



Western Australia

# **Environmental Protection Act 1986**

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Western Australia

## Environmental Protection Act 1986

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**Notes**

**Defined Terms**





Western Australia

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## **Environmental Protection Act 1986**

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

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Environmental Protection Act 1986*<sup>1</sup>.

### **2. Commencement**

The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation<sup>1</sup>.

### **3. Interpretation**

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

“**analysis**” means 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 analyst appointed under section 94;

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

“**appeals committee**” means appeals committee appointed under section 45(3) or 106;

“**approved policy**” means draft policy approved under section 31(d);

“**assessed scheme**”—

- (a) means 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);

- (b) for the purposes of Part IV, includes scheme —
  - (i) in respect of which the responsible authority has been informed under section 48A(1)(a);
  - (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 town planning scheme, or an amendment to a town planning scheme, in respect of which —
    - (A) section 35A of the *Metropolitan Region Town Planning Scheme Act 1959* has been complied with to the extent, if any, necessary in relation to an amendment to the Metropolitan Region Scheme; or
    - (B) section 18 of the *Western Australian Planning Commission Act 1985* has been complied with to the extent, if any, necessary in relation to a regional planning scheme, or an amendment to a regional planning scheme,  
  
which amendment to the Metropolitan Region Scheme, or regional planning scheme, or amendment to a regional planning scheme, is a scheme referred to in paragraph (a) or subparagraph (i) or (ii);
- (c) does not include scheme in respect of which the responsible authority has been advised under section 48A(2)(b);

**“Authority”** means Environmental Protection Authority continued in existence by section 7(1);

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

**“authorised person”** means person or member of a class of persons appointed under section 87(1), and includes Chief Executive Officer;

**“beneficial use”** means 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 discharges of wastes or of emissions of noise, odour or electromagnetic radiation; 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;

**“Chairman”** means the Authority member appointed to be Chairman of the Authority under section 7(4a);

**“Chief Executive Officer”** means person holding or acting in the office of chief executive officer of the Department;

**“committee of inquiry”** means committee of inquiry appointed under section 29(1);

**“condition”** includes restriction or limitation;

**“decision-making authority”** means 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 any 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 department of the Public Service of the State through which this Act is administered;

**“Deputy Chairman”** means the Authority member appointed to be Deputy Chairman of the Authority under section 7(4a);

**“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 draft of an environmental protection policy prepared under section 26;

**“driver”**, in relation to —

(a) a vehicle within the meaning of the *Road Traffic Act 1974*, has the meaning given by that Act;

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

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

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

**“equipment”** means 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) prepared under the *East Perth Redevelopment Act 1991*, means approval under section 32 of that Act, or under section 34 of that Act as read with that section;
- (aa) prepared under the *Midland Redevelopment Act 1999*, means approval under section 35 of that Act, or under section 37 of that Act as read with that section;
- (b) prepared under the *Subiaco Redevelopment Act 1994*, means approval under section 36 of that Act, or under section 38 of that Act as read with that section;
- (c) prepared under the *Metropolitan Region Town Planning Scheme Act 1959*, means approval under section 33(2)(1) or 33A(7), as the case requires, of that Act;
- (d) a regional planning scheme, or an amendment to a regional planning scheme, means approval under section 33(2)(1) or 33A(7), as the case requires, of the *Metropolitan Region Town Planning Scheme Act 1959* as read with section 18 of the *Western Australian Planning Commission Act 1985*;
- (e) a town planning scheme, or an amendment to a town planning scheme, means approval under section 7(2a) of the *Town Planning and Development Act 1928*; or
- (f) a statement of planning policy to which section 5AA(8) of the *Town Planning and Development Act 1928* applies, or an amendment to such a statement, means approval under section 7(2a), as read with section 5AA(8), of that Act;

**“fuel burning equipment”** means equipment (other than a motor vehicle) or 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;

**“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;
- (b) which when operated is capable of discharging waste or emitting noise, odour or electromagnetic radiation; or
- (c) which is of a prescribed class;

**“inspector”** means person appointed to be an inspector under section 88, and includes Chief Executive Officer;

**“licence”** means licence granted and in force under Part V;

**“licensee”** means holder of a licence;

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

**“Metropolitan Region Scheme”** has the meaning given by the *Metropolitan Region Town Planning Scheme Act 1959*;

**“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 Act 1974*;

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

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

**“occupier”**, in relation to —

- (a) any premises, means 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, 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 within the meaning of the *Road Traffic Act 1974*, has the meaning given by 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) prepared under the *East Perth Redevelopment Act 1991*, means period referred to in section 31(1)(a) of that Act, or in section 34 of that Act as read with that section;
- (aa) prepared under the *Midland Redevelopment Act 1999*, means period referred to in section 34(1)(a) of that Act, or in section 37 of that Act as read with that section;
- (b) prepared under the *Subiaco Redevelopment Act 1994*, means period referred to in section 35(1)(a) of that Act, or in section 38 of that Act as read with that section;
- (c) prepared under the *Metropolitan Region Town Planning Scheme Act 1959*, means period referred to in section 33(2)(d) or 33A(3), as the case requires, of that Act;

- (d) a regional planning scheme, or an amendment to a regional planning scheme, means period referred to in section 33(2)(d) or 33A(3), as the case requires, of the *Metropolitan Region Town Planning Scheme Act 1959* as read with section 18 of the *Western Australian Planning Commission Act 1985*;
- (e) a town planning scheme, or an amendment to a town planning scheme, means period of advertisement for public inspection referred to in section 7(2)(a) of the *Town Planning and Development Act 1928*; or
- (f) a statement of planning policy to which section 5AA(8) of the *Town Planning and Development Act 1928* applies, or an amendment to such a statement, means period of advertisement for public inspection referred to in section 7(2)(a), as read with section 5AA(8), of that Act;

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

- (a) to its detriment or degradation;
- (b) to the detriment of any beneficial use; or
- (c) of a prescribed kind;

**“pollution abatement notice”** means pollution abatement notice served under section 65(1);

**“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 premises”** means premises prescribed for the purposes of Part V;

**“proponent”**, in relation to a proposal, means person who or which is nominated under section 38 as being responsible for the proposal, or public authority on which the responsibility for the proposal is imposed under another written law;

**“proposal”** means project, plan, programme, policy, operation, undertaking or development or change in land use, or amendment of any of the foregoing, but does not include scheme;

**“proposal under an assessed scheme”** means 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 Minister of the Crown acting in his 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 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;

**“regional planning scheme”** has the meaning given by the *Western Australian Planning Commission Act 1985*;

**“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) prepared under the *East Perth Redevelopment Act 1991*, means East Perth Redevelopment Authority established by that Act;
  - (ia) prepared under the *Midland Redevelopment Act 1999*, means Midland Redevelopment Authority established by that Act;
  - (ii) prepared under the *Subiaco Redevelopment Act 1994*, means Subiaco Redevelopment Authority established by that Act;
  - (iii) prepared under the *Metropolitan Region Town Planning Scheme Act 1959*, means Western Australian Planning Commission;
  - (iv) a regional planning scheme, or an amendment to a regional planning scheme, means Western Australian Planning Commission;
  - (v) a town planning scheme, or an amendment to a town planning scheme, means local authority within the meaning of the *Town Planning and Development Act 1928* which is responsible for the town planning scheme or amendment; or
  - (vi) a statement of planning policy to which section 5AA(8) of the *Town Planning and Development Act 1928* applies, or an amendment to such a statement, means Western Australian Planning Commission;

or

- (b) subdivision which is —
  - (i) an activity requiring approval under Part III of the *Town Planning and Development Act 1928*, means Western Australian Planning Commission; or
  - (ii) a strata plan, strata plan of subdivision or strata plan of consolidation required to be accompanied by a certificate issued under section 23 of the *Strata Titles Act 1985*, means local authority (as defined by the *Town Planning and Development Act 1928*) within the district of which the subdivision is proposed;

**“responsible Minister”**, in relation to a scheme, means 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 Act 1974*;

**“scheme”** means —

- (a) redevelopment scheme within the meaning of the *East Perth Redevelopment Act 1991*, or amendment to such a redevelopment scheme;
- (aa) redevelopment scheme within the meaning of the *Midland Redevelopment Act 1999*, or amendment to such a redevelopment scheme;
- (b) redevelopment scheme within the meaning of the *Subiaco Redevelopment Act 1994*, or amendment to such a redevelopment scheme;
- (c) amendment to the Metropolitan Region Scheme;
- (d) regional planning scheme, or amendment to a regional planning scheme;
- (e) town planning scheme, or amendment to a town planning scheme; or
- (f) statement of planning policy to which section 5AA(8) of the *Town Planning and Development Act 1928* applies, or amendment to such a statement;



**“scheme Act”** means *East Perth Redevelopment Act 1991*, *Metropolitan Region Town Planning Scheme Act 1959*, *Midland Redevelopment Act 1999*, *Subiaco Redevelopment Act 1994*, *Town Planning and Development Act 1928* or *Western Australian Planning Commission Act 1985*;

**“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;

**“the repealed Act”** means the *Environmental Protection Act 1971*;

**“the regulations”** means the regulations made under section 123(1);

**“the Western Australian Planning Commission”** means the Western Australian Planning Commission established by section 4 of the *Western Australian Planning Commission Act 1985*;

**“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;

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**“town planning scheme”** has the meaning given by the *Town Planning and Development Act 1928*;

**“trade”** means 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 the discharge of waste or the emission of noise, odour or electromagnetic radiation, and includes activity prescribed to be a trade, business or undertaking for the purposes of this Act;

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

**“vehicle”** includes 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;

**“Waste Management (WA)”** means the body established under section 110L;

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

**“works approval”** means works approval granted and in force under Part V.

- (2) For the purposes of the definition of “environment” in subsection (1), the social surroundings of man are his aesthetic, cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by his physical or biological surroundings.

- (2a) For the purposes of the definition of “proposal under an assessed scheme” in subsection (1), “**subdivision**” means —
- (a) activity requiring the approval of the Western Australian Planning Commission under Part III of the *Town Planning and Development Act 1928*; or
  - (b) strata plan, strata plan of subdivision or strata plan of consolidation required to be accompanied by a certificate issued under section 23 of the *Strata Titles Act 1985*.
- (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;
    - (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;
  - (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.
- (4) A reference in this Act to amending a works approval or licence includes a reference to revoking or amending any condition to which the works approval or licence is subject and to making the works approval or licence subject to a new condition.

*[Section 3 amended by 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 ss.4, 23 and 28; No. 38 of 1999 s.71(2).]*

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**4. Crown bound**

This Act binds the Crown.

**5. Inconsistent laws**

- (1) Subject to subsection (2), whenever a provision of this Act is inconsistent with a provision contained in, or ratified or approved by, any other written law, the provision of this Act prevails.
- (2) This section does not apply to or in relation to any Act —
  - (a) which ratifies or approves a State agreement; and
  - (b) which received the Royal Assent before 1 January 1972.
- (3) In subsection (2)(a), “**a State agreement**” means an agreement —
  - (a) to which the State is a party; and
  - (b) which does not contain a provision to the effect that the party or parties to that agreement other than the State is or are not exempt from compliance with any requirement made by or under this Act or the repealed Act.

**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;
  - (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 on him or it by subsection (4), publish in the *Gazette* reasonable notice of his or its intention 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 he 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

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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.

## **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 members appointed by the Governor on the recommendation of the Minister on account of their interest in, and experience of, matters affecting the environment generally.
  - (3) Before making a recommendation under subsection (2) the Minister shall publish in a daily newspaper circulating throughout the State 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 Chairman of the Authority and another to be the Deputy Chairman of the Authority.
    - (4b) The duties of the Chairman are to be performed on a full-time basis.
    - (4c) The duties of an Authority member other than the Chairman 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.

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

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- (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 5 years as is specified in his instrument of appointment, but may from time to time be reappointed.
- (7) The office of an Authority member becomes vacant if he —
- (a) becomes an insolvent under administration within the meaning of the *Companies (Western Australia) Code*<sup>2</sup>;
  - (b) after his appointment as an Authority member, becomes a person employed under and subject to Part 3 of the *Public Sector Management Act 1994*;
  - (c) is removed from office by the Governor —
    - (i) on the grounds of misbehaviour, incompetence, or mental or physical incapacity, impairing the performance of his functions and proved to the satisfaction of the Governor; or
    - (ii) it having been proved to the satisfaction of the Governor that the Authority member has absented himself, except on leave granted by the Minister, from 3 consecutive meetings of the Authority of which he has had reasonable notice, on the grounds of his having so absented himself;
- or
- (d) resigns his office by notice in writing delivered to the Minister.
- (8) The Chairman or the Deputy Chairman ceases to hold office as such if his office as an Authority member becomes vacant.

*[Section 7 amended by No. 113 of 1987 s.32; No. 34 of 1993 s.5; No. 32 of 1994 s.19.]*



**8. Independence of Authority and Chairman**

Subject to this Act, neither —

- (a) the Authority; nor
- (b) the Chairman,

shall be subject to the direction of the Minister.

*[Section 8 amended by No. 34 of 1993 s.6.]*

**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 Minister for Public Sector Management determines in his case.

*[Section 9 amended by No. 34 of 1993 s.7; No. 14 of 1998 s.37.]*

**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) The Authority shall hold meetings at such times and places as it determines, but —

- (a) the Chairman may at any time; or
- (b) the Minister may when he wishes the Authority to discuss a matter on which he has requested its advice,

convene a meeting of the Authority.

- (2) At a meeting of the Authority —

- (a) the Chairman or, in his absence, the Deputy Chairman shall preside, but, if both the Chairman and the Deputy Chairman are absent from such a meeting, the Authority members present shall elect one of their number to preside at that meeting;

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

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- (b) 3 Authority members constitute a quorum;
  - (c) subject to section 12(2) each Authority member present shall cast a deliberative vote on any question that is to be decided;
  - (d) any question shall 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 shall not be decided unless at least 3 Authority members vote thereon.
- (3) Notice of meetings of the Authority shall be given to the Department, and the Chief Executive Officer, or a representative of the Chief Executive Officer, is entitled to attend any meeting and to take part in the consideration and discussion of any matter before a meeting, but shall not vote on any matter.

*[Section 11 amended by No. 34 of 1993 s.8.]*

**12. Disclosure of interests by Authority members**

- (1) An Authority member who has a direct or indirect pecuniary interest in a matter that is before a meeting of the Authority shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to Authority members who are at that meeting, and that disclosure shall be recorded in the minutes of the proceedings of that meeting.
- (2) An Authority member who has disclosed under subsection (1) his interest in a matter may take part in the consideration or discussion of the matter, but shall not vote thereon.
- (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 that interest exists.

- (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 and the Authority member may take part in the consideration or discussion of the matter, but shall not vote thereon.

**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 shall cause the minutes kept under subsection (1) to be made available for public inspection under such conditions and at such places and times as are prescribed.

*[Section 14 amended by No. 34 of 1993 s.9.]*

**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.

**16. Functions of Authority**

The functions of the Authority are —

- (a) to conduct environmental impact assessments;

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- (b) to consider and initiate the means of protecting the environment and the means of preventing, controlling and abating pollution;
- (c) to encourage and carry out studies, investigations and research into the problems of environmental protection and the prevention, control and abatement of pollution;
- (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;
- (e) to advise the Minister on environmental matters generally and on any matter which he may refer to it for advice, including the environmental protection aspects of any proposal or scheme, and on the evaluation of information relating thereto;
- (f) to prepare, and seek approval for, environmental protection policies;
- (g) to promote environmental awareness within the community and to encourage understanding by the community of the environment;
- (h) to receive representations on environmental matters from members of the public;
- (i) to provide advice on environmental matters to members of the public;
- (j) to publish reports on environmental matters generally;
- (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;
- (l) to keep under review the progress made in the attainment of the objects and purpose of this Act;

- (m) to coordinate all such activities, whether governmental or otherwise, as are necessary to protect, restore or improve the environment in the State;
- (n) to establish and develop criteria for the assessment of the extent of environmental change or pollution;
- (o) to specify standards and criteria, and the methods of sampling and testing to be used for any purpose;
- (p) to promote, encourage, coordinate or carry out planning and projects in environmental management; and
- (q) generally, to perform such other functions as are prescribed.

*[Section 16 amended by No. 23 of 1996 s.13.]*

**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;
  - (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;
  - (c) request the Minister to seek information on environmental management from any other Minister

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and, on receipt of that information, to give it to the Authority;

- (d) consider and make proposals as to the policy to be followed in the State with regard to environmental matters;
- (e) conduct and promote relevant research;
- (f) undertake investigations and inspections;
- (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.

*[Section 17 amended by No. 23 of 1996 s.14.]*

**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 by 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;
  - (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 his 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.

**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;
  - (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.

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**20. Delegation by Chief Executive Officer**

- (1) The Chief Executive Officer 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;
  - (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 Chief Executive Officer under this Act, other than this power of delegation.

*[(2) repealed]*

- (3) The Chief Executive Officer 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 Chief Executive Officer 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 by No. 34 of 1993 s.11; No. 14 of 1998 s.29.]*

**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
- (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.



**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 Chief Executive Officer in the performance of their respective functions.
- (2) The Chief Executive Officer 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 Minister for Public Sector Management.

*[Section 22 amended by No. 34 of 1993 s.12; No. 32 of 1994 s.19; No. 14 of 1998 s.37.]*

**23. Engagement of consultants, etc.**

- (1) The Chief Executive Officer may, with the approval of the Minister, engage under contracts for services such consultants and professional or technical or other assistance as he considers necessary to enable the Minister, the Authority and the Chief Executive Officer to perform their respective functions.
- (2) The engagement 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 him at the time of his engagement.

*[Section 23 amended by No. 32 of 1994 s.19.]*

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

The Minister or the Authority may, by arrangement made between him or it and the Minister concerned, and on such terms and conditions as may be mutually arranged by him or it 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 by No. 32 of 1994 s.19.]*

**25. Advisory groups, committees, councils and panels**

- (1) The Minister or the Authority may establish such groups, committees, councils and panels —
  - (a) as he or it thinks are necessary for the purpose of advising him or it on the administration of this Act; and
  - (b) with such terms of reference in each case as he or it thinks fit.
- (2) The Minister or the Authority may appoint such persons as he or it thinks fit to any group, committee, council or panel established by him or it 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 Minister for Public Sector Management determined by the Minister or the Authority, as the case requires, in his 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 by No. 14 of 1998 s.37.]*

### **Part III — Environmental protection policies**

**26. Preparation and publication by Authority of draft environmental protection policies**

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,

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;
- (d) cause to be published once in the *Gazette*, and once during each week of a period of 3 consecutive weeks —
  - (i) in a daily newspaper circulating throughout the State; and
  - (ii) 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 in, a particular local government district or districts, in a local newspaper circulating within that district or those districts, as the case requires,

a notice containing such 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, as are prescribed;

- (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 of the kind referred to in paragraph (d)(ii), consult the Western Australian Planning Commission and the local government or local governments of the relevant district or districts in respect of that draft.

*[Section 26 amended by No. 14 of 1996 s.4; No. 23 of 1996 s.15.]*

**27. Persons may make representations to Authority**

Any person may, in the manner and within the period specified in the relevant notice published under section 26(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 by Authority of draft environmental protection policies**

After the expiry of the period specified in the relevant notice published under section 26(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(e) or 32(1)(a), and by any local government or local governments consulted under section 26(f) or 32(1)(a), in respect of the draft policy to which that notice relates;
- (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(d), a notice in respect of that draft policy containing particulars of the same kind as those contained in a first notice; and

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

*[Section 28 amended by No. 14 of 1996 s.4.]*

**29. Committees of inquiry**

- (1) After receiving and considering a copy of a draft policy, together with a report thereon, submitted to him under section 28 or 32(1)(b), the Minister —
  - (a) shall, if he 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;
- (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 him.

- (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;
  - (b) the Chairman were references to the chairman of; 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 chairman 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 Minister for Public Sector Management determines in his case.

*[Section 29 amended by No. 14 of 1998 s.37.]*

**30. Minister to consult public authorities and persons likely to be affected by draft environmental protection policies**

After receiving and considering a copy of a draft policy, together with a report thereon, submitted to him under section 28 or 32(1)(b), the Minister shall, whether or not he appoints a committee of inquiry under section 29 in respect of that draft policy, make reasonable endeavours to consult such public authorities and persons as appear to him to be likely to be affected by that draft policy.

**31. Power of Minister to remit for reconsideration, or approve or refuse to approve, or amend, draft environmental protection policies**

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 to him 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,

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the Minister shall —

- (c) remit the draft policy to the Authority for reconsideration and shall, if he 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*;
- (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 his reasons for so refusing.

**32. Reconsideration of remitted draft environmental protection policies and resubmission thereof to Minister**

- (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(d), a notice in respect of that draft policy containing particulars of the same kind as those contained in a first notice;
    - (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;
    - (iii) in the case of a draft policy of the kind referred to in section 26(d)(ii), 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 by No. 14 of 1996 s.4.]*

**33. Status and revocation of approved environmental protection policies**

- (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.

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- (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 by No. 23 of 1996 s.16.]*

**34. Orders to be tabled in Parliament and subject to disallowance**

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 environmental protection 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 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;
  - (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 the discharge of waste, the emission of noise, odour or electromagnetic radiation or otherwise; and
  - (c) may create offences and provide —
    - (i) in the case of an individual, for a maximum penalty not exceeding \$5 000 in respect of any such offence and, if an offence so created is a continuing offence, for a daily penalty not exceeding \$1 000 in respect of that offence; and

- (ii) in the case of a body corporate, for a maximum penalty not exceeding \$10 000 in respect of any such offence and, if an offence so created is a continuing offence, for a daily penalty not exceeding \$2 000 in respect of that offence.
- (2) An approved policy may, unless it is inappropriate in the circumstances to do so —
  - (a) identify the boundaries of the area, and the portion of the environment, to which the approved policy applies;
  - (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;
  - (c) identify and declare the beneficial uses to be protected under the approved policy;
  - (d) set out the indicators, parameters or criteria to be used in measuring environmental quality;
  - (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;
    - (ii) the maximum levels of noise, odour or electromagnetic radiation permitted to be emitted into the relevant portion of the environment;

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- (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;
  - (iv) measures designed to minimise the possibility of pollution;
  - (v) measures designed to protect the environment; or
  - (vi) measures designed to achieve the beneficial uses to be protected,
- or any 2 or more of the matters referred to in subparagraphs (i), (ii), (iii), (iv), (v) and (vi).

**36. Review of approved environmental protection 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 his own initiative or otherwise, at the time or within the period and to the extent specified in that direction;
  - (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.

*[Section 36 amended by No. 23 of 1996 s.17.]*

**37. Minor changes to approved environmental protection 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 he 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 to him under subsection (2), together with a report thereon, he 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.

**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 by No. 14 of 1998 s.30.]*

## **Part IV — Environmental impact assessment**

### **Division 1 — Referral and assessment of proposals**

#### **38. Referrals**

- (1) A proposal that appears likely, if implemented, to have a significant effect on the environment, or a proposal of a prescribed class —
  - (a) subject to section 48I, shall, in the case of a proposal other than a proposal under an assessed scheme, be referred in writing to the Authority by a decision-making authority as soon as that proposal comes to the notice of the decision-making authority; and
  - (b) may be referred in writing to the Authority by —
    - (i) the proponent; or
    - (ii) in the case of a proposal other than a proposal under an assessed scheme, any other person.
- (2) 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 in writing the proposal to the Authority.
- (3) The Authority shall, if —
  - (a) it considers that a proposal is likely, if implemented, to have a significant effect on the environment; and
  - (b) in the case of a proposal under an assessed scheme, the Authority 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 that proposal,

or if a proposal is of a prescribed class, require in writing a decision-making authority or proponent to refer in writing the proposal to the Authority within such period as is specified in that requirement.

- (3a) In subsections (1) and (3), a reference to a proposal of a prescribed class includes a reference to a proposal of a prescribed class under an assessed scheme.
- (4) A decision-making authority or proponent which or who is required under subsection (3) to refer a proposal to the Authority shall comply with that requirement.
- (5) Subject to section 46(6), a proposal shall be referred once only to the Authority under this section.
- (6) Except when the responsibility for a proposal is imposed on a public authority under another written law, the Minister shall, after consulting the Authority, nominate by notice in writing served on —
- (a) the person concerned;
  - (b) the Authority; and
  - (c) any relevant decision-making authority,
- a person as being responsible for each proposal which is referred or required to be referred, or which ought to be referred, under this section and which the Authority considers should be assessed by it under this Part.
- (7) The Minister may, if he considers that a nomination made under subsection (6) should be revoked and after consulting the Authority, by notice in writing served on —
- (a) the person to whom or which that nomination relates;
  - (b) the Authority; and
  - (c) any relevant decision-making authority,
- revoke that nomination and, unless the proposal concerned is no longer referred or required to be referred, or no longer ought to be referred, under this section, nominate another person under that subsection in respect of that proposal.
- (8) For the purposes of subsections (6) and (7), a person who is an individual may be nominated as being responsible for a proposal

by reference to his name or by reference to his being the person for the time being holding or acting in a particular office or position.

*[Section 38 amended by No. 23 of 1996 s.18; No. 57 of 1997 s.54(1).]*

**39. Authority to keep records of all proposals referred to it**

- (1) The Authority shall, subject to this section, keep a public record of each proposal referred to it under section 38 and shall in that public record set out —
  - (a) whether or not that proposal is to be assessed under this Part; and
  - (b) if that proposal is to be assessed under this Part, the level of that assessment and such other details as are prescribed.
- (2) The proponent of a proposal which is referred to the Authority under section 38 may at the time of that referral or at any subsequent time request the Authority not to keep a public record under subsection (1) of the whole or any part of that proposal by reason of the confidential nature of any of the matters contained in that whole or part.
- (3) When a request is made under subsection (2), the Authority —
  - (a) shall, if the whole or part of the proposal to which the request relates contains particulars of —
    - (i) a secret formula or process;
    - (ii) the cash consideration offered for the acquisition of shares in the capital, or assets, of a body corporate; or
    - (iii) the current costs of manufacturing, producing or marketing goods or services;

or



- (b) may, if the whole or part of the proposal to which the request relates does not contain any particulars referred to in paragraph (a), but the Authority is satisfied that it is desirable to do so by reason of the confidential nature of the matters contained in that whole or part,

refrain from keeping a public record under subsection (1) of that whole or part.

- (4) If a request is made under subsection (2), the Authority shall refrain from keeping a public record under subsection (1) of the whole or part of the proposal to which the request relates until the Authority has dealt with that request.
- (5) The Authority shall cause each public record kept by it under subsection (1) to be made available for public inspection under such conditions and at such places and times as are prescribed.

*[Section 39 amended by No. 23 of 1996 s.19.]*

#### **40. Assessment of proposals referred**

- (1) When a proposal is referred to the Authority under section 38, the Authority shall —
- (a) if it considers that the proposal should not be assessed by it under this Part, so inform in writing within 28 days after that referral —
- (i) the proponent;
  - (ii) if the proposal is not so referred by the proponent, the person by which or whom it is so referred; and
  - (iii) any relevant decision-making authority, but may nevertheless give advice and make recommendations to the proponent, any relevant decision-making authority or any other relevant person on the environmental aspects of the proposal; or

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- (b) if it considers that the proposal should be assessed by it under this Part —
  - (i) so inform in writing within 28 days after that referral —
    - (A) the proponent;
    - (B) if the proposal is not so referred by the proponent, the person by which or whom it is so referred; and
    - (C) any relevant decision-making authority;and
  - (ii) assess the proposal.
- (2) The Authority may, for the purposes of assessing a proposal under subsection (1)(b) —
  - (a) require any person to provide it with such information as is specified in that requirement;
  - (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;
    - (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,or take any 2 or all 3 of the courses of action set out in paragraphs (a) to (c) and 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).
- (4) Subject to any direction made under section 43 and to subsection (5), the Authority may cause —
- (a) any information provided in compliance with a requirement made under subsection (2)(a); or
  - (b) any report made in compliance with a requirement made under subsection (2)(b),

to be made available for public review and shall, if it does so, determine 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 that information or report.

- (5) If any information relating to a manufacturing process or trade secret used in carrying on or operating any particular undertaking or equipment (in this subsection called “**the confidential information**”) is contained in —
- (a) any information referred to in subsection (4)(a); or
  - (b) any report referred to in subsection (4)(b),

the Authority shall before causing the information referred to in paragraph (a) or the report referred to in paragraph (b) to be made available for public review under subsection (4) exclude the confidential information from that information or report.

- (6) When the Authority causes any information or report to be made available for public review under subsection (4) —
- (a) the proponent shall —
    - (i) at his own expense and to the satisfaction of the Authority, make copies of that information or report and advertise its availability for public review; and

- (ii) provide copies of that information or report —
    - (A) free of charge to such public authorities and persons at such places and times; and
    - (B) to members of the public at such places and times, and at a price not exceeding such maximum price,  
as the Authority determines; and
  - (b) require the proponent concerned 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 chairman 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 Minister for Public Sector Management determines in his case.

*[Section 40 amended by No. 57 of 1997 s.54(2); No. 14 of 1998 s.37.]*

**41. Decision-making authority to await authorisation by Minister**

- (1) The Authority shall, if it acts under section 40(1)(b) in respect of a proposal, notify in writing any relevant decision-making authority that the proposal has been referred to the Authority under section 38.

- (2) A decision-making authority that —
- (a) has referred a proposal to the Authority under, or in compliance with a requirement made under, section 38 or has been notified under subsection (1) that a proposal has been referred to the Authority under that section; or
  - (b) has been required under section 38(3) to refer a proposal to the Authority,

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

- (c) it is informed under section 40(1)(a) that the Authority considers that the proposal should not be assessed by the Authority under this Part and the period within which an appeal against that decision may be lodged under section 100(1) has expired without the lodging of such an appeal or, if such an appeal has been lodged within that period, that appeal has been determined; or
- (d) an authority is served on it under section 45(7),

as the case requires.

**42. Conduct of public inquiries**

- (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;
  - (b) the Chairman were references to the Chairman of the Authority or to the chairman of 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.

**43. Power of Minister in relation to assessment by Authority of proposals**

- (1) The Minister may —
- (a) if the Authority considers that a proposal referred to it under section 38 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 40(1)(b), (2), (3), (4), (5), (6), (7), and (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.

*[Section 43 amended by No. 57 of 1997 s.54(3).]*

**44. Report by Authority**

- (1) Subject to subsection (2), the Authority shall, within 6 weeks after completing its assessment or reassessment of a proposal

referred to it under section 38, and may, at any time before completing that assessment or reassessment, prepare a report on —

- (a) the environmental factors relevant to that proposal; and
- (b) the conditions and procedures, if any, to which any implementation of that proposal should be subject,

and may make such recommendations in that report as it sees fit, and shall give the prescribed number of copies of that report to the Minister.

- (2) The Minister may, after consulting the Authority, direct the Authority to prepare a report on a proposal, and give copies of that report to him, under subsection (1) —
  - (a) within such period commencing on the day on which —
    - (i) that 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 such date,

as the Minister specifies in the direction given under this subsection, and the Authority shall comply with the direction given under this subsection.

- (3) The Minister shall, as soon as he is reasonably able to do so after receiving copies of a report given to him under subsection (1), simultaneously cause —
  - (a) that report to be published; and
  - (b) copies of that report to be given to —
    - (i) any other Minister appearing to him to be likely to be concerned in the outcome of the proposal to which that report relates;
    - (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 notified under section 41(1) that that proposal had been referred to the Authority; 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.

### **Division 2 — Implementation of proposals**

#### **45. Procedure for deciding on implementation of proposals**

- (1) The Minister shall, after he has caused a report to be published under section 44(3) —
- (a) if the decision-making authority, or one or more of the decision-making authorities, to which or whom a copy or copies of the report has or have been given under that section is or are another Minister or other Ministers, consult that Minister or those Ministers and, if possible, agree with him or them; or
- (b) if neither the decision-making authority, nor any of the decision-making authorities, as the case requires, referred to in paragraph (a) is another Minister, consult that decision-making authority or those decision-making authorities and, if possible, agree with it or them,

on whether or not the proposal to which the report relates may be implemented and, if that proposal may be implemented, to what conditions and procedures, if any, that implementation should be subject.

- (2) If the Minister and the other Minister or Ministers referred to in subsection (1)(a) cannot agree on any of the matters referred to in subsection (1), the Minister shall refer the matter or matters in dispute to the Governor for his decision, and the decision of the Governor on that matter or matters shall be final and without appeal.



- (3) If the Minister and the decision-making authority or decision-making authorities referred to in subsection (1)(b) cannot agree on any of the matters referred to in subsection (1), the Minister shall appoint an appeals committee to consider and report to him on the matter or matters in dispute.
- (4) 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 (3) as if that matter were the subject of an appeal from a decision of the Minister.
- (5) If agreement is reached or a decision is made under this section that a proposal may be implemented and on the conditions and procedures, if any, to which that implementation should be subject, the Minister shall cause —
- (a) copies of a statement indicating that the proposal may be implemented and setting out those conditions and procedures, if any, to be served on —
    - (i) the Authority;
    - (ii) the decision-making authority or decision-making authorities consulted by him under subsection (1);
    - (iii) the proponent of the proposal; and
    - (iv) in the case of a proposal referred to the Authority under section 38(1)(b)(ii), the person who so referred that proposal;
- and
- (b) the statement referred to in paragraph (a) to be published as soon after the service referred to in that paragraph as is practicable.
- (6) Notwithstanding anything in this section, if an appeal is lodged under —
- (a) section 100(2) in respect of a report published under section 44(3), the proposal to which that report relates

shall not be implemented and conditions and procedures shall not be agreed or decided under this section —

- (i) while the appeal is pending; or
- (ii) otherwise than in accordance with the decision made on the appeal;

or

- (b) section 100(3) in respect of any conditions or procedures agreed or decided under this section, the proposal shall not be implemented —

- (i) while the appeal is pending; or
- (ii) subject to any conditions or procedures which are not in accordance with the decision made on the appeal.

- (7) The Minister may, as soon as he is satisfied that there is no reason why a proposal in respect of which a statement has been published under subsection (5)(b) should not be implemented, cause to be served on the decision-making authority precluded by section 41 from making any decision that could have the effect of causing or allowing that proposal to be implemented an authority in writing permitting such a decision to be made.
- (8) If an agreement is reached or a decision is made under this section that a proposal may not be implemented, the Minister shall forthwith notify the persons referred to in subsection (5)(a)(i), (ii), (iii) and (iv) in writing accordingly.

**46. Amendment of conditions and procedures**

- (1) The Minister may, if he considers that any conditions or procedures agreed or decided under section 45 should be changed, request the Authority to inquire into and report to him within such period as the Minister specifies in that request on whether or not those conditions or procedures should be changed.

- (2) The Authority shall, on receiving a request made under subsection (1), inquire into whether or not the conditions or procedures to which that request relates should be changed and has for that purpose all the powers conferred on it by Division 1 in relation to a proposal.
- (3) On completing an inquiry made under subsection (2), the Authority shall prepare a report on whether or not the conditions or procedures to which that inquiry relates should be changed and may make such recommendations in that report as it sees fit, and shall give the prescribed number of copies of that report to the Minister.
- (4) The Minister shall, as soon as he is reasonably able to do so after receiving copies of a report given to him under subsection (3), 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).
- (5) The Minister shall, after he has caused a report to be published under subsection (4), deal with the question whether or not the conditions or procedures to which that report relates should be changed under section 45 as if that question were the question of to what conditions and procedures, if any, the implementation of a proposal should be subjected, and that section applies to the first-mentioned question accordingly.
- (6) Notwithstanding anything in this section, a proposed change to any conditions or procedures agreed or decided under section 45 shall, if the Minister and any decision-making authority consulted by him under that section agree that that change is a major change, be deemed to be a new proposal and shall be referred by that decision-making authority to the Authority under section 38(1).

**47. Duties of proponents on whom statements served**

- (1) A proponent on whom a statement has been served under section 45(5) and who does not ensure that any implementation

of the proposal to which the statement relates is carried out in accordance with any conditions and procedures set out in the statement commits an offence.

- (2) The Chief Executive Officer may require a proponent referred to in subsection (1) to give him such reports and information in respect of the implementation of the relevant proposal and of any conditions and procedures set out in the statement served on that proponent under section 45(5) as the Chief Executive Officer thinks fit.
- (3) A proponent to whom a requirement is made under subsection (2) and who does not without reasonable excuse comply with the requirement commits an offence.

**48. Control of implementation of proposals**

- (1) The Chief Executive Officer may monitor or cause to be monitored the implementation of any proposal insofar as that implementation is subject to any conditions or procedures —
  - (a) which are set out in the relevant statement served under section 45(5); and
  - (b) which do not subject that implementation to requirements made by a decision-making authority,for the purpose of determining whether or not those conditions or procedures have been or are being complied with and, if the Chief Executive Officer ascertains that any such condition or procedure has not been or is not being complied with, he shall inform the Minister accordingly.
- (2) A decision-making authority may monitor or cause to be monitored the implementation of any proposal insofar as that implementation is subject to any conditions or procedures —
  - (a) which are set out in the relevant statement served under section 45(5); and
  - (b) which subject that implementation to requirements made by the decision-making authority,

for the purpose of determining whether or not those conditions or procedures have been or are being complied with and, if that decision-making authority ascertains that any such condition or procedure has not been or is not being complied with, it or he may —

- (c) exercise such powers, if any, in respect of that non-compliance as are conferred on it or him by any Act, or by any subsidiary legislation made under any Act, or as are otherwise exercisable by it or him, as it or he thinks fit; or
  - (d) report that non-compliance to the Minister.
- (3) The Minister shall in relation to a proposal —
- (a) on being informed under subsection (1) by the Chief Executive Officer that any relevant condition or procedure has not been or is not being complied with;
  - (b) on receiving any relevant report made to him under subsection (2)(d); or
  - (c) if he is not satisfied with any relevant monitoring conducted, any relevant exercise of power, or any relevant report made or omitted to be made, under subsection (2),

exercise one or more of the powers set out in subsection (4).

- (4) The powers which the Minister shall exercise under subsection (3) are that he may —
- (a) after making reasonable endeavours to consult the proponent of the relevant proposal, cause to be served on that proponent an order made by the Minister and requiring that proponent forthwith to stop the implementation of that proposal for a period not exceeding 24 hours;
  - (b) cause to be served on the proponent of the relevant proposal an order made by the Minister and requiring that proponent to take such steps as are specified in that order within such period as is so specified for the

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purpose of complying with the relevant condition or procedure or of preventing, controlling or abating any pollution caused by any non-compliance with that condition or procedure;

- (c) cause such steps as are necessary for the purpose of complying with the relevant condition or procedure to be taken;
  - (d) cause such steps as are necessary for the purpose of preventing, controlling or abating any pollution caused by any non-compliance with the relevant condition or procedure to be taken; and
  - (e) if he considers that the relevant condition or procedure should be changed, make a request under section 46(1).
- (5) Subject to section 101(4), the cost of taking any steps referred to in subsection (4)(c) or (d) is a debt due to the Crown by the proponent concerned and may be recovered from him by the Minister by action in a court of competent jurisdiction and shall, if so recovered, be credited to the Consolidated Fund.
- (6) A proponent who does not comply with an order served on him under subsection (4)(a) or (b) commits an offence.
- (7) It shall not be necessary to publish in the *Gazette* an order served under subsection (4)(a) or (b).

*[Section 48 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]*

**Division 3 — Assessment of schemes**

*[Heading inserted by No. 23 of 1996 s.20.]*

**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;

- (b) should be assessed by it under this Division —
  - (i) so inform in writing the responsible authority and any relevant decision-making 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;
    - (ii) the responsible authority; and
    - (iii) any relevant decision-making authority,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 by No. 23 of 1996 s.20.]*

**48B. Authority to keep public records of schemes referred to it**

- (1) The Authority shall, subject to this section, 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) The Authority shall cause each public record kept by it under subsection (1) to be made available for public inspection under such conditions and at such places and times as are prescribed.

*[Section 48B inserted by No. 23 of 1996 s.20.]*

**48C. Powers of Authority in relation to assessment of schemes referred to it**

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



- (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).
- (4) The Authority may cause —
- (a) any report made in compliance with a requirement made under subsection (1)(a); or
  - (b) any information provided in compliance with a requirement made under subsection (1)(b),
- to be made available for public review and shall, if it does so, determine 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 that report or information.
- (5) When any report or information is made available for public review under subsection (4) or the relevant scheme Act —
- (a) the responsible authority shall —
    - (i) at its own expense advertise the availability of the report or information for public review; and

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- (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), (4) and (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), (4) and (5) shall not so apply.
- (7) In subsection (6) —
- “public review”**, in relation to a scheme which is —
- (a) prepared under the *East Perth Redevelopment Act 1991*, means procedure referred to in sections 30 and 31 of that Act, or in section 34 of that Act as read with those sections;
  - (aa) prepared under the *Midland Redevelopment Act 1999*, means procedure referred to in sections 33 and 34 of that Act, or in section 37 of that Act as read with those sections;
  - (b) prepared under the *Subiaco Redevelopment Act 1994*, means procedure referred to in sections 34 and 35 of that Act, or in section 38 of that Act as read with those sections;

- (c) prepared under the *Metropolitan Region Town Planning Scheme Act 1959*, means procedure referred to in section 33(2)(b) to (gaa) or 33A(2) to (4), as the case requires, of that Act;
- (d) a regional planning scheme, or an amendment to a regional planning scheme, means procedure referred to in section 33(2)(b) to (gaa) or 33A(2) to (4), as the case requires, of the *Metropolitan Region Town Planning Scheme Act 1959* as read with section 18 of the *Western Australian Planning Commission Act 1985*;
- (e) a town planning scheme, or an amendment to a town planning scheme, means procedure referred to in section 7(2) of the *Town Planning and Development Act 1928*; or
- (f) a statement of planning policy to which section 5AA(8) of the *Town Planning and Development Act 1928* applies, or an amendment to such a statement, means procedure referred to in section 7(2), as read with section 5AA(8), of that Act.

*[Section 48C inserted by No. 23 of 1996 s.20; amended by No. 38 of 1999 s.71(3).]*

**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 conditions, if any, to which that scheme should be subject,

and may make such recommendations in that report as it sees fit.

- (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 he is reasonably able to do so after receiving a report and any recommendations made to him 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;
    - (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 and any relevant decision-making authority.

*[Section 48D inserted by No. 23 of 1996 s.20.]*

**48E. Minister may direct further assessment or reassessment of schemes by Authority**

- (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 by No. 23 of 1996 s.20.]*

**48F. Procedure for agreeing or deciding on conditions to which schemes are to be subject**

- (1) The Minister shall, after he has caused a report to be published under section 48D(3), consult the responsible Minister and, if possible, agree with him on the conditions, if any, to which the scheme to which the report relates should be subject if that scheme is to be implemented.

- (2) If an agreement is reached under this section or a decision is made under section 48J on the conditions, if any, to which a scheme should be subject, the Minister shall cause —
- (a) copies of a statement which sets out those conditions, if any, and advises that there is no environmental reason why the scheme should not be implemented subject to those conditions to be delivered to —
    - (i) the Authority;
    - (ii) the responsible Minister; and
    - (iii) any other Minister to whom a copy of the relevant report has been given under section 48D(3), the responsible authority and any relevant decision-making authority;
- and
- (b) that statement to be published as soon after the delivery referred to in paragraph (a) as is practicable.
- (3) Despite anything in this section, a scheme to which a report published under section 48D(3) relates shall not be implemented, and conditions shall not be agreed under this section or decided under section 48J —
- (a) during the period of 14 days referred to in section 100(2)(b); or
  - (b) if an appeal is lodged under section 100(2)(b) in respect of that report —
    - (i) while the appeal is pending; or
    - (ii) otherwise than in accordance with the decision made on the appeal.

*[Section 48F inserted by No. 23 of 1996 s.20.]*

**48G. Review of conditions set out in statements published under section 48F**

- (1) A responsible authority may, after the publication of a statement of conditions under section 48F(2)(b) 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 the conditions set out in the statement.

- (2) If the responsible Minister agrees to a request under subsection (1), the responsible Minister and the Minister shall consult each other and attempt to reach agreement on whether or not the relevant conditions should be altered and, if so, to what extent.
- (3) If conditions the subject of an agreement under this section or a decision under section 48J are altered by that agreement or decision, the Minister shall cause —
  - (a) copies of a statement setting out those conditions as altered to be delivered to —
    - (i) the Authority;
    - (ii) the responsible Minister; and
    - (iii) the responsible authority and any relevant decision-making authority;
  - and
  - (b) that statement to be published as soon after the service referred to in paragraph (a) as is practicable,

and conditions so altered shall be treated for the purposes of this Act as having been agreed under section 48F or decided under section 48J.

*[Section 48G inserted by No. 23 of 1996 s.20.]*

#### **Division 4 — Implementation of schemes**

*[Heading inserted by No. 23 of 1996 s.20.]*

#### **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 condition agreed under section 48F or decided under section 48J (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 him, 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 by No. 23 of 1996 s.20.]*

**48I. Proposals under assessed schemes**

- (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 by No. 23 of 1996 s.20.]*

**48J. Decision of disputes between Minister and responsible Ministers**

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;
- (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);
- (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;
- (d) on whether or not the scheme to which a report relates should be subject to conditions under section 48F or, if that scheme should be so subject, to what conditions it should be so subject; or
- (e) on whether or not conditions referred to in section 48G(2) 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 by No. 23 of 1996 s.20.]*

## **Part V — Control of pollution**

### **49. Causing pollution and unreasonable emissions**

- (1) In this section —  
“**unreasonable emission**” means an emission 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.

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- (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 by No. 14 of 1998 s.6.]*

**50. Discharge of waste in circumstances in which it is 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) which is established by the evidence.

*[Section 50 inserted by No. 14 of 1998 s.6.]*

**51. Occupiers of premises to take certain measures**

The occupier of any premises who does not —

- (a) comply with any prescribed standard for the discharge of waste or the emission of noise, odour or electromagnetic radiation; and

- (b) take all reasonable and practicable measures to prevent or minimise the discharge of waste and the emission of noise, odour or electromagnetic radiation,

from those premises commits an offence.

**52. Restriction on changing premises to prescribed premises**

The occupier of any premises who carries out any work on or in relation to the premises which causes the premises to become prescribed premises commits an offence unless he does so in accordance with a works approval.

**53. Occupiers of prescribed premises to be authorised in respect of certain changes leading to discharges of waste or emissions of noise, odour or electromagnetic radiation**

- (1) Subject to this Act, the occupier of any prescribed premises who, if to do so may cause or increase the discharge of waste or the emission of noise, odour or electromagnetic radiation, or alter the nature of the waste discharged or noise, odour or electromagnetic radiation emitted, 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;
  - (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 of noise, odour or electromagnetic radiation,into the environment;

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- (c) alters the type of materials or products used or produced in any trade carried on at the prescribed premises;
- (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;
    - (ii) a licence; or
    - (iii) a requirement contained in a pollution abatement 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, alter or increase the discharge of waste or the emission of noise, odour or electromagnetic radiation 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;
  - (ii) a licence; or
  - (iii) a requirement contained in a pollution abatement 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.

**54. Applications for works approvals**

- (1) An application for a works approval shall be —
  - (a) made in the form and in the manner approved by the Chief Executive Officer;
  - (b) accompanied by such fee as is prescribed; and
  - (c) supported by such plans, specifications and other documents and information, including a summary thereof, as the Chief Executive Officer requires.
- (2) On receiving an application made under subsection (1), the Chief Executive Officer 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 Chief Executive Officer, a direct interest in the subject matter of that application.

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- (3) Subject to subsection (4), the Chief Executive Officer 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) and subject to section 60 —
  - (a) grant a works approval subject to such of the conditions referred to in section 62 as the Chief Executive Officer specifies in the works approval; or
  - (b) refuse to grant a works approval.
- (4) If an application for a works approval made under subsection (1) is related to a proposal which has been referred to the Authority under section 38, the Chief Executive Officer shall not perform any duty imposed on him by subsection (3) —
  - (a) while any decision-making authority is precluded by section 41 from making any decision which could have the effect of causing or allowing that proposal to be implemented; or
  - (b) otherwise than in accordance with any decision referred to in paragraph (a) and lawfully made by the decision-making authority concerned.

**55. Contravention of 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 is subject commits an offence.
- (2) If —
  - (a) the relevant premises are shared by a corporation and a subsidiary or subsidiaries of the corporation;
  - (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 section 5 of the *Companies (Western Australia) Code*<sup>2</sup>;

“**subsidiary**” has the meaning given by section 7 of the *Companies (Western Australia) Code*<sup>2</sup>.

**56. Occupiers of prescribed premises to be licensed in respect of discharges of waste or emissions of noise, odour or electromagnetic radiation**

Subject to this Act, the occupier of any prescribed premises who —

- (a) causes or increases, or permits to be caused or increased, the discharge of waste or the emission of noise, odour or electromagnetic radiation; or
- (b) alters or permits to be altered the nature of the waste discharged or 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.

**57. Applications for licences**

(1) An application for a licence shall be —

- (a) made in the form and in the manner approved by the Chief Executive Officer;
- (b) accompanied by such fee as is prescribed; and
- (c) supported by such plans, specifications and other documents and information, including a summary thereof, as the Chief Executive Officer requires.

- (2) On receiving an application made under subsection (1), the Chief Executive Officer 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 Chief Executive Officer, the works concerned have not been completed satisfactorily in accordance with the conditions to which the works approval is subject; 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 Chief Executive Officer 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, the Water and Rivers Commission.
- (3) The Chief Executive Officer 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 from the Water and Rivers Commission 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 Chief Executive Officer 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 Chief Executive Officer, 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 Chief Executive Officer in the licence; or

(ii) refuse to grant the licence.

(4) If an application for a licence made under subsection (1) is related to a proposal which has been referred to the Authority under section 38, the Chief Executive Officer shall not perform the duty imposed on him by subsection (3) —

(a) while any decision-making authority is precluded by section 41 from making any decision which could have the effect of causing or allowing that proposal to be implemented; or

- (b) otherwise than in accordance with any decision referred to in paragraph (a) and lawfully made by the decision-making authority concerned.

- (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*;
- (b) Underground Water Pollution Control Area or Public Water Supply Area constituted under the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*;
- (c) water-course, lake, lagoon, swamp or marsh to and in relation to which Division 1 of Part III of the *Rights in Water and Irrigation Act 1914* applies; or
- (d) proclaimed area declared under section 26, or irrigation district constituted under section 28, of the *Rights in Water and Irrigation Act 1914*;

**“Water and Rivers Commission”** means the body established by section 4(1) of the *Water and Rivers Commission Act 1995*.

*[Section 57 amended by No. 73 of 1995 s.188.]*

## **58. Contravention of licence conditions**

- (1) A licensee who contravenes a condition to which his 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;
  - (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 section 5 of the *Companies (Western Australia) Code*<sup>2</sup>;
- “**subsidiary**” has the meaning given by section 7 of the *Companies (Western Australia) Code*<sup>2</sup>.

**59. Revocation, suspension and amendment of licences by Chief Executive Officer**

- (1) During the currency of a licence, the Chief Executive Officer may, subject to this section, by notice in writing served on the licensee —
- (a) revoke or suspend the licence if —
    - (i) the Chief Executive Officer is satisfied that there has been a breach of any of the conditions —
      - (A) to which a works approval granted to the licensee was at the time of that breach subject; or
      - (B) to which the licence is subject;

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- (ii) the premises to which the licence relates are exempted by the regulations from requiring a licence;
  - (iii) the current business address of the licensee is unknown; or
  - (iv) the licensee has applied to the Chief Executive Officer to surrender the licence;
- or
- (b) subject to section 60, amend the licence by —
    - (i) revoking or amending any condition to which the licence is subject;
    - (ii) subjecting the licence to a new condition;
    - (iii) correcting in the licence —
      - (A) a clerical mistake or unintentional error or omission;
      - (B) a figure which has been miscalculated; or
      - (C) the misdescription of any person, thing or property referred to therein;
    - (iv) making an administrative change to the format of the licence which does not alter the obligations of the licensee;
    - (v) deleting any discharge point or emission point which is no longer in use; or
    - (vi) amending the licence in conformity with an exemption conferred by the regulations.
- (2) The Chief Executive Officer shall, before exercising any power conferred on him by this section in respect of a licensee, afford the licensee a reasonable opportunity to show cause in writing why that power should not be exercised in respect of him.
  - (3) An opportunity is not a reasonable opportunity within the meaning of subsection (2) unless the relevant licensee is

informed in writing of his right to show cause under that subsection not less than 21 days before the day on which the Chief Executive Officer exercises the power in question.

- (4) If the proposed revocation, suspension or amendment of a licence under subsection (1) is related to a proposal which has been referred to the Authority under section 38, the Chief Executive Officer shall not so revoke, suspend or amend —
- (a) while any decision-making authority is precluded by section 41 from making any decision which could have the effect of causing or allowing that proposal to be implemented; and
  - (b) otherwise than in accordance with any decision referred to in paragraph (a) and lawfully made by the decision-making authority concerned.

**60. Relationship between works approvals or licences and approved policies**

- (1) The Chief Executive Officer 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 Chief Executive Officer shall not amend or shall refuse to grant or transfer a works approval or licence if he considers that the discharge of waste or emission of noise, odour or electromagnetic radiation concerned would be inconsistent with any approved policy.
- (3) Notwithstanding anything in this section, the Chief Executive Officer may, if he is satisfied that, as a result of —
  - (a) his receiving further information indicating that environmental circumstances have changed, that change requires a higher level of protection of the environment or of the beneficial use of the area concerned than would be provided by the standards required by or under any

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approved policy or by prescribed standards, 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; or

- (b) 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, amend that works approval or licence to make it consistent with that approved policy.

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

- (1) A person who becomes the occupier of any prescribed premises in respect of which —

- (a) a works approval or licence is in force and who does not —
  - (i) comply with the conditions to which the works approval or licence is subject; and
  - (ii) within 30 days of becoming the occupier of those prescribed premises apply under section 64 for the transfer to him of the works approval or licence or under section 54 or 57 for a works approval or licence;

or

- (b) a works approval or licence is not in force and who does not within 30 days of becoming the occupier of those prescribed premises apply under section 54 or 57 for a works approval or licence,

commits an offence.



- (2) A person who —
- (a) becomes the occupier of; and
  - (b) complies with subsection (1) in respect of,
- any prescribed premises does not commit any offence under section 53 or 56 in respect of the discharge of waste or emission of noise, odour or electromagnetic radiation from the prescribed premises without a works approval or licence whilst his application for the transfer of a works approval or licence or for a works approval or licence, as the case requires, is pending.

**62. Conditions to which works approvals and licences may be subjected**

- (1) Subject to this section, the conditions which the Chief Executive Officer may specify in a works approval or licence are that the occupier of the premises to which the works approval or licence relates shall —
- (a) install within such period, if any, as is specified pollution control equipment which is —
    - (i) of a specified type; and
    - (ii) reasonably available to persons in the State;
  - (b) install within such period, if any, as is specified and operate pollution control equipment referred to in paragraph (a) in a specified manner;
  - (c) take within such period, if any, as is specified specified measures for the purpose of minimising the likelihood of pollution occurring as a result of any activity conducted or proposed to be conducted in any part of those premises;
  - (d) at his own expense provide within such period, if any, as is specified monitoring equipment of a specified type;
  - (e) at his own expense carry out within such period, if any, as is specified a specified monitoring programme for the purpose of supplying the Chief Executive Officer with

information relating to the characteristics, volume and effects of —

- (i) the waste being or to be discharged; or
- (ii) the noise, odour or electromagnetic radiation being or to be emitted,

from those premises into, and to the characteristics of, the environment;

- (f) if practicable, re-use waste wholly or in part or make waste available for re-use by another person;
- (g) operate any equipment in a specified manner and at specified times for the purpose of preventing, controlling or abating pollution; or
- (h) comply with such condition, other than a condition referred to in paragraphs (a) to (g), as is prescribed for the purposes of this subsection,

or do any 2 or more of the acts or things referred to in paragraphs (a) to (h).

- (2) An occupier of premises carrying out a monitoring programme in compliance with a condition referred to in subsection (1)(e) who does not supply all information recorded as a result of that programme to the Chief Executive Officer —

- (a) at specified intervals of time; and
- (b) in the specified form and manner,

commits an offence.

- (3) Without limiting the generality of subsection (2), the Chief Executive Officer may specify in the works approval or licence concerned that the results of a monitoring programme referred to in that subsection shall be supplied to the Chief Executive Officer in a report made by a person approved by the Chief Executive Officer, or registered by the body known as the National Association of Testing Authorities, in respect of testing of the kind required for that programme.

- (4) A condition referred to in subsection (1) —
- (a) may require the use of any specified equipment or process necessary to control pollution;
  - (b) may require —
    - (i) any specified standards not to be contravened; or
    - (ii) any specified noise, odour or electromagnetic radiation levels not to be exceeded;
- and
- (c) subject to section 60, shall not be inconsistent with any approved policy or with any prescribed standard.
- (5) In this section —
- “specified”** means specified by the Chief Executive Officer in the works approval or licence concerned.

**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.

**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 Chief Executive Officer;
  - (b) accompanied by the prescribed fee; and
  - (c) supported by such plans, specifications and other documents and information, including a summary thereof, as the Chief Executive Officer requires.

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- (2) On receiving an application made under subsection (1), the Chief Executive Officer 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 Chief Executive Officer specifies in that works approval or licence; or
  - (b) refuse to transfer the works approval or licence concerned to the applicant.

**65. Pollution abatement notices**

- (1) If the Chief Executive Officer is satisfied that any waste is being or is likely to be discharged, or any noise, odour or electromagnetic radiation is being or is likely to be emitted, from any premises into the environment, and that that waste or noise, odour or electromagnetic radiation —
- (a) does not comply with, or would not if it were discharged or emitted into the environment comply with —
    - (i) any standard required by or under an approved policy; or
    - (ii) any prescribed standard;or
  - (b) has caused or is causing or likely to cause pollution,
- the Chief Executive Officer may cause to be served on the owner or the occupier, or on both the owner and the occupier, of the premises a pollution abatement notice in respect of the premises.
- (2) A pollution abatement notice —
- (a) shall specify the reason for which it is served;
  - (b) may require any person bound by it to take such measures as —
    - (i) the Chief Executive Officer considers necessary to prevent, control or abate the discharge of

waste or emission of noise, odour or electromagnetic radiation to which the pollution abatement notice relates; and

(ii) are specified in the pollution abatement notice, within such period as is specified in the pollution abatement notice.

- (3) A pollution abatement notice —
- (a) while it subsists, binds each owner or occupier on whom it is served; and
  - (b) while it remains registered under section 66, binds each successive owner or occupier of the land to which the pollution abatement notice relates.
- (4) The Chief Executive Officer may by notice in writing served on every person bound by a pollution abatement notice revoke the pollution abatement notice or, subject to subsections (6) and (7), amend it —
- (a) by extending the period within which a requirement contained in the pollution abatement notice is to be complied with if the Chief Executive Officer is satisfied that the circumstances of the case justify such an extension; or
  - (b) by revoking or amending any requirement contained in the pollution abatement notice.
- (4a) A person who —
- (a) is bound by a pollution abatement notice; and
  - (b) intentionally or with criminal negligence does not comply with a requirement contained in the pollution abatement notice,
- commits an offence.
- (5) A person who is bound by a pollution abatement notice and who does not comply with a requirement contained in the pollution abatement notice commits an offence.

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- (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 Chief Executive Officer shall, before exercising in respect of a person the power of amendment conferred on him by subsection (4), afford the person a reasonable opportunity to show cause in writing why that power should not be exercised in respect of him.
- (7) An opportunity is not a reasonable opportunity within the meaning of subsection (6) unless the relevant person is informed in writing of his right to show cause under that subsection not less than 21 days before the day on which the Chief Executive Officer exercises the power in question.
- (8) In this section —  
“**specified**” means specified in the pollution abatement notice concerned.

*[Section 65 amended by No. 14 of 1998 s.7.]*

**66. Registration of pollution abatement notices**

- (1) When a pollution abatement notice is served under section 65, the Chief Executive Officer shall deliver a copy of the pollution abatement notice to the Western Australian Planning Commission and —
  - (a) in the case of a pollution abatement 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 a pollution abatement 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 a pollution abatement 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 pollution abatement notice and endorse or note accordingly the appropriate Register or register or record in respect of the land to which that pollution abatement notice relates.

- (3) When a pollution abatement notice registered under subsection (2) is revoked under section 65, the Chief Executive Officer 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 Chief Executive Officer 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 pollution abatement notice and endorse or note accordingly the appropriate Register or register or record in respect of the land to which that certificate relates.

- (5) In this section —

“**Registrar of Titles**” has the meaning given by the *Transfer of Land Act 1893*;

“**Registrar of Deeds and Transfers**” has the meaning given by the *Registration of Deeds Act 1856*.

[Section 66 amended by No. 84 of 1994 s.46; No. 81 of 1996 s.153(1); No. 31 of 1997 s.27.]

**67. Duty of outgoing owner or occupier to notify Chief Executive Officer and successor in ownership or occupation**

While a pollution abatement notice remains registered under section 66, each owner or occupier of the land to which the pollution abatement notice relates who does not, when he ceases to be such an owner or occupier, notify in writing —

- (a) the Chief Executive Officer of that fact and of the name and address of each person who succeeds him in the

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ownership or occupation or both, as the case requires, of that land; and

- (b) each person who succeeds him in the ownership or occupation or both, as the case requires, of that land of the content of the pollution abatement notice and of the fact that the pollution abatement notice is binding on that person,

commits an offence.

**68. Restriction on subdivision and amalgamation of land to which registered pollution abatement notice relates**

While a pollution abatement notice remains registered under section 66, the Western Australian Planning Commission shall not approve under section 20 of the *Town Planning and Development Act 1928* the subdivision of the land to which the pollution abatement notice relates or the amalgamation of that land with any other land unless the Chief Executive Officer consents to that approval.

*[Section 68 amended by No. 84 of 1994 s.46.]*

**69. Minister may make stop orders**

- (1) If the Minister is satisfied that —
  - (a) a person who is bound by a pollution abatement notice has not complied with a requirement contained in the pollution abatement 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 pollution abatement 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 he considers are necessary —
- (a) to stop the carrying on of the trade, process or activity, and to close down the premises, to which the pollution abatement 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 him by the Minister by action in a court of competent jurisdiction and shall, if so recovered, be credited to the Consolidated Fund.
- (4) The Minister may by notice served on the person to whom an order made under subsection (1) applies amend or, if he 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 him under subsection (1) commits an offence.

*[Section 69 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]*

**70. Particulars of works approvals, licences and pollution abatement notices to be recorded**

- (1) The Chief Executive Officer shall cause to be recorded such particulars of —
- (a) works approvals and licences, including applications therefor and applications for renewals or transfers thereof; and

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(b) pollution abatement notices,

as are prescribed.

- (2) The Chief Executive Officer shall cause to be published from time to time in a prescribed manner such of the particulars recorded under subsection (1) as are prescribed.

**71. Environmental protection directions**

- (1) Subject to this section, the Chief Executive Officer may —
- (a) if he is satisfied that pollution 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 he 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 Chief Executive Officer 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 Chief Executive Officer 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).

**72. Duty to notify Chief Executive Officer 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;
  - (b) occurs otherwise than in accordance with a works approval or licence or with a requirement contained in a pollution abatement 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, the occupier of the premises on or from which that discharge took place who does not, as soon as practicable after that discharge, notify the Chief Executive Officer 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 Chief Executive Officer in the prescribed manner of the prescribed details of that discharge.
- (4) An occupier who contravenes subsection (3) commits an offence.

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(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 by No. 14 of 1998 s.31.]*

**73. Powers in respect of discharges of waste and creation of pollution**

(1) If any waste has been or is being discharged from any premises otherwise than in accordance with a works approval or licence or a requirement contained in a pollution abatement notice, or a condition of pollution is likely to arise or has arisen, an inspector or authorised person may, with the approval of the Chief Executive Officer —

- (a) give such directions in writing as the inspector or authorised person considers necessary to such person as the inspector or authorised person considers appropriate —
  - (i) to remove, disperse, destroy, dispose of or otherwise deal with the waste which has been or is being discharged; or
  - (ii) to prevent the condition of pollution from arising or control or abate that condition if it arises, as the case requires; or
- (b) with such assistance as he considers appropriate —
  - (i) remove, disperse, destroy, dispose of or otherwise deal with the waste which has been or is being discharged; or
  - (ii) prevent the condition of pollution from arising or control or abate that condition if it arises, as the case requires.

- (2) When a person has complied with any directions given to him under subsection (1)(a), the Chief Executive Officer shall, 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 the discharge referred to in paragraph (a) or the likelihood of the relevant condition of pollution arising or the arising of that condition,

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

- (3) When an inspector or authorised person has incurred any cost in acting under subsection (1)(b) or the Chief Executive Officer has reimbursed any cost under subsection (2), the Chief Executive Officer 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 the discharge referred to in paragraph (a) or the likelihood of the relevant condition of pollution arising or the arising of that condition,

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 Fund.

- (4) If any waste has been or is being discharged from any premises or a condition of pollution is likely to arise or has arisen, the Chief Executive Officer may —
- (a) cause the waste to be removed, dispersed, destroyed, disposed of or otherwise dealt with, or the condition of pollution to be prevented from arising or, if that condition arises, that condition to be controlled or abated; and

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- (b) 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 paragraph (a) from the person who —
- (i) was the occupier of the premises at the time of that discharge; or
  - (ii) caused or allowed to be caused that discharge or the likelihood of the condition of pollution arising or the arising of that condition, 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 Fund.
- (5) A person who intentionally or with criminal negligence contravenes a direction given to that person under subsection (1), without reasonable excuse for that contravention, commits an offence.
- (6) A person who contravenes a direction given to that person under subsection (1), without reasonable excuse for that contravention, commits an offence.
- (7) A person charged with committing an offence against subsection (5) may be convicted of an offence against subsection (6) which is established by the evidence.

*[Section 73 amended by No. 6 of 1993 s.11; No. 73 of 1994 s.4; No. 14 of 1998 s.8.]*

**74. Defences to certain proceedings**

- (1) Subject to section 58 and subsection (2), it shall be a defence to proceedings for an offence under this Part in respect of the discharge of waste or the emission of noise, odour or

electromagnetic radiation if the person charged with that offence proves that —

- (a) that discharge or emission 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 discharge or emission occurred took all reasonable precautions to prevent that discharge or emission; and

- (b) as soon as was reasonably practicable after that discharge or emission that person notified particulars thereof in writing to the Chief Executive Officer.

(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 Chief Executive Officer.

(2) The defence referred to in subsection (1) or (1a) is not available to a person unless he notifies the Chief Executive Officer 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.

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- (3) It shall be a defence to proceedings under this Part for causing pollution or in respect of the discharge of waste or the emission of noise, odour or electromagnetic radiation if the person charged with that offence proves that that pollution was caused or that discharge or emission occurred —
- (a) in accordance with any prescribed standard, works approval, licence, requirement contained in a pollution abatement notice, approved policy, condition agreed or decided under section 45, declaration under section 6, exemption under the regulations, direction under section 73 or exemption under section 75; or
  - (b) in the exercise of any power conferred by this Act.

*[Section 74 amended by No. 73 of 1994 s.4; No. 14 of 1998 s.9.]*

**75. Discharges or emissions in emergencies**

- (1) The Chief Executive Officer may, if waste is being or is about to be discharged, or noise, odour or electromagnetic radiation is being or is about to be emitted, 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 his 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 he 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 Chief Executive Officer may grant an exemption under subsection (1) orally or in writing.



- (4) If the Chief Executive Officer grants an exemption under subsection (1) orally, he 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 Chief Executive Officer.

**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 he 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.

**77. Discharges into atmosphere or waters from vehicles or vessels**

- (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

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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. Interference 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 on 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;
  - (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 defendant is required to enter a plea that the circumstances are such that —
  - (a) less than 3 persons were affected by that alleged offence;
  - (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

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- (c) the enjoyment of the premises occupied by him was affected by that alleged offence in a degree substantially greater than was the case with other premises so affected,

and that the complaint is not of a frivolous, vexatious or unreasonable nature.

**80. Installation of equipment emitting unreasonable noise**

- (1) A person who installs on or in any premises any equipment which, when operated, emits unreasonable noise and which he knows or, if he 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 him in respect of the first-mentioned offence, from the other person by action in a court of competent jurisdiction.

**81. Noise abatement directions**

- (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 he considers appropriate —
    - (i) the person whom he believes to be the occupier of those premises to cause the emission of that unreasonable noise to cease; or
    - (ii) any person whom he 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.

**81A. Seizure of 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.

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- (2) 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.
- (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 by No. 50 of 1996 s.9.]*

**82. Powers in respect of noise abatement directions**

- (1) An authorised person or police officer may, for the purpose of enabling him 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 he considers necessary and, subject to subsection (3), with the use of reasonable force, at any time when he considers on reasonable grounds that an unreasonable noise has been or is being emitted from those premises; and
  - (b) whether or not he enters those premises, require any person —
    - (i) who he 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 he has given an oral or written warning of the obligation of that person to furnish him with the name and address of that person and with the name and address of the occupier of those premises,

to furnish him 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 he exercises the power referred to in subsection (1)(a), use force in so doing unless he is, or is accompanied by, a police officer.

*[Section 82 amended by No. 50 of 1996 s.10.]*

**83. Assistance and information to be furnished to authorised persons**

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 him; 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 by No. 50 of 1996 s.11.]*

**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.

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- (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 he 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.

## **Part VI — Enforcement**

### **87. Appointment of authorised persons**

- (1) The Chief Executive Officer 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 Chief Executive Officer shall cause to be issued to each authorised person an authority in writing signed by the Chief Executive Officer and bearing a photograph of that authorised officer.
- (3) An authorised person shall produce the authority issued to him under subsection (2) whenever required to do so —
  - (a) by a person in respect of whom he has exercised, is exercising, or is about to exercise any of the powers —
    - (i) conferred on him by or under this Act; and
    - (ii) which he 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 him at the time of his appointment.

*[Section 87 amended by No. 32 of 1994 s.19.]*

**88. Inspectors**

- (1) The Chief Executive Officer 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;
  - (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;
  - (c) recording, measuring, testing or analysing noise, odour and electromagnetic radiation emissions;
  - (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;
  - (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 him by or under this Act.

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- (2) Notwithstanding anything in this Act but without limiting the generality of section 52 of the *Interpretation Act 1984*, the Chief Executive Officer 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 Chief Executive Officer shall cause to be issued to each inspector an authority in writing signed by the Chief Executive Officer and bearing a photograph of that inspector.
- (4) An inspector shall produce the authority issued to him under subsection (3) whenever required to do so —
- (a) by a person in respect of whom he has exercised, is exercising or is about to exercise any of the powers —
    - (i) which are conferred on him by or under this Act; and
    - (ii) which he 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 him at the time of his appointment.
- (6) In subsection (1) —
- “approved”** means approved by the Chief Executive Officer.
- [Section 88 amended by No. 32 of 1994 s.19.]*

**89. General powers of entry 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;
  - (b) at any reasonable time any premises, other than premises referred to in paragraph (a), or place from which any waste is being or is likely to be discharged or from which noise, odour or electromagnetic radiation is being or is likely to be emitted;
  - (c) at any reasonable time any premises in respect of which a proposal has been made or a scheme has been prepared or formulated; or
  - (ca) at any reasonable time any premises, other than premises referred to in paragraph (a), or place at or from which the inspector reasonably believes solid fuel burning equipment, or solid fuel, is manufactured, sold or distributed for sale,

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;
- (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 section 45 or 48F, any works approval or licence or condition specified therein or any requirement contained in a pollution abatement notice,

direction given under section 73(1)(a), 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) Notwithstanding anything in subsection (1), an inspector is not entitled to enter a private dwelling-house or on land used in connection therewith unless he believes on reasonable grounds that waste is being, or has recently been, discharged from that dwelling-house or land into the environment or finds that unreasonable noise is being, or believes that unreasonable noise has recently been, emitted therefrom into the environment.
- (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 groundwater 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,
- 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 on him 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;
- (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 by No. 23 of 1996 s.21; No. 14 of 1998 ss.10 and 32.]*

**90. Power of inspectors to require production of books, etc.**

- (1) An inspector may by notice in writing require —
  - (a) the occupier of any premises —
    - (i) from which any waste has been, is being or is likely to be discharged; or
    - (ii) from which any noise, odour or electromagnetic radiation has been, is being or is likely to be emitted,to produce to the inspector —
    - (iii) any books or other sources of information relating to that discharge or emission or to any manufacturing, industrial or trade process carried on at those premises; or
    - (iv) any data from any monitoring equipment or monitoring programme in respect of that discharge or emission;or
  - (b) 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 discharge of any waste or any emission of noise, odour or electromagnetic radiation; or
    - (ii) the manufacture, sale or distribution for sale of any prescribed equipment or material,

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and may take copies of or data or extracts from any books or other sources of information produced to him in compliance with such a requirement.

- (1a) An inspector may require 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.
- (1b) An inspector may —
- (a) conduct such examination and inquiry as 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 require that person to answer any question and, if the inspector considers it appropriate, to verify the answer by statutory declaration.
- (2) A person who does not comply with a requirement made to him under subsection (1), (1a) or (1b) commits an offence.

*[Section 90 amended by No. 14 of 1998 ss.11 and 33.]*

**91. Additional powers of entry of inspectors**

- (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 his 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.

**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 any waste or noise, odour or electromagnetic radiation has been, is being or is likely to be discharged or emitted;
  - (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.

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- (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 by No. 14 of 1998 ss.12 and 34.]*

**92A. Seizure**

- (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 by No. 14 of 1998 s.13.]*

**92B. Dealing with thing seized**

- (1) If any thing is seized under section 92A and, in the opinion of the Chief Executive Officer, the thing is likely to cause pollution or perish if no action is taken to deal with it, the Chief Executive Officer 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 Fund.
- (3) If —
  - (a) any thing is seized by an inspector in connection with a suspected offence;
  - (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 Chief Executive Officer in dealing with the thing) are to be paid to the person from whom the thing was seized.

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- (4) The Chief Executive Officer may recover all costs and expenses incurred by the Chief Executive Officer 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 by No. 14 of 1998 s.13.]*

**92C. Return of thing seized**

- (1) The Chief Executive Officer 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 Chief Executive Officer may authorise the return of the thing on such conditions as the Chief Executive Officer thinks fit, including a condition that the person give security to the Chief Executive Officer 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 Chief Executive Officer 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 by No. 14 of 1998 s.13.]*

**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 Chief Executive Officer 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 by No. 14 of 1998 s.13.]*

**92E. Person not to interfere with seized property**

- (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 Chief Executive Officer 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 Chief Executive Officer or to any other person for any damage or loss caused by the offence.

*[Section 92E inserted by No. 14 of 1998 s.13.]*

**92F. Assistance to inspector**

- (1) An inspector may be assisted in the exercise of his or her powers under this Part by such persons as the inspector considers necessary.

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- (2) A person is not personally liable for any matter or thing done or omitted to be done in good faith by that person in the course of giving assistance to an inspector under subsection (1).

*[Section 92F inserted by No. 14 of 1998 s.13.]*

**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 by No. 14 of 1998 s.13.]*

**92H. Compensation**

- (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(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 Chief Executive Officer for compensation for that loss or damage.

- (2) No compensation is payable pursuant to an application under subsection (1) unless the Chief Executive Officer 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 Chief Executive Officer or, in default of any such agreement, by a Local Court on the application of the person so applying or of the Chief Executive Officer.

*[Section 92H inserted by No. 14 of 1998 s.13.]*

**93. Delay or obstruction of inspectors or authorised persons**

A person who —

- (a) delays or obstructs a police officer, inspector or authorised person;
- (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 of his powers under this Act commits an offence.

**94. Appointment of analysts**

- (1) The Chief Executive Officer 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 him at the time of his appointment.

*[Section 94 amended by No. 32 of 1994 s.19.]*

**95. Chief Executive Officer may require information concerning industrial processes**

- (1) The Chief Executive Officer may, if he 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 Chief Executive Officer within such period, being

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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 discharged or 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 him under subsection (1) commits an offence.

**96. Chief Executive Officer may require information concerning vehicles or vessels**

- (1) Subject to subsection (2), the Chief Executive Officer 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 the discharge of waste or the emission of noise, odour or electromagnetic radiation from vehicles or vessels, including information —
    - (i) relating to any such discharge or emission obtained by the use of any equipment; or
    - (ii) required by the Chief Executive Officer for the making of any inspection, measurement or test of any such discharge or emission by a prescribed method,

require that person to furnish the information referred to in paragraph (b) to the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer, 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 him under subsection (1) commits an offence.

*[Section 96 amended by No. 57 of 1997 s.54(4).]*

**97. Chief Executive Officer may require vehicles, vessels and equipment to be made available for testing**

- (1) The Chief Executive Officer 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 who has in his possession 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 him under subsection (1) commits an offence.

**98. Powers of police officers in relation to testing of 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.

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**99. Police officers may inactivate audible alarms**

- (1) If a police officer is satisfied that an alarm —
- (a) has been sounding in or on any premises for not less than such period as is prescribed; and
  - (b) is emitting unreasonable noise,
- he may —
- (c) enter the premises referred to in paragraph (a); and
  - (d) take all such steps as appear to him to be reasonably necessary for or in connection with stopping the alarm from sounding,

with the aid of such assistants as he considers necessary and with the use of reasonable force.

- (2) A police officer who has exercised the powers conferred on him by subsection (1) shall cause such persons or public authorities as appear to him to be appropriate in the circumstances to be informed promptly of that exercise.
- (3) The Chief Executive Officer 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) The amount of a fee paid by the Chief Executive Officer under subsection (3) constitutes a debt due to the Crown by the owner of the premises in respect of which the aid to which that fee relates was rendered and may be recovered by the Chief Executive Officer from that owner in a court of competent jurisdiction and, if so recovered, shall be credited to the Consolidated Fund.

*[Section 99 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64; No. 57 of 1997 s.54(5) and (6).]*

## **Part VIA — Legal proceedings and penalties**

*[Heading inserted by No. 14 of 1998 s.14.]*

### **Division 1 — Tier 2 offences and modified penalties**

*[Heading inserted by No. 14 of 1998 s.14.]*

#### **99A. Giving a modified penalty notice**

- (1) This section applies to a person if —
- (a) the Chief Executive Officer is of the opinion that —
    - (i) the person has committed a Tier 2 offence; and
    - (ii) there is sufficient evidence to support the allegation of the offence;
  - (b) the Minister has consented, under section 114(1a), to the institution of proceedings in respect of the offence;
  - (c) 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 Chief Executive Officer;
  - (d) 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;
  - (e) the alleged offender cooperated with officers and employees of the Department and provided information and assistance when so requested;
  - (f) the alleged offender has taken reasonable steps to ensure that the circumstances giving rise to the allegation of the offence do not reoccur; and
  - (g) 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.

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- (2) If the Chief Executive Officer makes a determination that a person alleged to have committed a Tier 2 offence is a person to whom this section applies, the Chief Executive Officer 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 Chief Executive Officer that a person is, or is not, a person to whom this section applies, or the fact that the Chief Executive Officer 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 by No. 14 of 1998 s.14.]*

**99B. Content of notice**

- (1) A modified penalty notice is to be in the prescribed form and is to —
- (a) contain a description of the alleged offence;
  - (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by 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 Chief Executive Officer may, in writing, appoint persons or classes of persons to be designated persons for the purposes of this section.

*[Section 99B inserted by No. 14 of 1998 s.14.]*

**99C. Extension of time**

The Chief Executive Officer 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 by No. 14 of 1998 s.14.]*

**99D. Withdrawal of notice**

- (1) Within one year after a modified penalty notice was given to an alleged offender in respect of an offence the Chief Executive Officer may, if —
- (a) the Chief Executive Officer is no longer of the opinion that the alleged offender is a person to whom section 99A applies in respect of that offence; and

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(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 by No. 14 of 1998 s.14.]*

**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 Chief Executive Officer is to publish a notice of payment of the modified penalty, and such particulars as are prescribed, in —
- (a) the annual report of the Department prepared for the purposes of the *Financial Administration and Audit Act 1985*; and
  - (b) a daily newspaper circulating throughout the State.
- (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 by No. 14 of 1998 s.14.]*

**99F. Register of certificates and modified penalty notices**

- (1) The Chief Executive Officer is to maintain a register of —
- (a) certificates and modified penalty notices issued under section 99A(2);

- (b) withdrawal forms sent under section 99D; and
  - (c) such particulars in relation to modified penalty notices and payments as the Chief Executive Officer 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 by No. 14 of 1998 s.14.]*

**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 by No. 14 of 1998 s.14.]*

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*[Heading inserted by No. 14 of 1998 s.14.]*

**99H. Interpretation**

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 by No. 14 of 1998 s.14.]*

**99I. Designated persons**

- (1) The Chief Executive Officer 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.

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- (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 by No. 14 of 1998 s.14.]*

**99J. Giving a notice**

- (1) An inspector who has reason to believe that a person has committed an infringement notice offence may, within 35 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.
- (2) An infringement notice may be served personally or by registered post.

*[Section 99J inserted by No. 14 of 1998 s.14.]*

**99K. Content of notice**

- (1) An infringement notice is to be in the prescribed form and is to —
- (a) contain a description of the alleged offence;
  - (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by 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 a Tier 3 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 by No. 14 of 1998 s.14.]*

**99L. Convictions and payments to be disregarded after 5 years**

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 by No. 14 of 1998 s.14.]*

**99M. Extension of time**

A designated person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and

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the extension may be allowed whether or not the period of 28 days has elapsed.

*[Section 99M inserted by No. 14 of 1998 s.14.]*

**99N. Withdrawal of 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 by 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 by 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 by No. 14 of 1998 s.14.]*

### **Division 3 — Penalties**

*[Heading inserted by 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 by 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

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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 Chief Executive Officer 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 by No. 14 of 1998 s.14.]*

**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 by No. 14 of 1998 s.14.]*

#### **Division 4 — Additional powers available to the court**

*[Heading inserted by No. 14 of 1998 s.14.]*

##### **99T. Meaning of “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 by 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 *Crimes (Confiscation of Profits) Act 1988*.

*[Section 99U inserted by No. 14 of 1998 s.14.]*

**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 Chief Executive Officer under section 92C in lieu of the thing is taken to be forfeited to the Crown in lieu of the thing.

*[Section 99V inserted by No. 14 of 1998 s.14.]*

**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 Fund.
- (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 by No. 14 of 1998 s.14.]*

**99X. Orders for restoration and prevention**

- (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;
  - (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 Chief Executive Officer, 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 by No. 14 of 1998 s.14.]*

**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 Chief Executive Officer 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;
    - (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 Chief Executive Officer, 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 by No. 14 of 1998 s.14.]*

**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 monetary, financial or economic benefits acquired by the avoidance of charges, fees or other costs which would have been incurred by the offender if the offender had not committed the offence.

*[Section 99Z inserted by No. 14 of 1998 s.14.]*

**99ZA. Additional orders**

- (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.

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- (4) If the offender fails to comply with an order under subsection (1)(a) or (b), the Chief Executive Officer 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 Chief Executive Officer as a debt due in a court of competent jurisdiction.

*[Section 99ZA inserted by No. 14 of 1998 s.14.]*

**99ZB. Enforcement of orders for payment of 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 Chief Executive Officer and the copy may be registered (without payment of a fee) as a judgment in a court of competent jurisdiction.

*[Section 99ZB inserted by No. 14 of 1998 s.14.]*

## Part VII — Appeals

### 100. Lodging of appeals in respect of levels of assessment of, and reports on, proposals and conditions or procedures attached thereto

- (1) Any decision-making authority, responsible authority, proponent or other person which or who disagrees with —
  - (a) a decision of the Authority that a proposal should not be assessed by it set out in a public record under section 39(1);
  - (b) the level of assessment of a proposal set out in a public record under section 39(1); or
  - (c) the content of any instructions set out in a public record under section 48B(1),

may within 14 days of the making available of the public record lodge with the Minister an appeal in writing setting out the grounds of that appeal.

- (2) Any responsible authority, decision-making authority, proponent or other person which or who disagrees with the content of, or any recommendations in, the report prepared in respect of —
  - (a) a proposal under section 44 may, within 14 days of the publication under section 44(3)(a); or
  - (b) a scheme under section 48D may, within 14 days of the publication under section 48D(3)(a),

of that report, lodge with the Minister an appeal in writing setting out the grounds of that appeal.

- (3) Any proponent which or who disagrees with any of the conditions or procedures agreed or decided under section 45 may, within 14 days of the publication under that section of the statement setting out those conditions or procedures, lodge with the Minister an appeal in writing setting out the grounds of that appeal.

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- (4) A proponent who is aggrieved by —
- (a) an order served on him under section 48(4)(a) or (b); or
  - (b) the taking of any steps under section 48(4)(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 by No. 73 of 1994 s.4; No. 23 of 1996 s.22.]*

**101. Powers of Minister in respect of appeals lodged under section 100**

- (1) Subject to subsections (2a), (2b), (2c), (2d) and (2e), when an appeal is lodged under section 100, the Minister may —
- (a) in the case of any appeal so lodged but subject to section 109(3)(a), dismiss the appeal;
  - (b) in the case of an appeal referred to in section 100(1) or (2), remit the proposal concerned to the Authority for —
    - (i) the making of a fresh decision under section 40(1) on whether or not that proposal should be assessed by it under Part IV; or
    - (ii) assessment, further assessment or reassessment, as the case requires, and for that purpose make a direction under section 43,as the case requires;
  - (c) in the case of an appeal referred to in section 100(3), appoint an appeals committee to consider and report to him on that appeal;
  - (d) in the case of an appeal against an order served under section 48(4)(a), set aside that order;
  - (e) in the case of an appeal against an order served under section 48(4)(b), set aside or alter that order; or

- (f) in the case of an appeal against the taking of any steps under section 48(4)(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.

- (2) When the Minister remits under subsection (1)(b) a proposal to the Authority for —

- (a) the making of a fresh decision, that decision shall be made; or

- (b) assessment, further assessment or reassessment and makes a direction under section 43, such portions of the procedure laid down by sections 40 to 48 as are appropriate shall apply to the proposal and those portions shall be completed,

within such period as the Minister specifies in his remittal.

- (2a) When an appeal is lodged under section 100(1)(c), the Minister shall consult, and attempt to reach agreement with, the responsible Minister on the decision of that appeal.

- (2b) If the Minister and the responsible Minister are unable to reach agreement under subsection (2a), they shall refer the matter in dispute to the Governor and the Governor shall decide that matter.

- (2c) The Minister shall decide an appeal lodged under section 100(1)(c) in accordance with an agreement reached under subsection (2a) or the decision of the Governor under subsection (2b) and that decision of the Minister is final and without appeal.

- (2d) When an appeal is lodged under section 100(2)(b), the Minister shall —

- (a) if he 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

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that condition and, if possible, agreed with him 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 he 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) referred to in section 100(1) does not affect the relevant decision referred to in section 100(1)(a), the level of assessment of the relevant proposal, or the operation of the relevant instructions, as the case requires;
- (b) referred to in section 100(2) has the effect described in section 45(6) or 48F(3), as the case requires;
- (c) referred to in section 100(3) prevents the implementation of the proposal concerned;
- (d) against an order served under section 48(4)(a) does not suspend the operation of that order;
- (e) against an order served under section 48(4)(b) suspends the operation of that order; or
- (f) against the taking of any steps under section 48(4)(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), (2c) or (2d).

(4) In giving a decision under subsection (1)(f), the Minister may order that section 48(5) does not apply to any steps to which the decision relates and that order has effect according to its tenor.

*[Section 101 amended by No. 23 of 1996 s.23; No. 57 of 1997 s.54(7) and (8).]*

**102. Lodging of appeals in respect of 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 Chief Executive Officer to grant the works approval or licence under section 54(3) or 57(3), as the case requires;
  - (b) the transfer of a works approval or licence who is aggrieved by the refusal of the Chief Executive Officer 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 Chief Executive Officer of any condition in the works approval or licence under section 54(3), 57(3) or 64(2),  
may within 21 days 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 revocation, suspension or amendment of a licence under section 59(1) may within 21 days of that amendment, revocation or suspension lodge with the Minister an appeal in writing setting out the grounds of that appeal.
- (3) A person (other than an applicant referred to in subsection (1) or a holder under subsection (2)) who disagrees with a refusal, specification, amendment, revocation or suspension referred to in that subsection may within 21 days of that refusal, specification, revocation, suspension 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 —
  - (a) under subsection (1), (2) or (3), the decision against which that appeal is lodged shall, subject to paragraph (b), continue to have effect; or

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- (b) under subsection (2) or (3), an amendment referred to in that subsection shall be deemed not to have been made.

**103. Lodging of appeals in respect of pollution abatement notices**

- (1) Subject to section 105, a person who is aggrieved by —
  - (a) a requirement contained in a pollution abatement notice served on him; or
  - (b) an amendment contained in a notice served on him under section 65(4),

may within 21 days of that service 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.

**104. Lodging of appeals in respect of requirements under sections 96 and 97**

- (1) A person who is aggrieved by a requirement contained in a notice served on him 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.



**105. Limitation on lodging of appeals**

An appeal shall not be lodged —

- (a) under section 102 or 103 in respect of anything done by the Chief Executive Officer under section 110 to give effect to recommendations referred to in section 109; or
- (b) under section 102(2) in respect of the amendment of a licence by correcting it under section 59(1)(b)(iii), (iv), (v) or (vi).

**106. Preliminary action by Minister in respect of certain appeals**

- (1) Subject to subsection (2), when an appeal is lodged with the Minister under section 100, 102, 103 or 104, the Minister —
  - (a) shall request the Chief Executive Officer and, if the Minister thinks it necessary to do so, the Authority to report to him on the appeal;
  - (b) may request the Chief Executive Officer to consider the appeal and to consult the appellant and any other appropriate person to determine whether or not the point at issue in the appeal can be resolved; and
  - (c) may, or, if the decision appealed against is a decision of the Minister, shall, appoint an appeals committee to consider and report to him on the appeal.
- (2) Subsection (1)(c) does not apply to an appeal referred to in section 101(2a) or (2d).

*[Section 106 amended by No. 23 of 1996 s.24.]*

**107. Consideration by Chief Executive Officer and Authority of appeal at request of Minister**

- (1) On receiving a request under —
  - (a) section 106(1)(a), the Chief Executive Officer and, if the request extends to the Authority, the Authority shall report on the relevant appeal to the Minister; or

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- (b) section 106(1)(b), the Chief Executive Officer shall carry out the consideration and consultation concerned and report to the Minister on the results thereof.
- (2) On receiving a report or reports made under subsection (1), 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(2a) or (2d).

*[Section 107 amended by No. 23 of 1996 s.25; No. 14 of 1998 s.24.]*

**108. Composition and remuneration of appeals committees**

- (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 Minister for Public Sector Management from time to time determines in respect of him, 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 Minister for Public Sector Management.

*[Section 108 amended by No. 32 of 1994 s.19; No. 57 of 1997 s.54(9); No. 14 of 1998 s.37.]*

**109. Procedure of appeals committees**

- (1) In considering an appeal, an appeals committee —
  - (a) shall consult the Chief Executive Officer and the appellant and 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.
- (2) In relation to an appeal lodged under section 102(2) in respect of the amendment of a licence under section 59(1)(b)(i) or (ii), 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.

**110. Implementation by Chief Executive Officer of decisions of Minister on appeals**

- (1) The Chief Executive Officer 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.

*[Section 110 amended by No. 23 of 1996 s.26.]*

**Environmental Protection Act 1986**

**Part VIIA** Landfill levy

**Division 1** Collection of levy imposed under Environmental Protection  
(Landfill) Levy Act 1998

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**Part VIIA — Landfill levy**

*[Heading inserted by No. 14 of 1998 s.20.]*

**Division 1 — Collection of levy imposed under *Environmental Protection (Landfill) Levy Act 1998***

*[Heading inserted by No. 14 of 1998 s.20.]*

**110A. Interpretation**

In this Part —

“**Fund**” means the Waste Management and Recycling Fund established under section 110H;

“**levy**” means a levy imposed under the *Environmental Protection (Landfill) Levy Act 1998*.

*[Section 110A inserted by No. 14 of 1998 s.20.]*

**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 by No. 14 of 1998 s.20.]*

**110C. Financial assurance**

The regulations may make provision —

- (a) empowering the Chief Executive Officer to require a licensee to provide a financial assurance for the purpose of securing or guaranteeing payment of a levy;
- (b) with respect to the form, amount, maintenance and termination of the financial assurance;

- (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 by No. 14 of 1998 s.20.]*

**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 by 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 by 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 by 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 by No. 14 of 1998 s.20.]*

**Division 2 — Waste Management and Recycling Fund**

*[Heading inserted by No. 14 of 1998 s.20.]*

**110H. Waste Management and Recycling Fund**

- (1) There is to be established and kept —
  - (a) at the Treasury, as an account forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
  - (b) with the approval of the Treasurer, at a bank,an account to be called the “Waste Management and Recycling Fund”.
- (2) The Fund is to be administered by the Minister.

- (3) The Fund is to be credited with —
- (a) any levy paid;
  - (b) any amount paid by way of penalty under section 110E;
  - (c) income derived from the investment of moneys forming part of the Fund; and
  - (d) any other moneys lawfully payable to the credit of the Fund.
- (4) Moneys held in the Fund 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 Fund (including the costs of collecting levies and penalties and support and evaluation services).
- (5) Moneys held in the Fund 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;
  - (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;
  - (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.

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**Part VIIA** Landfill levy

**Division 2** Waste Management and Recycling Fund

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- (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 Fund; 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 the *Financial Administration and Audit Act 1985* 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 by No. 14 of 1998 s.20.]*

**110I. Application of *Financial Administration and Audit Act 1985***

- (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in relation to the Fund.
- (2) The administration of the Fund is for the purposes of section 52 of the *Financial Administration and Audit Act 1985* to be regarded as a service of the Department.

*[Section 110I inserted by No. 14 of 1998 s.20.]*

**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*<sup>1</sup> 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 by No. 14 of 1998 s.20.]*



## **Part VIIB — Waste management operations**

*[Heading inserted by No. 14 of 1998 s.22.]*

### **110K. Interpretation**

In this Part —

“**waste management operation**” means an operation for the collection, transport, storage, treatment or disposal of waste, or for 2 or more of those activities.

*[Section 110K inserted by No. 14 of 1998 s.22.]*

### **110L. Waste Management (WA) established**

- (1) A body called Waste Management (WA) is established.
- (2) Waste Management (WA) —
  - (a) consists of the Chief Executive Officer; and
  - (b) is a body corporate with perpetual succession and a common seal.
- (3) Proceedings may be taken by or against Waste Management (WA) in its corporate name.
- (4) Waste Management (WA) is an entity that forms part of the Department and —
  - (a) its services are services under the control of the Department; and
  - (b) its operations are operations of the Department.

*[Section 110L inserted by No. 14 of 1998 s.22.]*

### **110M. Waste Management (WA) may carry on waste management operations**

- (1) Subject to subsection (2), Waste Management (WA) may carry on waste management operations at or in relation to the following sites —
  - (a) the intractable waste disposal facility operated at Mt Walton East, Shire of Coolgardie by or on behalf of

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the State immediately before the coming into operation of section 22 of the *Environmental Protection Amendment Act 1998*<sup>1</sup>;

(b) the Metropolitan Septage Treatment Plant, Waterworks Road, Forrestdale operated by or on behalf of the State immediately before the coming into operation of section 22 of the *Environmental Protection Amendment Act 1998*<sup>1</sup>;

(c) the Industrial Liquid Waste Treatment Plant, Waterworks Road, Forrestdale operated by or on behalf of the State immediately before the coming into operation of section 22 of the *Environmental Protection Amendment Act 1998*<sup>1</sup>.

(2) Waste Management (WA) is to carry on a waste management operation in accordance with —

(a) the conditions and procedures to which the proposal to carry on the waste management operation is subject under Part IV; and

(b) the directions of the Minister under section 110N.

(3) Waste Management (WA) does not require a licence or other authorisation under any other provision of this Act in order to carry on a waste management operation and Waste Management (WA) is taken to comply with all of the provisions of this Act, other than this Part, when carrying on a waste management operation under subsection (1).

*[Section 110M inserted by No. 14 of 1998 s.22.]*

**110N. Directions by Minister**

(1) Without limiting section 32 of the *Public Sector Management Act 1994*, the Minister may give directions in writing to Waste Management (WA) with respect to the performance of Waste Management (WA)'s functions, either generally or with respect to a particular matter, including a direction that Waste

Management (WA) is not to perform a function without the prior approval in writing of the Minister, and Waste Management (WA) is to give effect to those directions.

- (2) If there is inconsistency between a direction of the Minister and —
- (a) a condition or procedure to which the proposal to carry on the waste management operation is subject under Part IV; or
  - (b) a requirement or direction of the Treasurer under section 110Q,

the condition or procedure, or requirement or direction of the Treasurer, as the case may be, prevails to the extent of the inconsistency.

*[Section 110N inserted by No. 14 of 1998 s.22.]*

**110O. Monitoring of waste management operations**

- (1) The Authority may monitor or cause to be monitored the implementation of any proposal of which Waste Management (WA) is the proponent insofar as that implementation is subject to —
- (a) any conditions or procedures which are set out in the relevant statement served under section 45(5); and
  - (b) any direction of the Minister under section 110N,
- for the purpose of determining whether or not those conditions, procedures or directions have been or are being complied with and, if the Authority ascertains that any such condition, procedure or direction has not been or is not being complied with, the Authority is to inform the Minister accordingly.
- (2) The Minister, on being informed under subsection (1) by the Authority that any relevant condition, procedure or direction has not been or is not being complied with, is to exercise one or more of the powers set out in section 48(4) as if that section

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applied to the carrying on of a waste management operation in accordance with section 110M(2).

- (3) Any order or direction given by the Minister to Waste Management (WA) under subsection (2) is taken to be a direction given under section 110N.
- (4) Sections 47 and 48 do not apply to or in respect of Waste Management (WA) as a proponent.

*[Section 110O inserted by No. 14 of 1998 s.22.]*

**110P. Powers**

- (1) Waste Management (WA) may, subject to this Part, do all things necessary or convenient to be done for or in connection with the performance of its functions under section 110M.
- (2) Without limiting subsection (1), Waste Management (WA) may, for the purpose of performing its functions under section 110M and subject to this Part —
  - (a) acquire, hold, manage, improve, develop and dispose of property;
  - (b) participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement;
  - (c) enter into a contract or arrangement;
  - (d) charge for the provision and use of its services and facilities; and
  - (e) apply the expertise and resources of the Department to provide services and facilities for profit or providing revenue.
- (3) In exercising any power under this section Waste Management (WA) may act in conjunction with —
  - (a) any person or firm, or a public authority; or
  - (b) any department of the Public Service or any agency of the State or the Commonwealth.

(4) In this section —

**“acquire”** includes taking on lease or licence or in any other manner in which an interest in property may be acquired;

**“business arrangement”** means a partnership, a trust, a joint venture, or an arrangement for sharing profits;

**“dispose of”** includes dispose of by way of lease;

**“participate”** includes form, promote, establish, enter, manage, dissolve, wind-up, and do anything incidental to participating in a business arrangement;

**“property”** means property of every kind, whether real or personal, tangible or intangible, corporeal or incorporeal, and any interest in property.

*[Section 110P inserted by No. 14 of 1998 s.22.]*

**110Q. Treasurer to consider proposals under section 110P(2)(b)**

(1) Before exercising any power conferred by section 110P(2)(b) Waste Management (WA) is to —

- (a) notify the Treasurer of the proposal; and
- (b) seek the Treasurer’s approval to it,

unless it is of a kind that the Treasurer has determined in writing need not be so notified.

(2) The Treasurer may impose requirements to be complied with by Waste Management (WA) in connection with a proposal of which the Treasurer has approved.

(3) The Treasurer may also give directions to be complied with generally by Waste Management (WA) in the exercise of the powers referred to in section 110P(2)(b).

*[Section 110Q inserted by No. 14 of 1998 s.22.]*

**110R. Delegation by Waste Management (WA)**

(1) Waste Management (WA) may, by instrument in writing, delegate to an officer of the Department the performance of any of its functions, other than this power of delegation.

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- (2) A function performed by a delegate is taken to be performed by Waste Management (WA).
- (3) A delegate performing a function under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section is to be read as limiting the ability of Waste Management (WA) to act through its agents in the normal course of business.

*[Section 110R inserted by No. 14 of 1998 s.22.]*

**110S. Documents presumed to be duly executed**

When a document is produced bearing a seal purporting to be the common seal of Waste Management (WA), it is to be presumed until the contrary is shown that the seal is the seal of Waste Management (WA) and has been duly affixed.

*[Section 110S inserted by No. 14 of 1998 s.22.]*

**110T. Tabling and annual report**

- (1) Any direction given by the Minister under this Part is to be tabled in each House of Parliament within 14 sitting days of that House after the approval or direction is given.
- (2) The annual report of the Department prepared for the purposes of the *Financial Administration and Audit Act 1985* is to include —
  - (a) any direction given to Waste Management (WA) by the Minister under this Part during the financial year to which the report relates; and
  - (b) an environmental performance report on waste management operations carried on by Waste Management (WA).

*[Section 110T inserted by No. 14 of 1998 s.22.]*

## Part VIII — General

### 111. Saving of rights at law

Nothing in this Act in any way affects any right any person has at law to prevent, control or abate pollution or to obtain damages.

### 112. False information

A person who, in purporting to comply with a requirement made by or under this Act to give information to the Authority, the Chief Executive Officer, an authorised person or an inspector or a police officer, gives or causes to be given information that to his knowledge is false or misleading in a material particular commits an offence.

### 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) if the individual objected at the time of doing so on the ground that it might incriminate the individual.
- (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 by No. 14 of 1998 s.15.]*

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[113.    *Repealed by No. 14 of 1998 s.16.*]

**114.    Institution of prosecutions**

- (1)    A prosecution for a Tier 1 offence is not to be instituted otherwise than by the Chief Executive Officer acting with the consent of the Minister.
- (1a)   Subject to subsection (3), 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 Chief Executive Officer, are not to be instituted otherwise than by the Chief Executive Officer acting with the consent of the Minister.
- (1b)   Subject to section 79(2), a prosecution for a Tier 3 offence is not to be instituted otherwise than by —
  - (a)    the Chief Executive Officer; 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 Chief Executive Officer in respect of the giving of a modified penalty notice or an infringement notice or the institution of a prosecution.
- (2)    Notwithstanding section 51 of the *Justices Act 1902*, a complaint of an offence under this Act shall be made within 24 months from the time when the matter of complaint arose.
- (3)    A prosecution for an offence under section 81(2), 82(2), 83 or 93 may be instituted by a police officer acting with the consent of the Chief Executive Officer.

*[Section 114 amended by No. 50 of 1996 s.12; No. 14 of 1998 s.17.]*



**115. Award of prosecution 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**

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.

**117. Proof of documents**

- (1) In all proceedings in which any notice, order or other document required or authorised to be given or served under this Act has to be proved, the defendant 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.

**118.    Liability of directors etc. when offence committed by body corporate**

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director or other officer concerned in the management of the body corporate, or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence.
- (2) A director or other officer who is guilty of an offence under this Act by virtue of subsection (1) is liable to the penalty to which an individual who is convicted of the same offence is liable.

**119.    Averment of occupation or control**

In a prosecution for an offence under this Act, an averment in the complaint 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 complaint, 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.

**120.    Secrecy**

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 him or obtained by him 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;

- (b) under or in connection with the execution of this Act;
- (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.

**121. General indemnity**

A person who is or has been —

- (a) the Minister, an inspector, an authorised officer, an Authority member or a member of a group, committee, council or panel established under section 25(1);
- (b) the Chief Executive Officer or an officer referred to in section 22(1) or person engaged under section 22(2) or 23(1) or an agent of the Authority; or
- (c) a delegate of the Minister, the Authority, the Chief Executive Officer or Waste Management (WA),

or whose services are or have been used under section 24 is not personally liable for any act of the Minister, an inspector, an authorised officer, the Authority or that group, committee, council or panel or of the Authority member or member of that group, committee, council or panel, the Chief Executive Officer, officer, person or delegate acting as such.

*[Section 121 amended by No. 14 of 1998 s.25.]*

**122. Administrative procedures**

- (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;
  - (b) amend or revoke administrative procedures drawn up under this section; and

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- (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.

**123. Regulations**

- (1) The Governor may, on the recommendation of the Authority, 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 Chief Executive Officer, 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 by No. 14 of 1996 s.4; No. 14 of 1998 s.35.]*

**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);
  - (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 him to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on his 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.

## **Part IX — Transitional**

**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 related to Environmental Protection Act 1971*<sup>3</sup>**

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*<sup>3</sup>**

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*<sup>4</sup> 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.

**Schedule 1 — Penalties**

[Sections 99Q and 99R]

**Part 1 — Tier 1 Offences and Penalties**

**Division 1 — Individuals**

<b>Column 1</b> <b>Item</b>	<b>Column 2</b> <b>Section</b>	<b>Column 3</b> <b>Penalty — individual</b>	<b>Column 4</b> <b>Daily penalty</b>
1	6(7)	\$250 000	\$50 000
2	47(1)	\$125 000	\$25 000
3	48(6)	\$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
9	65(4a)	\$250 000	\$50 000
10	69(5)	\$162 500	\$32 500
11	71(5)	\$250 000	\$50 000
12	73(5)	\$250 000	\$50 000

**Division 2 — Bodies corporate**

<b>Column 1</b> <b>Item</b>	<b>Column 2</b> <b>Section</b>	<b>Column 3</b> <b>Penalty — body corporate</b>	<b>Column 4</b> <b>Daily penalty</b>
1	6(7)	\$500 000	\$100 000
2	47(1)	\$250 000	\$50 000
3	48(6)	\$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
9	65(4a)	\$500 000	\$100 000

**Schedule 1 Penalties**

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<b>Column 1 Item</b>	<b>Column 2 Section</b>	<b>Column 3 Penalty — body corporate</b>	<b>Column 4 Daily penalty</b>
10	69(5)	\$325 000	\$65 000
11	71(5)	\$500 000	\$100 000
12	73(5)	\$500 000	\$100 000

**Part 2 — Tier 2 Offences and Penalties**

**Division 1 — Individuals**

<b>Column 1 Item</b>	<b>Column 2 Section</b>	<b>Column 3 Penalty — individual</b>	<b>Column 4 Daily penalty</b>
1	49(5)	\$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
6	56	\$50 000	\$10 000
7	58(1)	\$62 500	\$12 500
8	61(1)	\$62 500	\$12 500
9	65(5)	\$62 500	\$12 500
10	75(2)	\$62 500	\$12 500
11	73(6)	\$62 500	\$12 500
12	92C(3)	\$62 500	Nil
13	92E(1)	\$62 500	Nil
14	99X(4)	\$62 500	Nil

**Division 2 — Bodies corporate**

<b>Column 1 Item</b>	<b>Column 2 Section</b>	<b>Column 3 Penalty — body corporate</b>	<b>Column 4 Daily penalty</b>
1	49(5)	\$125 000	\$25 000
2	52	\$100 000	\$20 000
3	53(1)	\$100 000	Nil
4	53(2)	\$100 000	Nil
5	55(1)	\$125 000	\$25 000
6	56	\$100 000	\$20 000



<b>Column 1 Item</b>	<b>Column 2 Section</b>	<b>Column 3 Penalty — body corporate</b>	<b>Column 4 Daily penalty</b>
7	58(1)	\$125 000	\$25 000
8	61(1)	\$125 000	\$25 000
9	65(5)	\$125 000	\$25 000
10	73(6)	\$125 000	\$25 000
11	75(2)	\$125 000	\$25 000
12	92C(3)	\$125 000	Nil
13	92E(1)	\$125 000	Nil
14	99X(4)	\$125 000	Nil

**Division 3 — Individuals and bodies corporate**

<b>Column 1 Item</b>	<b>Column 2 Section</b>	<b>Column 3 Penalty — individual or body corporate</b>	<b>Column 4 Daily penalty</b>
1	47(3)	\$50 000	Nil
2	51	\$25 000	\$5 000
3	62(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(2)	\$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	\$50 000	Nil
22	120	\$50 000	Nil

**Schedule 1 Penalties**

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**Part 3 — Tier 3 Offences and Penalties**

<b>Column 1 Item</b>	<b>Column 2 Section</b>	<b>Column 3 Penalty — individual or body corporate</b>	<b>Column 4 Daily penalty</b>
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
10	97(2)	\$5 000	\$1 000
11	110H(6)	\$5 000	Nil

*[Schedule 1 inserted by No. 14 of 1998 s.18.]*

## Schedule 2

[Section 123(2)]

### **Matters in respect of which regulations may be made**

1. In this Schedule —  
“**specified**” means specified in regulations made under section 123.
2. The fees to apply under this Act and the recovery of unpaid fees.
3. The taking of measurements for the purposes of this Act.
4. The conduct and methods of testing the extent and effects of the discharge of waste or emission of noise, odour or electromagnetic radiation, 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 testing referred to in item 4;
  - (c) the equipment for such measurements or testing;
  - (d) the persons taking such measurements, conducting such tests or testing equipment for such measurements 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 the discharge of waste or the emission of noise, odour or electromagnetic radiation 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

**Schedule 2**

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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 the discharge of any waste or the emission of any noise, odour or electromagnetic radiation 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 of noise, odour or electromagnetic radiation from premises, whether or not those premises are prescribed premises or a public place.
15. Prohibiting or regulating the emission 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 in relation to any area, premises, act or thing, including the laying down of minimum requirements.
17. Prohibiting the use of any equipment capable of causing pollution or of discharging excessive amounts of waste.
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.
20. Requiring the installation and use in connection with any equipment of any other equipment to prevent pollution 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.
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 for the implementation of any approved policy.
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 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.

**Schedule 2**

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- 30. Prohibiting the sale, use or operation of an article except in accordance with specified conditions relating to the emission 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.
- 31. Prohibiting the carrying on of a trade, industry or process except in accordance with such conditions relating to the emission 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 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.
- 34. Prescribing administrative procedures for the purposes referred to in section 122(1)(a).
- 35. Prescribing procedures in respect of appeals under Part VII.
- 36. The keeping and inspection 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.
- 37. Creating offences under the regulations and penalties for the commission thereof not exceeding \$5 000.

*[Schedule 2 amended by No. 14 of 1998 ss.19, 21 and 36.]*

**Schedule 3**

[Section 126]

**Transitional provisions related to *Environmental Protection Act 1971***

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,

**Schedule 3**

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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 Chief Executive Officer.
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. 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;
  - (e) the Conservation and Environment Council shall be construed as a reference to the Authority;
  - (f) the Department shall be construed as a reference to the Authority;
  - (g) the Director shall be construed as a reference to the Chief Executive Officer; or

**Schedule 3**

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- (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.

## Schedule 4

[Section 127]

### **Transitional provisions not related to *Environmental Protection Act 1971***

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 Chief Executive Officer of that work within 14 days of that coming into operation; and
  - (b) if required to do so by the Chief Executive Officer by notice in writing served on that occupier, supplies to the Chief Executive Officer 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*<sup>3</sup> 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*<sup>3</sup> 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*<sup>3</sup> 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*<sup>3</sup> 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.

**Schedule 4**

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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*<sup>3</sup> 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;
  - (b) valid for the remainder of the period for which the first-mentioned licence would have been valid had the *Clean Air Act 1964*<sup>3</sup> 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*<sup>3</sup> 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*<sup>3</sup> 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) 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) 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*<sup>3</sup>; 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*<sup>3</sup>; or
  - (ii) a disposal licence under section 27B of the *Rights in Water and Irrigation Act 1914*;

and

**Schedule 4**

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- (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*<sup>3</sup>; 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 Chief Executive Officer 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 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 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*<sup>3</sup> 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*<sup>3</sup> 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*<sup>3</sup> 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*<sup>3</sup> 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*<sup>5</sup> 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*<sup>3</sup>; 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*<sup>5</sup>,

**Schedule 4**

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(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*<sup>5</sup> 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*<sup>5</sup> 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*<sup>5</sup> 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*<sup>5</sup> 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*<sup>5</sup> 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*<sup>5</sup> 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*<sup>5</sup> 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 by No. 57 of 1997 s.54(10).]*



### Notes

<sup>1</sup> This reprint is a compilation as at 7 July 2000 of the *Environmental Protection Act 1986* and includes the amendments effected by the other Acts referred to in the following Table.

### Table of Acts

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Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Environmental Protection Act 1986</i>	87 of 1986	10 December 1986	Proclaimed 20 February 1987 (see section 2 and <i>Gazette</i> 20 February 1987 p.440)	
<i>Acts Amendment (Public Service) Act 1987, section 32</i>	113 of 1987	31 December 1987	Proclaimed 16 March 1988 (see section 2 and <i>Gazette</i> 16 March 1988 p.813)	
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2)	
<i>Environmental Protection Amendment Act 1993</i>	34 of 1993	16 December 1993	14 January 1994 (see section 2 and <i>Gazette</i> 14 January 1994 p.69)	Section 5(2), (3) and (4) transitional <sup>6</sup>
<i>Acts Amendment (Public Sector Management) Act 1994, section 19</i>	32 of 1994	29 June 1994	Proclaimed 1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 December 1994	9 December 1994 (see section 2)	
<i>Planning Legislation Amendment Act (No. 2) 1994, section 46</i>	84 of 1994	13 January 1995	Proclaimed 1 March 1995 (see section 2 and <i>Gazette</i> 21 February 1995 p.567)	
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995, section 188</i>	73 of 1995	27 December 1995	Proclaimed 1 January 1996 (see section 2 and <i>Gazette</i> 29 December 1995 p.6291)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Planning Legislation Amendment Act 1996, Part 3</i>	23 of 1996	11 July 1996	Proclaimed 4 August 1996 (see section 2 and <i>Gazette</i> 2 August 1996 p.3615)	

## **Environmental Protection Act 1986**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2(1))	
<i>Acts Amendment (Assemblies and Noise) Act 1996, Part 3</i>	50 of 1996	31 October 1996	Proclaimed 4 December 1996 (see section 2 and <i>Gazette</i> 3 December 1996 p.6695)	
<i>Transfer of Land Amendment Act 1996, section 153(1)</i>	81 of 1996	14 November 1996	14 November 1996 (see section 2(1))	
<i>Acts Amendment (Land Administration) Act 1997, Part 25</i>	31 of 1997	3 October 1997	30 March 1998 (see section 2 and <i>Gazette</i> 27 March 1998 p.1765)	
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 54</i>	57 of 1997	15 December 1997	15 December 1997 (see section 2(1))	

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Environmental Protection Amendment Act 1998</i>	14 of 1998	21 May 1998	Sections 1, 2, 3, 21, 26, 27, 29, 32, 33, 34, 36, 37 operative 21 May 1998 (see section 2(1)); section 20: 1 July 1998 (see section 2(2) and <i>Gazette</i> 26 June 1998 p.3369); sections 4, 6-9, 11, 12 and 14 (to the extent that it inserts Part VIA heading, Divisions 3 and 4 headings and section 99Q-99X and 99Z-99ZB), 15-19, 22-25, 28, 30, 31 and 35 operative 1 July 1998 (see section 2(3) and <i>Gazette</i> 26 June 1998 p.3369); sections 10, 13 and 14 (to the extent that it inserts Divisions 1 and 2 headings and sections 99A-99P and 99Y) operative 8 January 1999 (see section 2 and <i>Gazette</i> 8 January 1999 p.35); section 5 to be proclaimed <sup>1a</sup>	Division 3 of Part 3 transitional <sup>7</sup>

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Midland Redevelopment Act 1999</i> , section 71	38 of 1999	11 November 1999	Proclaimed 1 January 2000 (see section 2 and <i>Gazette</i> 31 December 1999 p.7059)	

N.B. This Act is affected by the *Environmental Protection (Landfill) Levy Act 1988* (No. 11 of 1988).

<sup>1a</sup> As at the date of this reprint, section 5 of the *Environmental Protection Amendment Act 1998* (No. 14 of 1998) was not operative. It reads as follows —

“

**5. Section 35 amended**

- (1) Section 35 (1) of the principal Act is amended —
  - (a) by inserting “and” after paragraph (a);
  - (b) by deleting “; and” after paragraph (b) and substituting a full stop; and
  - (c) by deleting paragraph (c).

- (2) After section 35(1) of the principal Act the following subsections are inserted —

“

- (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;

- (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.

”  
”

<sup>2</sup> In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990* (No. 105 of 1990)

<sup>3</sup> Repealed by the *Acts Amendment and Repeal (Environmental Protection) Act 1986* (No. 77 of 1986).

<sup>4</sup> Act No. 77 of 1986.

<sup>5</sup> Repealed by the *Acts Amendment (Occupational Health, Safety and Welfare) Act 1987* (No. 41 of 1987).

<sup>6</sup> Section 5(2), (3) and (4) of the *Environmental Protection Amendment Act 1993* (No. 34 of 1993) read as follows —

“

- (2) If the appointment of a person as an Authority member under the provisions of section 7 of the principal Act as enacted before the commencement is still in effect immediately before that commencement, that appointment is terminated on and by virtue of that commencement.

- (3) Subsection (2) does not affect the eligibility of the person to be appointed as an Authority member under section 7 as amended by this Act.
- (4) In subsections (2) and (3) “**Authority member**” has the same meaning as in the principal Act.

”

<sup>7</sup> Division 3 of Part 3 of the *Environmental Protection Amendment Act 1998* (No. 14 of 1998) 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.

”



## 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)
a first notice .....	28(c)(i), 32(1)(a)(i)
a State agreement .....	5(3)
acquire.....	110P(4)
analysis.....	3(1)
analyst .....	3(1)
appeals committee.....	3(1)
applicant.....	3(1)
approved.....	88(6)
approved policy.....	3(1)
assessed scheme .....	3(1)
authorised person .....	3(1)
Authority.....	3(1)
Authority member.....	3(1)
beneficial use .....	3(1)
books.....	3(1)
business arrangement .....	110P(4)
Chairman.....	3(1)
Chief Executive Officer .....	3(1)
committee of inquiry .....	3(1)
condition .....	3(1)
convicted.....	99T(a)
corporation .....	55(3), 58(4)
decision-making authority.....	3(1)
Department.....	3(1)
Deputy Chairman .....	3(1)
designated area.....	57(5)
designated person.....	99H
discharge .....	3(1)
dispose of .....	110P(4)
draft policy .....	3(1)
driver.....	3(1)
environment .....	3(1)
equipment.....	3(1)
final approval .....	3(1)
fuel burning equipment .....	3(1)
Fund .....	110A
industrial plant .....	3(1)
infringement notice offence .....	99H
inspector.....	3(1)

**Defined Terms**

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levy.....	110A
licence .....	3(1)
licensee.....	3(1)
materials .....	3(1)
Metropolitan Region Scheme.....	3(1)
monetary benefits .....	99Z(2)
monitoring programme .....	3(1)
motor vehicle .....	3(1)
NEPM .....	3(1)
noise .....	3(1)
occupier.....	3(1)
owner .....	3(1)
participate.....	110P(4)
period of public review .....	3(1)
pollution .....	3(1)
pollution abatement notice .....	3(1)
practicable .....	3(1)
practicable means .....	3(1)
premises .....	3(1)
prescribed premises.....	3(1)
property .....	110P(4)
proponent .....	3(1)
proposal.....	3(1)
proposal under an assessed scheme.....	3(1)
protection .....	3(1)
public authority .....	3(1)
public place .....	3(1)
public review.....	48C(7)
regional planning scheme.....	3(1)
Registrar of Deeds and Transfers .....	66(5)
Registrar of Titles .....	66(5)
relevant NEPM.....	72(5)
reserve .....	3(1)
responsible authority .....	3(1)
responsible Minister .....	3(1)
road .....	3(1)
scheme .....	3(1)
scheme Act.....	3(1)
sell.....	3(1)
specified .....	6(10), 62(5), 65(8), 71(6), Sch.2, cl.1
subdivision .....	3(2a)
subsidiary .....	55(3), 58(4)
the condition.....	48H(1)
the confidential information.....	40(5)

Defined Terms

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the delegate .....	18(1)(c), 19(1)(c), 20(1)(c)
the draft policy .....	31(a)(i)
the principal offence .....	99S
the regulations .....	3(1)
the relevant Act .....	Sch.4, cl.23
the relevant premises .....	55(1)
the repealed Act .....	3(1)
the Western Australian Planning Commission .....	3(1)
Tier 1 offence .....	3(1)
Tier 2 offence .....	3(1)
Tier 3 offence .....	3(1)
town planning scheme .....	3(1)
trade .....	3(1)
unreasonable emission .....	49(1)
unreasonable noise .....	3(1)
vehicle .....	3(1)
vessel .....	3(1)
waste .....	3(1)
Waste Management (WA) .....	3(1)
waste management operation .....	110K
Water and Rivers Commission .....	57(5)
waters .....	3(1)
works approval .....	3(1)