalties for, and other consequences of, failure to pay fees, late payment of fees or underpayment of fees;

(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;

(c) prescribing fees that are payable before or when the authorisation is amended, transferred or surrendered.

3. The taking of measurements and analysis of substances and things for the purposes of this Act.

4. The conduct and methods of testing the extent and effects of an emission, the equipment to be used for the purpose of that testing, and the persons who are authorised to use that equipment.

5. The matters that may be set out in a certificate or report relating to —

(a) the taking, or results, of measurements referred to in item 3;

(b) the conduct, method, or results, of analysis referred to in item 3 or testing referred to in item 4;

(c) the equipment for such measurements, analysis or testing;

(d) the persons taking such measurements, conducting such tests or analysis or testing equipment for such measurements, analysis or testing,

and the evidential status and probative value of those matters.

6. The facts by which and the manner in which it may be proved that any noise, odour or electromagnetic radiation emitted from any source does not comply with any standard prescribed in respect of that source by or under this Act.

7. Limiting an emission in relation to any area, premises, act or thing.

8. The standards for determining when any matter, act or thing is poisonous, noxious, objectionable, detrimental to health or within any other description referred to in this Act, which standards may be different in different localities.

9. Prohibiting the discharge into the environment of any matter, whether liquid, solid, gaseous or radioactive, and prohibiting or regulating the use of any specified chemical substance or fuel.

10. Prohibiting either generally or in specified circumstances or subject to specified conditions an emission into the environment.

11. Prescribing ambient standards and emission standards and specifying the maximum permissible concentrations of any matter that may be present in or discharged into the environment.

12. Prescribing noise emission standards for different kinds of premises and equipment.

13. The times within which specified noise emission levels may be exceeded or shall not be exceeded.

14. Prohibiting or regulating the emission or transmission of noise, odour or electromagnetic radiation from premises or a place.

15. Prohibiting or regulating the emission or transmission of noise, odour or electromagnetic radiation in public places.

16. Requiring the means to be used for the prevention, and for counteracting the effect, of pollution or environmental harm in relation to any area, premises, act or thing, including the laying down of minimum requirements.

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

18. Prohibiting the use of any equipment capable of emitting noise that does not meet any prescribed noise emission standard in any respect or regulating the construction, installation or operation thereof so as to prevent or minimise the emission of noise.

18A. Regulating the seizure and storage of things under section 92A and the sale, preservation, treatment and other ways of dealing with those things.

19. Regulating the construction, installation or operation of any premises or equipment or the repair or maintenance of any vehicle or vessel so as to prevent or minimise pollution or environmental harm.

20. Requiring the installation and use in connection with any equipment of any other equipment to prevent pollution or environmental harm and prohibiting the operation of any specified equipment unless there is installed and operated, in connection with the specified equipment, any other equipment to prevent pollution or environmental harm.

21. Requiring any equipment or the packaging thereof to be fitted or marked with a plate, label or other marking and prescribing the manner in which the plate, label or other marking is to be fitted or marked.

22. Prescribing types of plates, labels and other markings and the information to be contained thereon or therein.

23. Prohibiting the removal or defacing of any plate, label or other marking of a prescribed type required to be fitted or marked to or on any equipment or the packaging thereof.

24. The enforcement and implementation of approved policies or the identification of any portion of the environment.

25. Prescribing standards and criteria for the implementation of any approved policy.

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.

26. Prescribing any premises or class of premises as prescribed premises for the purposes of Part V.

27. Regulating the establishment of sites for the disposal of solid or liquid wastes on or in land and the use of any such sites, whether or not established after the commencement of this item.

28. The control, prevention or abatement of pollution or environmental harm generally.

29. Without limiting the generality of section 6 or of section 43(8)(d) of the *Interpretation Act 1984*, exempting any persons, premises or equipment or class of persons, premises or equipment or any category, type, volume

or kind of waste or source of noise from all or any of the provisions of this Act, and specifying circumstances in which and conditions subject to which such an exemption shall apply.

30. Prohibiting the sale, use or operation of an article except in accordance with specified conditions relating to the emission or transmission of noise, odour or electromagnetic radiation from the article when in use or operation and, in particular prohibiting the sale, use or operation of an article unless it is fitted with specified noise, odour or electromagnetic radiation control equipment.

30A. Prohibiting or regulating the manufacture, sale or distribution for sale of solid fuel burning equipment, or solid fuel, of a prescribed class or description.

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.

31. Prohibiting the carrying on of a trade, industry or process except in accordance with such conditions relating to the emission or transmission of noise, odour or electromagnetic radiation arising in the course of the carrying on of the trade, industry or process as are specified.

32. Prohibiting or regulating the use or operation of any article, or the carrying on of any trade, industry or process, at any specified times.

33. Regulating and controlling the collection, transport, storage and disposal of waste and specifying conditions for the re-use thereof.

33A. Requiring any information or documents supplied for the purposes of the Act to be verified by statutory declaration.

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

34. Prescribing administrative procedures for the purposes referred to in section 122(1)(a).

35. Prescribing procedures in respect of appeals under Part VII.

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

35B. Providing for notices, orders or other documents to be given, sent or served under this Act by electronic communication (as defined in the *Electronic Transactions Act 2011* section 5(1)) and providing for the proof of that giving, sending or service.

36. Without limiting section 122B, the keeping, inspection and production of records and registers under this Act.

36A. The keeping and production of returns and other information by a licensee in relation to the receipt of waste.

36B. Establishing or recognising a scheme or system for the accreditation of persons as environmental practitioners for purposes related to this Act.

36C. Specifying timelines for steps in processes contained in Part V.

37. Creating offences under the regulations and penalties for the commission thereof not exceeding $20 000.

[Schedule 2 amended: No. 14 of 1998 s. 19, 21 and 36; No. 54 of 2003 s. 26, 67, 86, 89, 96 and 138; No. 36 of 2007 s. 100; No. 40 of 2020 s. 108(1)-(6) and (8)-(11).]

Schedule 3 — Transitional provisions related to *Environmental Protection Act 1971*

[s. 126]

[Heading amended: No. 19 of 2010 s. 4.]

1. Any order made under section 8 of the repealed Act and in force immediately before the coming into operation of this clause ceases to have effect on that coming into operation.

2. Every person holding office as an Authority member within the meaning of the repealed Act immediately before the coming into operation of this clause shall on that coming into operation be deemed to have been appointed under section 7 to be an Authority member for the remainder of the period for which he would, but for the repeal of the repealed Act, have held office as an Authority member within the meaning of the repealed Act, and may from time to time be reappointed under that section.

3. Every person appointed under section 10(2) of the repealed Act and still so appointed immediately before the coming into operation of this clause shall on that coming into operation cease to be so appointed.

4. The Minister shall under section 7 appoint one of the persons deemed by clause 2 to have been appointed under that section to be Authority members to be the Chairman of the Authority and another of those persons to be the Deputy Chairman of the Authority.

5. The Department of Conservation and Environment referred to in section 12 of the repealed Act is abolished.

6. The office of Director of Conservation and Environment referred to in section 13 of the repealed Act is abolished.

7. The Council within the meaning of the repealed Act is abolished.

8. Every Council member within the meaning of the repealed Act, every person appointed under section 18 of the repealed Act and every deputy of such a Council member appointed under section 21 of the repealed Act who holds office, or whose appointment subsists, immediately before the coming into operation of this clause ceases to hold office or his appointment terminates, as the case requires, on that coming into operation.

9. The appointment of a committee and of the members thereof under section 27 of the repealed Act subsisting immediately before the coming into operation of this clause shall terminate on that coming into operation.

10. The establishment of a committee under section 30(4) of the repealed Act subsisting immediately before the coming into operation of this clause shall terminate on that coming into operation.

11. Any person invited to act in an advisory capacity to the Authority under section 30(4) of the repealed Act and so acting immediately before the coming into operation of this clause shall on that coming into operation cease so to act.

12. Any model by-laws published under section 30(4) of the repealed Act and in force immediately before the coming into operation of this clause shall on that coming into operation cease to be in force.

13. Any regulations made under section 30(4) of the repealed Act and in force immediately before the coming into operation of this clause shall on that coming into operation cease to be in force.

14. Any criteria established and developed under section 30(4)(j), and any standards and criteria and methods of sampling and testing specified under section 30(4)(k), of the repealed Act and subsisting immediately before the coming into operation of this clause shall on that coming into operation continue to subsist for the purposes of this Act —

    (a) unless inconsistent with any standards prescribed for the purposes of this Act; or

    (b) if not inconsistent within the meaning of paragraph (a), until abolished by the CEO.

15. A delegation made under section 31 of the repealed Act and in force immediately before the coming into operation of this clause shall on that coming into operation be deemed to have been made under section 19 and may be amended or revoked accordingly.

16. A request made under section 54(1) of the repealed Act and not complied with before the coming into operation of this clause shall be deemed on that coming into operation to be a requirement made under section 38(3).

17. A matter referred to the Minister for Conservation and Environment under section 55(1) of the repealed Act and not reported on to him by the Authority before the coming into operation of this clause shall be deemed

on that coming into operation to be a proposal referred to the Authority under section 38.

18. A matter referred to the Authority under section 56(1) of the repealed Act and not reported on by the Authority to the Minister for Conservation and Environment before the coming into operation of this clause shall be deemed on that coming into operation to be a proposal referred to the Authority under section 38.

19. A requirement made under section 59(2) of the repealed Act and not complied with before the coming into operation of this clause shall be deemed on that coming into operation to be a requirement contained in a pollution abatement notice served on the person whose duty it was to comply with the first-mentioned requirement.

20. (1) Subject to subitem (2), in any —

(a) written law;

(b) agreement, whether in writing or not;

(c) deed or other instrument,

unless the context is such that it would be incorrect or inappropriate, a reference to —

(d) an Environmental Appeal Board shall be construed as a reference to an appeals committee; or

(e) the Conservation and Environment Council shall be construed as a reference to the Authority; or

(f) the Department shall be construed as a reference to the Authority; or

(g) the Director shall be construed as a reference to the CEO; or

(h) the repealed Act or to a provision thereof shall be construed as a reference to this Act or to the equivalent provision thereof, if any, as the case requires.

(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.

[Schedule 3 amended: No. 54 of 2003 s. 139 and 140(2).]

Schedule 4 — Transitional provisions not related to *Environmental Protection Act 1971*

[s. 127]

[Heading amended: No. 19 of 2010 s. 4.]

1. If an occupier of premises has, before the coming into operation of this clause, commenced work in respect of which a works approval would have been required by virtue of section 52 or 53, had that section then been in operation, and not completed that work immediately before that coming into operation, that occupier may, notwithstanding that section, complete that work if that occupier —

    (a) notifies the CEO of that work within 14 days of that coming into operation; and

    (b) if required to do so by the CEO by notice in writing served on that occupier, supplies to the CEO such plans, specifications and other information as are specified in that notice within such period as is so specified.

2. The Air Pollution Advisory Committee established under section 7 of the *Clean Air Act 1964* [2] is abolished.

3. A person whose services were immediately before the coming into operation of this clause co-opted under section 22(2) of the *Clean Air Act 1964* [2] shall be deemed on that coming into operation to be a person whose services are made use of under section 24(a).

4. An inspector appointed under section 22(3) of the *Clean Air Act 1964* [2] and holding office as such immediately before the coming into operation of this clause shall on that coming into operation be deemed to have been appointed to be an inspector under section 88.

5. A person who has applied for a licence or a renewal or transfer thereof under section 24 of the *Clean Air Act 1964* [2] and whose application is awaiting determination immediately before the coming into operation of this clause shall be deemed on that coming into operation to have applied under section 59 for, or for the renewal or transfer of, a licence of the same kind as the first-mentioned licence.

6. A person who is immediately before the coming into operation of this clause the holder of a licence under the *Clean Air Act 1964* [2] shall on that

coming into operation be deemed to be the holder of a licence under Part V —

(a) of the same kind as the first-mentioned licence; and

(b) valid for the remainder of the period for which the first-mentioned licence would have been valid had the *Clean Air Act 1964* [2] not been repealed; and

(c) subject to the same conditions as those to which the first-mentioned licence was subject.

7. An exemption granted under section 33 of the *Clean Air Act 1964* [2] and in force immediately before the coming into operation of this clause shall on that coming into operation be deemed to be an exemption granted under section 6.

8. If the occupier of any premises has, before the coming into operation of this clause, applied for approval under section 34 of the *Clean Air Act 1964* [2] in respect of any works on those premises, in respect of which works a works approval would have been required by virtue of section 52 or 53, had that section then been in operation, and that application has not, immediately before that coming into operation, been granted or refused, that application shall be deemed to be an application for a works approval under section 54 and shall be dealt with accordingly.

9. A direction given under section 27A(4) [5] of the *Rights in Water and Irrigation Act 1914* and not complied with before the coming into operation of this clause shall, notwithstanding that coming into operation, continue in operation until complied with as if Part IIIA of that Act had not been repealed.

10. A notice in writing given under section 27AA(1) [5] of the *Rights in Water and Irrigation Act 1914* and not complied with or cancelled before the coming into operation of this clause shall, notwithstanding that coming into operation, continue in operation until complied with or cancelled as if Part IIIA of that Act had not been repealed.

11. An application for a disposal licence under section 27B of the *Rights in Water and Irrigation Act 1914* made before the coming into operation of this clause and not granted or refused before that coming into operation shall be deemed on that coming into operation —

(a) if that application is for a disposal licence in respect of works or premises, to be an application for a works approval; or

(b) if that application is for a disposal licence in respect of the discharge of waste from premises, to be an application for a licence,

and shall be dealt with accordingly under this Act.

12. If the occupier of any premises has, before the coming into operation of this clause, been granted —

(a) an approval under section 34 of the *Clean Air Act 1964* [2]; or

(b) a disposal licence under section 27B of the *Rights in Water and Irrigation Act 1914*,

in respect of any works on those premises, in respect of which works a works approval would have been required by virtue of section 52 or 53, had that section then been in operation, and those works have not, immediately before that coming into operation, been commenced, that approval or disposal licence shall be deemed to be a works approval granted to that occupier in respect of those works and subject to the same conditions, if any, as the conditions to which that approval or disposal licence was subject.

13. The occupier of any premises in respect of the discharge of waste from which —

(a) immediately before the coming into operation of this clause that occupier should have been, but was not, the holder of —

(i) an approval under section 34, or a permit under section 39B, of the *Clean Air Act 1964* [2]; or

(ii) a disposal licence under section 27B of the *Rights in Water and Irrigation Act 1914*;

and

(b) on the coming into operation of this clause that occupier should be a licensee,

shall within the period of 3 months after the coming into operation of this clause apply for a licence under section 57 and does not commit —

(c) within that period; and

(d) if he makes such an application within the period referred to in paragraph (a), while that application is awaiting determination,

any offence under section 61.

14. If immediately before the coming into operation of this clause —

(a) a permit granted under section 39B of the *Clean Air Act 1964* [2]; or

(b) a disposal licence granted under section 27B of the *Rights in Water and Irrigation Act 1914*,

in respect of the discharge of waste was in force, that permit or disposal licence shall be deemed to be a licence granted under this Act in respect of that discharge and may be amended or revoked by the CEO accordingly, and any fee payable under that Act in respect of that permit or disposal licence shall continue to be payable in respect of the licence deemed to be granted under this Act in respect of that discharge while that licence subsists.

15. A declaration made under section 27G [5] of the *Rights in Water and Irrigation Act 1914* and in force immediately before the coming into operation of this clause shall be deemed on that coming into operation to be an exemption granted under section 6 in respect of the subject matter of that declaration.

16. Any regulations made under Part IIIA [5] of the *Rights in Water and Irrigation Act 1914* and in force immediately before the coming into operation of this clause shall be deemed on that coming into operation to have been made under this Act and may be repealed or amended accordingly.

17. A notice served under section 41 of the *Clean Air Act 1964* [2] and not complied with before the coming into operation of this clause shall be deemed on that coming into operation to be a requirement made under section 90 or 95, as the case requires.

18. A prohibition made by Order in Council under section 43 of the *Clean Air Act 1964* [2] and in force immediately before the coming into operation of this clause shall continue in force notwithstanding that coming into operation as if that Act had not been repealed.

19. An appeal pending under section 45 of the *Clean Air Act 1964* [2] immediately before the coming into operation of this clause shall notwithstanding that coming into operation be dealt with and finally determined as if that Act had not been repealed.

20. Any regulations made under section 53 of the *Clean Air Act 1964* [2] and in force immediately before the coming into operation of this clause shall be deemed on that coming into operation to be regulations made under section 123.

21. If, immediately before the coming into operation of this clause, an exemption granted under section 6 of the *Noise Abatement Act 1972* [6] in respect of the emission of noise was in force, that exemption shall be deemed to be an exemption granted under section 6 in respect of that emission and any fee payable under that Act in respect of that exemption shall continue to be payable in respect of the exemption granted under section 6 in respect of that emission while that exemption subsists.

22. Notwithstanding anything in clause 13, 14 or 21, any discharge or emission permitted by that clause to continue after the coming into operation of that clause shall be so permitted only insofar as that discharge or emission complies with any approved policy and with any prescribed standard.

23. Every —

    (a) notice served or given under section 33, 35, 38 or 39 of the *Clean Air Act 1964* [2]; or

    (b) abatement notice served under section 26, nuisance order made under section 27 or noise abatement direction given under section 33B, of the *Noise Abatement Act 1972* [6],

    (in this clause called the ***relevant Act***) which was in force or pending immediately before the coming into operation of this clause shall on that coming into operation continue in force or may be prosecuted to its conclusion, as the case requires, as if that section had not been repealed and the provisions of the relevant Act shall apply to that notice, abatement notice, nuisance order or noise abatement direction accordingly.

24. A delegation made under section 12A of the *Noise Abatement Act 1972* [6] to a person performing functions unrelated to occupational health, safety

or welfare and in force immediately before the coming into operation of this clause shall on that coming into operation be deemed to be revoked.

25. A committee established under section 20 of the *Noise Abatement Act 1972*[6] in respect of matters unrelated to occupational health, safety or welfare and in existence immediately before the coming into operation of this clause shall on that coming into operation be abolished.

26. A person invited under section 20 of the *Noise Abatement Act 1972*[6] to act in an advisory capacity unrelated to occupational health, safety or welfare to the Noise Abatement Advisory Committee established by section 13 of that Act and so acting immediately before the coming into operation of this clause shall on that coming into operation cease so to act.

27. A person who was immediately before the coming into operation of this clause an inspector authorised, or a member of a prescribed class of inspectors authorised, under section 33A(2) of the *Noise Abatement Act 1972*[6] shall on that coming into operation be deemed to have been appointed an authorised person under section 87.

28. A person who was immediately before the coming into operation of this clause an inspector (other than a workplace inspector) appointed under section 34 of the *Noise Abatement Act 1972*[6] shall on that coming into operation be deemed to have been appointed an inspector under section 88.

29. Any by-laws or model by-laws made under section 45 of the *Noise Abatement Act 1972*[6] and in force immediately before the coming into operation of this clause shall on that coming into operation cease to have effect.

30. Any regulations made under section 48 of the *Noise Abatement Act 1972*[6] in respect of the appointment of inspectors (other than workplace inspectors) or any other matter unrelated to occupational health, safety or welfare and in force immediately before the coming into operation of this clause shall on that coming into operation be deemed to have been made under section 123.

[Schedule 4 amended: No. 57 of 1997 s. 54(10); No. 54 of 2003 s. 140(2).]

Schedule 5 — Principles for clearing native vegetation

[s. 51A]

[Heading inserted: No. 54 of 2003 s. 116.]

1. Principles

Native vegetation should not be cleared if —

(a) it comprises a high level of biodiversity; or

(b) it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna; or

(c) it includes, or is necessary for the continued existence of, threatened flora; or

(d) it comprises the whole or a part of, or is necessary for the maintenance of, a threatened ecological community; or

(e) it is significant as a remnant of native vegetation in an area that has been extensively cleared; or

(f) it is growing in, or in association with, an environment associated with a watercourse or wetland; or

(g) the clearing of the vegetation is likely to cause appreciable land degradation; or

(h) the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area; or

(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.

[Clause 1 inserted: No. 54 of 2003 s. 116; amended: No. 24 of 2016 s. 314(2).]

2. Terms used

In this Schedule —

biodiversity has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

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;

fauna has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

threatened ecological community means —

(a) a threatened ecological community as defined in the *Biodiversity Conservation Act 2016* section 5(1); or

(b) any other ecological community listed, designated or declared as threatened, endangered or vulnerable under or for the purposes of a written law; or

(c) a listed threatened ecological community as defined in the Commonwealth Environment Act section 528;

threatened flora has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

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.

[Clause 2 inserted: No. 54 of 2003 s. 116; amended: No. 24 of 2016 s. 314(3) and (4); No. 40 of 2020 s. 109.]

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

[Heading inserted: No. 54 of 2003 s. 104.]

[s. 51C]

1. Clearing that is done in order to give effect to a requirement to clear under a prescribed enactment.

2. Clearing that is done —

   (a) in the implementation of a proposal in accordance with an implementation agreement or decision; or

   (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; or

   (c) in accordance with —

      (i) a prescribed standard; or

      (ii) a works approval; or

      (iii) a licence; or

      (iv) a requirement contained in a closure notice, an environmental protection notice or a prevention notice; or

      (v) an approved policy; or

      (vi) a declaration under section 6; or

      (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 in the performance of functions that the CEO, as defined in the *Conservation and Land Management Act 1984* section 3, has under section 33(1)(a) or (aa) of that Act.

4. Clearing consisting of the taking of flora —

   (a) as authorised by a licence under the *Biodiversity Conservation Act 2016*; or

   (b) as authorised by an authorisation under the *Biodiversity Conservation Act 2016* section 40; or

   (c) by a person referred to in the *Biodiversity Conservation Act 2016* section 171(2) for the purposes of supply in accordance with a licence under that Act.

*[**5, 6.** deleted]*

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 *Planning and Development Act 2005*, including —

   (a) clearing for the purposes of any development that is deemed by section 157 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); or

   (b) in accordance with a permit obtained under section 18; or

   (c) in accordance with an exemption granted under section 22C; or

   (d) under section 22(2), 23, 26A, 39(1)(d) or 44(1)(c); or

   (e) as authorised by a proclamation under section 26; or

   (f) to comply with a notice given under section 33(1); or

(g) as authorised under section 36(b),

of the *Bush Fires Act 1954*.

10A. Clearing that is done by a local government under the *Bush Fires Act 1954* section 33(4) if the person who is given a notice mentioned in item 10(f) fails to comply with it.

10B. Clearing that is done by the occupier of land, or an energy operator, under the *Energy Operators (Powers) Act 1979* section 54.

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 FES Commissioner as defined in the *Fire and Emergency Services Act 1998* section 3.

13. Clearing caused by the grazing of stock on land under a pastoral lease or diversification lease within the meaning of the *Land Administration Act 1997* as long as that grazing is not in breach of —

(a) that Act; or

(b) the pastoral lease or diversification lease; or

(c) in the case of a pastoral lease — any relevant condition set, determination made or direction given by the Pastoral Lands 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*.

15. Clearing that is done by the owner or occupier of land to comply with a notice given under the *Local Government Act 1995* section 3.25(1) in respect of something prescribed in Schedule 3.1 Division 1 item 5A, 8 or 9 of that Act.

16. Clearing that is done by a local government under the *Local Government Act 1995* section 3.26 if the person who is given a notice mentioned in item 15 fails to comply with it.

[Schedule 6 inserted: No. 54 of 2003 s. 116; amended: No. 38 of 2005 s. 15; No. 25 of 2009 s. 20; No. 22 of 2012 s. 123; No. 24 of 2016

s. 314(5); No. 40 of 2020 s. 110(1), (3) and (4)-(6); No. 4 of 2023 s. 121.]

Schedule 7 — Appeals Convenor

[s. 107A]

[Heading inserted: No. 54 of 2003 s. 104.]

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.

[Clause 1 inserted: No. 54 of 2003 s. 104.]

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 Public Sector Commissioner; 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.

[Clause 2 inserted: No. 54 of 2003 s. 104; amended: No. 39 of 2010 s. 89.]

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 is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws.

(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.

[Clause 3 inserted: No. 54 of 2003 s. 104; amended: No. 18 of 2009 s. 35.]

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 the person 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 the person 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.

[Clause 4 inserted: No. 54 of 2003 s. 104; amended: No. 40 of 2020 s. 111(1).]

5. Other conditions of service

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

[Clause 5 inserted: No. 54 of 2003 s. 104; amended: No. 39 of 2010 s. 89.]

Notes

This is a compilation of the *Environmental Protection Act 1986* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Environmental Protection Act 1986	87 of 1986	10 Dec 1986	s. 1 and 2: 10 Dec 1986; Act other than s. 1 and 2: 20 Feb 1987 (see s. 2 and *Gazette* 20 Feb 1987 p. 440)
Acts Amendment (Public Service) Act 1987 s. 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and *Gazette* 16 Mar 1988 p. 813)
Financial Administration Legislation Amendment Act 1993 s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
Environmental Protection Amendment Act 1993 [7]	34 of 1993	16 Dec 1993	s. 1 and 2: 16 Dec 1993; Act other than s. 1 and 2: 14 Jan 1994 (see s. 2 and *Gazette* 14 Jan 1994 p. 69)
Acts Amendment (Public Sector Management) Act 1994 s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and *Gazette* 30 Sep 1994 p. 4948)
Statutes (Repeals and Minor Amendments) Act 1994 s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
Planning Legislation Amendment Act (No. 2) 1994 s. 46(1) and (6)	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and *Gazette* 21 Feb 1995 p. 567)
Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and *Gazette* 29 Dec 1995 p. 6291)

Reprint of the *Environmental Protection Act 1986* as at 7 Mar 1996
(includes amendments listed above)

Short title	Number and year	Assent	Commencement
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Planning Legislation Amendment Act 1996 Pt. 3	23 of 1996	11 Jul 1996	4 Aug 1996 (see s. 2 and *Gazette* 2 Aug 1996 p. 3615)
Financial Legislation Amendment Act 1996 s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Acts Amendment (Assemblies and Noise) Act 1996 Pt. 3	50 of 1996	31 Oct 1996	4 Dec 1996 (see s. 2 and *Gazette* 3 Dec 1996 p. 6695)
Transfer of Land Amendment Act 1996 s. 153(1)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
Acts Amendment (Land Administration) Act 1997 Pt. 25	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and *Gazette* 27 Mar 1998 p. 1765)
Statutes (Repeals and Minor Amendments) Act 1997 s. 54	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Environmental Protection Amendment Act 1998[8]	14 of 1998	21 May 1998	s. 1-3, 21, 26, 27, 29, 32-34, 36 and 37: 21 May 1998 (see s. 2(1)); s. 20: 1 Jul 1998 (see s. 2(2) and *Gazette* 26 Jun 1998 p. 3369); s. 4, 6-9, 11, 12 and 14 (to the extent that it inserts Pt. VIA heading, Div. 3 and 4 headings and s. 99Q-99X and 99Z-99ZB), 15-19, 22-25, 28, 30, 31 and 35: 1 Jul 1998 (see s. 2(3) and *Gazette* 26 Jun 1998 p. 3369); s. 10, 13 and 14 (to the extent that it inserts Div. 1 and 2 headings and s. 99A-99P and 99Y): 8 Jan 1999 (see s. 2(3) and *Gazette* 8 Jan 1999 p. 35); s. 5: 10 Sep 2005 (see s. 2(3) and *Gazette* 9 Sep 2005 p. 4155)

Short title	Number and year	Assent	Commencement
Reprint of the *Environmental Protection Act 1986* as at 16 Apr 1999 (includes amendments listed above except those in the *Environmental Protection Amendment Act 1998* s. 5)			
Midland Redevelopment Act 1999 s. 71	38 of 1999	11 Nov 1999	1 Jan 2000 (see s. 2 and *Gazette* 31 Dec 1999 p. 7059)
Reprint of the *Environmental Protection Act 1986* as at 7 Jul 2000 (includes amendments listed above except those in the *Environmental Protection Amendment Act 1998* s. 5)			
Rights in Water and Irrigation Amendment Act 2000 s. 84	49 of 2000	28 Nov 2000	10 Jan 2001 (see s. 2 and *Gazette* 10 Jan 2001 p. 163)
Criminal Property Confiscation (Consequential Provisions) Act 2000 s. 13(1) [9]	69 of 2000	6 Dec 2000	1 Jan 2001 (see s. 2 and *Gazette* 29 Dec 2000 p. 7903)
Hope Valley-Wattleup Redevelopment Act 2000 s. 37	77 of 2000	7 Dec 2000	1 Jan 2001 (see s. 2 and *Gazette* 29 Dec 2000 p. 7904)
Corporations (Consequential Amendments) Act 2001 Pt. 23	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285)
Armadale Redevelopment Act 2001 s. 69	25 of 2001	26 Nov 2001	23 Mar 2002 (see s. 2 and *Gazette* 22 Mar 2002 p. 1651)
Reprint of the *Environmental Protection Act 1986* as at 11 Jan 2002 (includes amendments listed above except those in the *Environmental Protection Amendment Act 1998* s. 5 and the *Armadale Redevelopment Act 2001*)			
Environmental Protection Amendment Act 2003 [10-14]	54 of 2003 (as amended by No. 8 of 2009 s. 54)	20 Oct 2003	s. 1 and 2: 20 Oct 2003; Act other than s. 1, 2, 37, 54(2), 55, 72(2) and (4), 75(3) and (4) and Pt. 9: 19 Nov 2003 (see s. 2 and *Gazette* 18 Nov 2003 p. 4723); s. 37, 54(2), 55, 72(2) and (4), 75(3) and (4) and Pt. 9: 8 Jul 2004 (see s. 2 and *Gazette* 30 Jun 2004 p. 2581)

Short title	Number and year	Assent	Commencement
Contaminated Sites Act 2003 s. 100	60 of 2003 (as amended by No. 40 of 2005 s. 13)	7 Nov 2003	1 Dec 2006 (see s. 2 and *Gazette* 8 Aug 2006 p. 2899)
Courts Legislation Amendment and Repeal Act 2004 s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction: *Gazette* 7 Jan 2005 p. 53))
Reprint 5: The *Environmental Protection Act 1986* as at 16 Sep 2005 (includes amendments listed above except those in the *Contaminated Sites Act 2003*)			
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078)
Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 7 Div. 2	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and *Gazette* 27 Jun 2006 p. 2347)
Financial Legislation Amendment and Repeal Act 2006 s. 4 and Sch. 1 cl. 59	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Waste Avoidance and Resource Recovery Act 2007 Sch. 4 cl. 2(1), (2), (4) and (5) [15]	36 of 2007	21 Dec 2007	Sch. 4 cl. 2(1), (2) and (4): 9 Jan 2008 (see s. 2(b) and *Gazette* 8 Jan 2008 p. 33); Sch. 4 cl. 2(5): 1 Jul 2008 (see s. 2(b) and *Gazette* 20 Jun 2008 p. 2705)
Water Resources Legislation Amendment Act 2007 s. 194	38 of 2007	21 Dec 2007	1 Feb 2008 (see s. 2(2) and *Gazette* 31 Jan 2008 p. 251)
Reprint 6: The *Environmental Protection Act 1986* as at 11 Apr 2008 (includes amendments listed above, except those in the *Waste Avoidance and Resource Recovery Act 2007* Sch. 4 cl. 2(5))			

Short title	Number and year	Assent	Commencement
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 53	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Acts Amendment (Bankruptcy) Act 2009 s. 35	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
Bush Fires Amendment Act 2009 s. 20	25 of 2009	17 Nov 2009	1 Dec 2009 (see s. 2(b) and *Gazette* 1 Dec 2009 p. 4829)
Approvals and Related Reforms (No. 3) (Crown Land) Act 2010 Pt. 4	8 of 2010	3 Jun 2010	18 Sep 2010 (see s. 2(b) and *Gazette* 17 Sep 2010 p. 4757)
Standardisation of Formatting Act 2010 s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Approvals and Related Reforms (No. 4) (Planning) Act 2010 Pt. 2 Div. 2 Subdiv. 1	28 of 2010	19 Aug 2010	22 Nov 2010 (see s. 2(b) and *Gazette* 19 Nov 2010 p. 5709)
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)
Approvals and Related Reforms (No. 1) (Environment) Act 2010	40 of 2010	28 Oct 2010	Pt. 1 other than s. 3: 28 Oct 2010 (see s. 2(a)); Act other than Pt. 1 heading, s. 1 and 2: 26 Nov 2010 (see s. 2(b) and *Gazette* 23 Nov 2010 p. 5851)
Environmental Protection Amendment Act 2010	48 of 2010	24 Nov 2010	s. 1 and 2: 24 Nov 2010 (see s. 2(a)); Act other than s. 1 and 2: 25 Nov 2010 (see s. 2(b))
Reprint 7: The *Environmental Protection Act 1986* as at 11 Feb 2011 (includes amendments listed above)			
Metropolitan Redevelopment Authority Act 2011 s. 137	45 of 2011	12 Oct 2011	31 Dec 2011 (see s. 2(b) and *Gazette* 30 Dec 2011 p. 5573)
Agricultural Practices (Disputes) Repeal Act 2011 s. 4	54 of 2011	9 Nov 2011	7 Dec 2011 (see note under s. 1)

Short title	Number and year	Assent	Commencement
Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 20	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371)
Fire and Emergency Services Legislation Amendment Act 2012 Pt. 7 Div. 6	22 of 2012	29 Aug 2012	1 Nov 2012 (see s. 2(b) and *Gazette* 31 Oct 2012 p. 5255)
Water Services Legislation Amendment and Repeal Act 2012 s. 211	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and *Gazette* 14 Nov 2013 p. 5028)
Reprint 8: The *Environmental Protection Act 1986* as at 17 May 2013 (includes amendments listed above except those in the *Water Services Legislation Amendment and Repeal Act 2012* and the *Road Traffic Legislation Amendment Act 2012*)			
Environmental Protection Amendment (Validation) Act 2014	27 of 2014	27 Nov 2014	27 Nov 2014 (see s. 2)
Biodiversity Conservation Act 2016 s. 314	24 of 2016	21 Sep 2016	1 Jan 2019 (see s. 2(b) and *Gazette* 14 Sep 2018 p. 3305)
Reprint 9: The *Environmental Protection Act 1986* as at 4 May 2018 (includes amendments listed above except those in the *Biodiversity Conservation Act 2016* s. 314)			
Strata Titles Amendment Act 2018 Pt. 3 Div. 6	30 of 2018	19 Nov 2018	1 May 2020 (see s. 2(b) and SL 2020/39 cl. 2)
Community Titles Act 2018 Pt. 14 Div. 8	32 of 2018	19 Nov 2018	30 Jun 2021 (see s. 2(b) and SL 2021/69 cl. 2)
Planning and Development Amendment Act 2020 Pt. 6 Div. 2 and Pt. 7 Div. 2 [16]	26 of 2020 (as amended by No. 40 of 2020 s. 117)	7 Jul 2020	Pt. 6 Div. 2: 1 Aug 2023 (see s. 2(1)(b) and SL 2023/107 cl. 2); Pt. 7 Div. 2: 1 Mar 2024 (see s. 2(1)(b) and SL 2024/16 cl. 2)

Short title	Number and year	Assent	Commencement

Environmental Protection Amendment Act 2020 Pt. 2 (other than s. 4(2), (4) and (10), 34, 42, 59, 60, 63, 65-68, 71, 72, 83, 86, 87, 88(1), 92, 98, 104, 105, 106(3), 108(7), 110(2) and 112) [17]	40 of 2020	19 Nov 2020	s. 3, 5-8, 10, 13, 14, 24, 32, 35, 36, 37(1), 58, 73-76, 80-82, 93, 94, 96, 99, 101, 106(4)-(6), 107, 108(1)-(6) and (8)-(11), 110(4)-(6) and 111: 3 Feb 2021 (see s. 2(1)(e) and SL 2021/12 cl. 2);
			s. 4(1), (3), (5) and (7)-(9), 9, 11, 12, 15-23, 25-31, 33, 37(2), 38-41, 43-57, 61, 62, 64, 69, 70, 77-79, 84, 85, 88(2), 89-91, 95, 97, 100, 102, 103, 106(1) and (2), 109 and 110(1) and (3): 23 Oct 2021 (see s. 2(1)(e) and SL 2021/176 cl. 2);
			s. 4(6): 1 Mar 2024 (see s. 2(1)(b)(i))

Environmental Protection Amendment Act (No. 2) 2020 s. 4	41 of 2020	19 Nov 2020	3 Feb 2021 (see s. 2(1)(b) and SL 2021/12 cl. 2)
Swan Valley Planning Act 2020 Pt. 10 Div. 3	45 of 2020	9 Dec 2020	Pt. 10 Div. 3 (other than s. 103): 1 Aug 2021 (see s. 2(1)(e) and SL 2021/124 cl. 2); s. 103: 1 Aug 2023 (see s. 2(1)(c)(ii) and SL 2023/107 cl. 2)
Aboriginal Cultural Heritage Act 2021 s. 348	27 of 2021	22 Dec 2021	1 Jul 2023 (see s. 2(e) and SL 2023/40 cl. 2(b))
Land and Public Works Legislation Amendment Act 2023 Pt. 4 Div. 4	4 of 2023	24 Mar 2023	10 Aug 2023 (see s. 2(b) and SL 2023/132 cl. 2)
Directors' Liability Reform Act 2023 Pt. 3 Div. 24	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))
Aboriginal Heritage Legislation Amendment and Repeal Act 2023 s. 28	23 of 2023	24 Oct 2023	15 Nov 2023 (see s. 2(d) and SL 2023/161 cl. 2)
Planning and Development Amendment Act 2023 Pt. 5 Div. 2	34 of 2023	11 Dec 2023	1 Mar 2024 (see s. 2(d))

Short title	Number and year	Assent	Commencement
Environmental Protection Amendment Act 2024 Pt. 1-3, Pt. 4 (other than Div. 1 Subdiv. 2), Pt. 5 and Pt. 6 Div. 1	36 of 2024	22 Oct 2024	Pt. 1: 22 Oct 2024 (see s. 2(1)(a)); Pt. 2 and 3, Pt. 4 Div. 2 and 3, Pt. 5 and Pt. 6 Div. 1: 23 Oct 2024 (see s. 2(1)(e)); Pt. 4 Div. 1 Subdiv. 1 and Div. 4: 28 Nov 2024 (see s. 2(1)(b) and (d) and SL 2024/239 cl. 2)
State Development Act 2025 Pt. 8 Div. 2	21 of 2025	19 Dec 2025	19 Feb 2026 (see s. 2(e) and SL 2026/13 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

Short title	Number and year	Assent	Commencement
Waste Avoidance and Resource Recovery Act 2007 Sch. 4 cl. 2(3)	36 of 2007	21 Dec 2007	To be proclaimed (see s. 2(b))
Aquatic Resources Management Act 2016 s. 366	53 of 2016	29 Nov 2016	To be proclaimed (see s. 2(b))
Environmental Protection Amendment Act 2020 s. 4(2), (4) and (10), 34, 42, 59, 60, 63, 65-68, 71, 72, 83, 86, 87, 88(1), 92, 98, 104, 105, 106(3), 108(7), 110(2) and 112 [17]	40 of 2020	19 Nov 2020	s. 59: on the day on which s. 83 comes into operation (see s. 2(1)(c)); s 4(2), (4) and (10), 34, 42, 60, 63, 65-68, 71, 72, 83, 86, 87, 88(1), 92, 98, 104, 105, 106(3), 108(7), 110(2) and 112: to be proclaimed (see s. 2(1)(e))
Environmental Protection Amendment Act (No. 2) 2020 s. 5	41 of 2020	19 Nov 2020	Immediately after the *Environmental Protection Amendment Act 2020* s. 92 comes into operation (see s. 2(1)(c))

Short title	Number and year	Assent	Commencement
Environmental Protection Amendment Act 2024 Pt. 4 Div. 1 Subdiv. 2	36 of 2024	22 Oct 2024	Immediately after the *Environmental Protection Amendment Act 2020* s. 60 comes into operation (see s. 2(1)(c)(i))

Other notes

[1] Footnote no longer applicable.

[2] Repealed by the *Acts Amendment and Repeal (Environmental Protection) Act 1986*.

[3] Act No. 77 of 1986.

[4] Footnote no longer applicable.

[5] Deleted by the *Acts Amendment and Repeal (Environmental Protection) Act 1986* s. 32.

[6] Repealed by the *Acts Amendment (Occupational Health, Safety and Welfare) Act 1987*.

[7] The *Environmental Protection Amendment Act 1993* s. 5(2), (3) and (4) are transitional provisions that are of no further effect.

[8] The *Environmental Protection Amendment Act 1998* Pt. 3 Div. 3 reads as follows:

Division 3 — Recovery of certain costs

26. Interpretation

In this Division —

agreement means an agreement —

(a) made between the State and another party in respect of disposal of waste at the Mt Walton East waste facility before the coming into operation of this section; and

(b) declared by the Minister, by notice published in the *Gazette*, to be an agreement to which this Division applies,

and includes —

(c) that agreement as varied from time to time in accordance with its provisions; and

(d) any annexure to that agreement;

Mt Walton East waste facility means the intractable waste disposal facility at Mt Walton East, Shire of Coolgardie in Western Australia situated on reserve number 42001 (Jaurdi Location 73).

27. Recovery of costs from other party

(1) The State may recover directly from the other party to an agreement costs (within the meaning of the agreement) incurred by the State in conducting the Works (within the meaning of the agreement).

(2) The power of the State under subsection (1) is to be exercised subject to, and in accordance with, the terms of the relevant agreement.

[9] The *Criminal Property Confiscation (Consequential Provisions) Act 2000* s. 13(2) reads as follows:

(2) Despite the amendment effected by subsection (1), section 99U(4) of the *Environmental Protection Act 1986* as in force before the commencement of this Act continues to apply to any exercise under this Act of the court's powers under the *Crimes (Confiscation of Profits) Act 1988*.

[10] The *Environmental Protection Amendment Act 2003* s. 45(4) reads as follows:

(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.

[11] The *Environmental Protection Amendment Act 2003* s. 51(6) reads as follows:

(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.

[12] The *Environmental Protection Amendment Act 2003* s. 97(4) and (5) read as follows:

> (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.

[13] The *Environmental Protection Amendment Act 2003* s. 110(2)-(4) are transitional provisions that are of no further effect.

[14] The *Environmental Protection Amendment Act 2003* s. 111(2)-(5) (as amended by the *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 54(2) and (3)) read as follows:

> (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) deleted]

(5) Sections 70(3) to (11) and 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.

[Section 111 amended: No. 8 of 2009 s. 54(2) and (3).]

[15] The *Waste Avoidance and Resource Recovery Regulations 2008* r. 24 reads as follows:

24. Transitional provision — Waste Management and Recycling Fund

The *Waste Avoidance and Resource Recovery Act 2007* Schedule 5 clause 6 prevails to the extent that there is an inconsistency between that provision and Part VIIA Division 2 of the EP Act.

[16] The *Planning and Development Amendment Act 2020* s. 71 will not come into operation because the definition it sought to amend was deleted by the *Environmental Protection Amendment Act 2020* s. 55(1)(b).

[17] The *Environmental Protection Amendment Act 2020* the 2nd and 4th rows in the Table to s. 112 will not come into operation because they were deleted by the *Environmental Protection Amendment Act 2020* s. 2(3) and (4).

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
Account	110A
agreement to reserve	51A
amended EP Act	133(1)
amending Act	129, 133A, 133Q
amendment day	133T(1), 133U(1), 133V(1), 133W(1)
analysis	3(1)
analyst	3(1)
appeals committee	3(1)
Appeals Convenor	3(1)
applicant	3(1)
approved	88(6), 122B(1)
approved policy	3(1)
approved proposal	3(1)
area	51DA(4)
area permit	51A, 51E(7)
assessed proposal	44A
assessed scheme	3(1)
assessment report	44(1)
authorisation	50D(1), 68A(1), 86A, Sch. 2
authorised person	3(1)
Authority	3(1)
Authority member	3(1)
beneficial use	3(1)
bilateral agreement	124A
bilateral matter	124A
biodiversity	Sch. 5 cl. 2
books	3(1)
capture	116B(2)
captured	116B(1)
CEO	3(1)
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clearing	3(1), 51A
clearing decision	51F(1)
clearing injunction	51S(2), 133D(1)
clearing matter	51O(1)
clearing permit	3(1)
clearing principles	51A
closure notice	2(1), 68A(2)
commencement	133C(1), 133D(1), 133E, 133M(2), (3), (5) and (7), 133N(1)

commencement condition ..... 47A(2)
Commissioner ..... 51D(1)
committee of inquiry ..... 3(1)
Commonwealth Environment Act ..... 3(1)
compliance period ..... 38F(2)
condition ..... 3(1), 48H(1)
conduct affecting the environment ..... 50D(1)
conduct injunction ..... 133D(1)
conservation area ..... Sch. 5 cl. 2
conservation covenant 51A
consolidated proposal ..... 45D(1)
contaminated ..... 3(1)
contaminated sites auditor ..... 3(1)
contravention ..... 51S(1)
convicted 99T
corporation ..... 51R(7), 55(3), 58(4)
court ..... 51S(1)
damage costs ..... 3A(3)
decision ..... 51O(1)
decision date ..... 134(1)
decision-making authority ..... 3(1)
deemed referral ..... 133C(2)
delegate ..... 18(1), 19(1), 20(1)
Department ..... 3(1)
Deputy Chair ..... 3(1)
designated area ..... 57(5)
designated person 99H
detrimental action ..... 111A(3)
development approval ..... 3(1)
discharge ..... 3(1)
DMA decision 44A
documentation ..... 122B(1)
draft policy ..... 3(1), 31
driver ..... 2(1)
ecological community ..... 3(1)
ecosystem health condition ..... 3(1)
effective day 21A
emission ..... 3(1)
environment ..... 3(1)
environmental harm ..... 3(1), 3A(2)
environmentally sensitive area 51A
environmental monitoring programme ..... 3(1)
environmental protection covenant ..... 3(1)
environmental protection notice ..... 3(1), 64A(1)

environmental undertaking ..... 3(1)
environmental value ..... 3(1)
equipment ..... 3(1)
establish ..... 51I(4)
existing Act 133E
existing appeal ..... 133W(1)
existing application ..... 133C(1), 133D(1), 133H(1), 133I(1), 133J(1)
existing authorisation ..... 61(3)
existing Authority member ..... 133T(1)
expectation statement 21A
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