



Western Australia

Environmental Protection Amendment Act 2020

Environmental Protection Amendment Act 2020

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Western Australia

Environmental Protection Amendment Act 2020

No. 40 of 2020

**An Act to amend the *Environmental Protection Act 1986* and to
consequentially amend other Acts.**

[Assented to 19 November 2020]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Environmental Protection Amendment Act 2020*.

2. Commencement

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) section 4(6) — on the later of the following —
 - (i) the day on which the *Planning and Development Amendment Act 2020* section 64 comes into operation;
 - (ii) immediately after section 4(3) comes into operation;
- (c) section 59 — on the day on which section 83 comes into operation;
- (d) section 117 — on the day after assent day;
- (e) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

(2) However —

- (a) if no day is fixed under subsection (1)(e) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends; or
- (b) if paragraph (a) does not apply, and a provision of this Act does not come into operation before the end of the period of 10 years beginning on assent day, that provision is repealed on the day after that period ends.

(3) Despite subsection (1), if section 112 has not come into operation before the day on which the *Planning and*

Development Amendment Act 2020 section 68(2) comes into operation, the 2nd row in the Table to section 112 —

- (a) does not come into operation; and
- (b) is deleted on that day.

- (4) Despite subsection (1), if section 112 has not come into operation before the day on which the *Planning and Development Amendment Act 2020* section 70 comes into operation, the 4th row in the Table to section 112 —

- (a) does not come into operation; and
- (b) is deleted on that day.

Part 2 — *Environmental Protection Act 1986* amended

3. Act amended

This Part amends the *Environmental Protection Act 1986*.

4. Section 3 amended

- (1) In section 3(1) delete the definitions of:

bilateral agreement

Chairman

Deputy Chairman

implementation agreement or decision

implementation conditions

proposal

- (2) In section 3(1) delete the definitions of:

applicant

licensee

prescribed premises

works approval

- (3) In section 3(1) insert in alphabetical order:

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

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

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

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

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

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

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

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

environmental undertaking means —

- (a) a biodiversity conservation agreement under the *Biodiversity Conservation Act 2016* section 114; or
- (b) a biodiversity conservation covenant under the *Biodiversity Conservation Act 2016* section 122; or
- (c) a conservation covenant or agreement to reserve under the *Soil and Land Conservation Act 1945* section 30B; or
- (d) an environmental protection covenant; or
- (e) some other form of binding undertaking to manage land for the protection of the environment;

implementation conditions has the meaning given in section 44A;

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

planning instrument means —

- (a) a scheme or a strategy, policy or plan made or adopted under a scheme; or
- (b) a State planning policy approved under the *Planning and Development Act 2005* section 29 and published in the *Gazette*; or

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

prescribed means prescribed by the regulations;

proposal means any of the following but not a scheme —

- (a) a policy, plan or programme;
- (b) a project, undertaking or development;
- (c) a change in land use;
- (d) an amendment of any proposal described in paragraph (a), (b) or (c);
- (e) an amendment described in paragraph (b) of the definition of **significant amendment**;

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

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

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

significant amendment, of an approved proposal, means —

- (a) a proposal that —
 - (i) is or includes the amendment of an approved proposal; and
 - (ii) is likely, if implemented, to have a significant effect on the environment;

or

- (b) a proposed amendment to implementation conditions relating to an approved proposal if implementation of the proposal under the amended implementation conditions is likely to have a significant detrimental effect on the

environment in addition to, or different from,
the effect the proposal has in its implementation
under the existing implementation conditions;

- (4) In section 3(1) insert in alphabetical order:

prescribed activity means an activity prescribed as a
prescribed activity for the purposes of Part V;

- (5) In section 3(1):

- (a) in the definition of ***appeals committee*** delete
“section 45(3)” and insert:

section 45(6)

- (b) in the definition of ***Authority member*** delete “Chairman
and Deputy Chairman;” and insert:

Chair and Deputy Chair;

- (c) in the definition of ***decision-making authority*** —
(i) delete “***authority*** means” and insert:

authority, in relation to a proposal, means

- (ii) delete “any proposal” and insert:

the proposal

- (d) in the definition of ***Western Australian Planning
Commission*** delete “*Act 2005*;” and insert:

Act 2005.

- (6) In section 3(1) in the definition of *planning instrument* paragraph (b) delete “section 29 and published in the *Gazette*; or” and insert:

Part 3; or

- (7) Delete section 3(2) and insert:

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

- (a) a statement served and published under section 45(8) or under section 45(8) as applied by section 46(8); or
- (b) a statement published under section 45(8)(b) as applied by section 110(3); or
- (c) a statement published as required by section 45D(2) or (3); or
- (d) if it is appropriate in the context, the implementation agreement or decision, as defined in section 44A, set out in a statement mentioned in paragraph (a), (b) or (c).

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

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

- (8) In section 3(2b) delete “section 38(6)” and insert:

section 38H(2)

- (9) In section 3(3a) before “changing” insert:

amendment or

- (10) Delete section 3(4) and insert:

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

5. Section 3A amended

In section 3A(3) in the definition of *threshold amount* delete “\$20 000,” and insert:

\$100 000,

6. Section 7 amended

- (1) Delete section 7(3) and insert:

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

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- (2) In section 7(4a), (4b) and (4c) delete “Chairman” (each occurrence) and insert:

Chair

- (3) Delete section 7(7) and (8) and insert:

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

- (a) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* (Commonwealth); or
- (b) after appointment as an Authority member, becomes a person employed under and subject to the *Public Sector Management Act 1994* Part 3; or

- (c) is removed from office by the Governor —

- (i) on the grounds of misbehaviour, incompetence, or mental or physical incapacity, impairing the performance of the Authority member’s functions and proved to the satisfaction of the Governor; or
 - (ii) on the grounds of being absent without leave, if it is proved to the satisfaction of the Governor that the Authority member has been absent, except on leave granted by the Minister, from 3 consecutive meetings of the Authority of which the Authority member has had reasonable notice;

or

- (d) resigns from office by notice in writing delivered to the Minister.
- (8) The person who is the Chair or the Deputy Chair ceases to hold that office if the person's office as an Authority member becomes vacant.

7. Section 8 replaced

Delete section 8 and insert:

8. Independence of Authority and Chair

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

- (a) the Authority;
- (b) the Chair.

8. Section 11 replaced

Delete section 11 and insert:

11. Meetings of Authority

- (1) Meetings of the Authority are to be held at such times and places as the Authority determines, but —
 - (a) the Chair may convene a meeting of the Authority at any time; and
 - (b) the Minister may convene a meeting of the Authority if the Minister wishes it to discuss a matter on which the Minister has requested its advice.

- (2) At a meeting of the Authority —
 - (a) the person who presides is —
 - (i) the Chair, if present; or
 - (ii) if the Chair is not present — the Deputy Chair, if present; or
 - (iii) if both the Chair and the Deputy Chair are not present — an Authority member elected to preside by the Authority members present;
 - and
 - (b) 3 Authority members constitute a quorum; and
 - (c) subject to section 12(5)(b), each Authority member present must cast a deliberative vote on any question that is to be decided; and
 - (d) any question must be decided by a majority of the votes cast by the Authority members present, but if the voting on a question is equally divided, the person presiding at that meeting has a casting vote in addition to a deliberative vote; and
 - (e) a question cannot be decided unless at least 3 Authority members vote on it.
- (3) Notice of meetings of the Authority must be given to the Department.
- (4) The CEO, or a representative of the CEO, is entitled to be present at any meeting and to take part in the consideration and discussion of any matter before a meeting, but cannot vote on any matter.
- (5) At a meeting of the Authority the presence of an Authority member need not be by attendance in person but may be by that Authority member, each other Authority member at the meeting and any person at the meeting under subsection (4) being simultaneously in

contact by telephone or other means of instantaneous communication.

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

9. Section 14 amended

Delete section 14(2) and insert:

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

10. Section 14A inserted

After section 14 insert:

14A. Decision without meeting

- (1) The purpose of this section is to enable the Authority to make a decision on a matter (the *matter*) without a meeting of the Authority being held.
- (2) A notice setting out a draft decision on the matter may be sent by the Chair to each other Authority member for consideration.
- (3) The Deputy Chair may send a notice under subsection (2) if the Chair is unable to do so for any reason.

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- (4) Subject to subsection (5), an Authority member may, by notice sent to each other Authority member, cast a vote on whether or not the decision should be made.
- (5) An Authority member who has a direct or indirect pecuniary interest in the matter cannot cast a vote under subsection (4).
- (6) If at least 3 Authority members cast a vote under subsection (4) and a majority of the votes are in favour of the decision being made, the decision is taken to have been made and is as effectual as if it had been made at a meeting of the Authority.
- (7) The Authority must cause a record to be kept of each decision under subsection (6) and section 14(2) applies to that record.

11. Section 16 amended

In section 16:

- (a) delete paragraph (aa);
- (b) in paragraph (q) before “prescribed.” insert:

conferred by this Act or

12. Section 17 amended

Delete section 17(4).

13. Section 26 amended

In section 26(1):

- (a) delete paragraph (d) and insert:
 - (d) cause a notice containing prescribed particulars of the draft referred to in paragraph (c), including the places at which, and the period during which, that draft will be available for public inspection, to be published —
 - (i) in the *Gazette*; and
 - (ii) if the regulations so require, in any other manner specified in the regulations;
- and
- (b) in paragraph (f) delete “of the kind referred to in paragraph (d)(ii),” and insert:

concerned with the protection of a portion of the environment confined to, or with the prevention, control or abatement of pollution or environmental harm in, a particular local government district or districts,

14. Section 32 amended

In section 32(1)(a)(iii) delete “of the kind referred to in section 26(1)(d)(ii),” and insert:

concerned with the protection of a portion of the environment confined to, or with the prevention, control or abatement of pollution or environmental harm in, a particular local government district or districts,

15. Sections 37B to 38A replaced

Delete sections 37B, 38 and 38A and insert:

37B. Terms used

(1) In this Division —

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

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

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

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

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

38. Referral of proposals

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

(2) In the case of a proposal under an assessed scheme, only the proponent can refer the proposal to the Authority under subsection (1).

(3) If it appears to the Minister that there is public concern about the likely effect of a proposal, if implemented, on the environment, the Minister may refer the proposal to the Authority.

- (4) A decision-making authority must refer a proposal to the Authority as soon as it has notice of the proposal if the proposal appears to it to be —
 - (a) a significant proposal; or
 - (b) a proposal of a prescribed class.
- (5) Subsection (4) does not apply if the proposal has been referred to the Authority under subsection (1) or (3).
- (6) In the case of a proposal under an assessed scheme, the application of subsection (4)(a) is subject to section 48I.
- (7) The proponent of a strategic proposal may refer the proposal to the Authority.

38A. Calling in a proposal

- (1) If a proposal has not been referred to the Authority under section 38, the Authority must require the proponent or a decision-making authority to refer the proposal to the Authority if the Authority considers that the proposal is —
 - (a) a significant proposal; or
 - (b) a proposal of a prescribed class.
- (2) A requirement under subsection (1) must be in writing and must specify the period within which it has to be complied with.
- (3) A proponent or decision-making authority that is required under subsection (1) to refer a proposal to the Authority must do so within the period specified in the requirement.
- (4) In the case of a proposal under an assessed scheme, the Authority can only require the referral of the proposal if it did not, when it assessed the assessed scheme under Division 3, have sufficient scientific or technical

information to enable it to assess the environmental issues raised by the proposal.

- (5) A requirement under subsection (1) has effect despite section 48I(2).
- (6) A proposal referred to the Authority under subsection (3) is taken to have been referred to the Authority under section 38.

38B. Requirements as to referrals

- (1) A referral to the Authority must be in writing.
- (2) A proposal cannot be referred to the Authority more than once unless —
 - (a) under section 38D, a referral of the proposal is taken to have been withdrawn; or
 - (b) under section 38F(4), a referral of the proposal has been declared to have been withdrawn; or
 - (c) under section 40A, assessment of the proposal has been terminated; or
 - (d) under section 47A, a Ministerial statement relating to the proposal has been withdrawn or is taken to have been withdrawn.

38C. Proponent may amend a referred proposal

- (1) At any time before the Authority decides whether or not to assess a referred proposal, the proponent may, by written notice, request the Authority to approve of the proposal being amended in the manner set out in the request.
- (2) The Authority may, at its discretion, give or refuse to give approval under subsection (1).

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

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

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

38E. Proposals derived from assessed strategic proposals

- (1) A referred proposal may be dealt with under this section if —
- (a) there has been an assessment under this Division (the *strategic assessment*) of a strategic proposal; and
 - (b) a Ministerial statement has been published in relation to the strategic proposal.
- (2) If this section applies, the proponent of a referred proposal may request the Authority in writing to declare the referred proposal to be a derived proposal.
- (3) If the proposal is referred by the proponent, a request under subsection (2) may be made in the referral.
- (4) If a request is made under subsection (2), the Authority must declare the referred proposal to be a derived proposal if it considers that —
- (a) the referred proposal was identified in the strategic proposal; and

- (b) in the implementation agreement or decision set out in the statement mentioned in subsection (1)(b) it was agreed or decided that the referred proposal could be implemented, or could be implemented subject to conditions and procedures agreed or decided under section 45.
- (5) Despite subsection (4), the Authority may refuse to declare the referred proposal to be a derived proposal if it considers that —
 - (a) environmental issues raised by the proposal were not adequately assessed in the strategic assessment; or
 - (b) there is significant new or additional information that justifies the reassessment of the issues raised by the proposal; or
 - (c) there has been a significant change in the relevant environmental factors since the strategic assessment was completed.
- (6) If the Authority declares the referred proposal to be a derived proposal, it must —
 - (a) record the declaration in the public record kept under section 39(1); and
 - (b) give written notice of the declaration to the Minister.
- (7) If the Authority declares the referred proposal to be a derived proposal, it cannot decide to assess the proposal except for the purposes of conducting an inquiry under section 46(4).
- (8) If the Authority refuses to declare the referred proposal to be a derived proposal, it must give written notice of the refusal to the proponent.
- (9) A notice under subsection (8) may be included in the notice given under section 38G(1)(b)(i).

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

38F. Request for further information

- (1) This subsection applies if the Authority considers that it does not have enough information about a referred proposal to enable it to decide —
- (a) whether or not to assess the proposal; or
 - (b) whether or not to agree to a request made under section 38E(2).
- (2) If subsection (1) applies, the Authority may, by written notice (a *requisition*), request any person to provide it with additional information about the proposal before the end of a period specified in the notice (the *compliance period*).
- (3) In determining whether the 28 day period set by section 38G(1) has ended the following are to be disregarded —
- (a) if a requisition is complied with within the compliance period — the period from the day on which it was issued until the day on which it was complied with;
 - (b) if a requisition is not complied with within the compliance period — the compliance period.
- (4) If a requisition in relation to a proposal is issued to the person who referred the proposal and the compliance period ends without the requisition having been complied with, the Authority may, by written notice to the person, declare the referral to have been withdrawn.
- (5) If the proposal was not referred by the proponent, the Authority must obtain the consent of the proponent before giving notice under subsection (4).

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

- (1) The Authority must, within 28 days after the referral of a proposal —
 - (a) decide whether or not to assess the referred proposal; and
 - (b) give written notice of the decision —
 - (i) to the proponent; and
 - (ii) if the proposal was not referred by the proponent — to the person that referred it; and
 - (iii) to any decision-making authority determined by the Authority to be a relevant decision-making authority in relation to the proposal.
- (2) Subsection (1) does not apply if —
 - (a) under section 38D, the referral is taken to have been withdrawn; or
 - (b) the proposal is declared under section 38E to be a derived proposal; or
 - (c) under section 38F(4), the referral has been declared to have been withdrawn.
- (3) The Authority's decision under subsection (1) must be based on —
 - (a) any information submitted to it when the proposal was referred; and
 - (b) any additional information provided to it under section 38F; and
 - (c) any information derived from its own investigations and inquiries.

- (4) In making its decision under subsection (1) the Authority may take into account other statutory decision-making processes that can mitigate the potential impacts of the proposal on the environment.
- (5) If, for any reason, a relevant decision-making authority is not given notice as required by subsection (1)(b)(iii) that a proposal is going to be assessed, the Authority may give written notice to the decision-making authority under this subsection.
- (6) Notice under subsection (5) may be given by the Authority of its own motion or at the request of the decision-making authority, and may be given at any time before a report on the proposal is given to the Minister under section 44(1).
- (7) If the Authority decides not to assess a proposal, it may nevertheless give advice and make recommendations on the environmental aspects of the proposal to the proponent or any other relevant person or authority.

38H. Nomination of person responsible for proposal

- (1) This section applies to a proposal if —
 - (a) the proposal is referred, or is required to be referred, to the Authority under section 38; and
 - (b) the Authority decides that the proposal should be assessed by it under this Part.
- (2) Except when the responsibility for a proposal is imposed on a public authority under another written law, the Authority must nominate a person as being responsible for the proposal.

- (3) If an individual is nominated under subsection (2), the nomination may be made —
 - (a) by reference to the individual's name; or
 - (b) by reference to the individual being the person for the time being holding or acting in a particular office or position.
- (4) Written notice of a nomination under subsection (2) must be served on —
 - (a) the person nominated; and
 - (b) any decision-making authority to which or whom notice of the Authority's decision to assess the proposal has been given under section 38G(1)(b)(iii) or (5).

38I. Change of person responsible for proposal

- (1) A person nominated under section 38H(2) in relation to a proposal that proposes to transfer responsibility for the proposal to another person must give written notice advising the name of that other person —
 - (a) to the Authority; or
 - (b) if a statement relating to the proposal has been published under section 45(8)(b) — to the Minister.
- (2) The Authority may —
 - (a) revoke a nomination under section 38H(2) in relation to a proposal; and
 - (b) nominate another person under section 38H(2) in relation to the proposal.
- (3) Subsection (2) applies even if —
 - (a) no written notice has been given to the Authority under subsection (1); or

- (b) the person mentioned in subsection (2)(b) is not the person named in a written notice given to the Authority under subsection (1).
- (4) Subsections (1) and (2) apply even if a report on the proposal has been published under section 44(3) or a statement has been published under section 45(8)(b) but, if a statement has been published, the powers conferred by subsection (2) must be exercised by the Minister.
- (5) Subsections (1) and (2) do not apply if the assessment of the proposal has been terminated under section 40A.
- (6) For the purposes of subsections (1) and (2) and section 3(2b), a person that has been notified under section 38G(1)(b)(i) that the Authority is going to assess a proposal is taken to have been nominated under section 38H(2) as being responsible for the proposal whether or not such a nomination has been made.

16. Section 39 replaced

Delete section 39 and insert:

39. Authority to keep records of referred proposals

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

- (a) whether or not that proposal is to be assessed under this Part; and
- (b) if the proposal is to be assessed under this Part, the level of assessment.

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17. Sections 39A and 39B deleted

Delete sections 39A and 39B.

18. Section 40 amended

- (1) In section 40(3) delete “subsection (2)(b).” and insert:

subsection (2)(b) and publish an indicative outline of the timing of the environmental review.

- (2) Delete section 40(4) and (5) and insert:

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

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

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

- (a) declare the information or report to be available for public review; and
- (b) specify the period within which, the extent to which and the manner in which public authorities or persons may make submissions to the Authority in respect of the information or report.

- (3) In section 40(6):
- (a) delete “causes any information or report to be made available for public review under subsection (4) —” and insert:

declares any information or report to be available for public review under subsection (5)(a) —
 - (b) delete paragraph (a)(i) and insert:
 - (i) at the proponent’s own expense, publish notice of that information or report being available for public review; and
 - (c) in paragraph (a)(ii) before “at such” insert:

in such manner and
 - (d) in paragraph (a)(iii) before “at such” insert:

in such manner,

19. Section 40AA inserted

Before section 40A insert:

40AA. Assessment of significant amendments

- (1) This section applies if the Authority assesses a significant amendment of an approved proposal.
- (2) The Authority must assess the significant amendment in the context of the approved proposal and have regard to the combined effect that the implementation of the

approved proposal and the significant amendment might have on the environment.

- (3) For the purposes of subsection (2) the Authority may inquire into and report on the implementation conditions relating to the approved proposal.
- (4) Each of those implementation conditions continues to apply in relation to the approved proposal subject to —
 - (a) it being amended under section 45C or 46(9);
or
 - (b) revised conditions or procedures being agreed or decided under sections 45 and 45A in relation to the approved proposal after the significant amendment has been assessed.
- (5) Subsection 41A(1) does not apply to the doing of anything to implement the approved proposal.
- (6) If a statement is served and published under subsection 45(8), it may be in the form of —
 - (a) a statement that only applies to the significant amendment; or
 - (b) a statement that includes the implementation conditions for the approved proposal as amended by the significant amendment, and supersedes the previous Ministerial statement relating to the approved proposal.

20. Section 40A amended

After section 40A(1)(a) insert:

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

21. Section 40B replaced

Delete section 40B and insert:

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

- (1) Sections 41, 41A and 45(12) do not apply in relation to a strategic proposal.
- (2) Sections 44, 45 (other than subsection (12)) and 45A apply in relation to a strategic proposal as if references in them to implementation were references to the implementation of a future proposal identified in the strategic proposal in the event of that future proposal being declared under section 38E to be a derived proposal.
- (3) This section does not affect the application of sections 41, 41A, 44, 45 and 45A in relation to a strategic proposal to the extent to which the strategic proposal is itself a significant proposal.

22. Section 41 amended

- (1) In section 41(2):
 - (a) delete paragraph (a) and insert:
 - (a) has referred a proposal to the Authority under section 38; or
 - (b) in paragraph (b) delete “section 38(3)” and insert:

section 38A(1)

- (c) in paragraph (c) delete “section 39A(3)(b) that the Authority is not going to assess the proposal and the period within which an appeal against that decision” and insert:

section 38G(1)(b)(iii) that the Authority is not going to assess the proposal and the period within which an appeal against the decision that the proposal not be assessed

- (d) in paragraph (d) delete “section 45(7),” and insert:

section 45(12),

- (2) In section 41(3):

- (a) delete “section 39A(3)(c) or (4)” and insert:

section 38G(1)(b)(iii) or (5)

- (b) delete “section 45(7)” and insert:

section 45(12)

23. Section 41A amended

- (1) In section 41A(1) delete “section 45(5)(b) or a notification is given under section 45(8)” and insert:

section 45(8)(b) or a notification is given under section 45(13)

- (2) In section 41A(2) delete “section 45(5)(b) and (8) were references to the application of those provisions to any revised or further” and insert:

section 45(8)(b) and (13) were references to the application of those provisions to any new

24. Section 42 amended

In section 42(1)(b) delete “Chairman of” and insert:

Chair of

25. Section 43 amended

- (1) In section 43(1)(a) delete “proposal referred to it under section 38” and insert:

referred proposal

- (2) In section 43(2) delete “39, 39A(3), 40(2), (3), (4), (5), (6), (7), and (8),” and insert:

38G(1), 39, 40(2) to (8),

- (3) Delete section 43(3) and insert:

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

- (3A) A direction can be given under subsection (1) even if the Minister has dismissed an appeal under section 100(1)(a) against a decision by the Authority that the proposal is not to be assessed.

26. Section 43A replaced

Delete section 43A and insert:

43A. Amendments to proposals during assessment

- (1) While a proposal is being assessed, the proponent may, by written notice —
- (a) advise the Authority that the proponent wishes to amend the proposal in the manner set out in that notice; and
 - (b) request that the Authority approve of the assessment of the proposal being completed in respect of the proposal as so amended.
- (2) The Authority may, at its discretion, give or refuse to give approval under subsection (1)(b).
- (3) If the Authority gives approval under subsection (1)(b) —
- (a) the proposal as so amended is taken to have been referred to the Authority under section 38; and
 - (b) without limiting section 40, the Authority, if it thinks fit, may perform, or perform again, any function that it could have performed, or has already performed, in respect of the proposal.

27. Section 44 amended

- (1) In section 44(1) delete “is to” and insert:

must

- (2) Before section 44(2a) insert:

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

- (3) In section 44(3)(b)(ii) delete “section 39A(3)(c) or (4)” and insert:

section 38G(1)(b)(iii) or (5)

28. Sections 45 to 45C replaced

Delete sections 45, 45A, 45B and 45C and insert:

44A. Terms used

In this Division —

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

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

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

implementation conditions means the conditions and procedures, if any, agreed or decided in relation to the assessed proposal under section 45 and 45A (or under those sections as applied by section 46(8)) and, if those conditions and procedures are amended under section 45C or on an appeal lodged under section 100(3), means those conditions and procedures as so amended;

implementation issue means —

- (a) the issue of whether or not the assessed proposal may be implemented; or
- (b) the issue of the conditions and procedures, if any, to which the assessed proposal, if implemented, should be subject;

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

45. Procedure for deciding if assessed proposal may be implemented

- (1) This section applies after the Minister has caused a report to be published under section 44(3)(a).
- (2) For the purposes of this section the Minister must determine which or whom of the decision-making authorities in relation to the assessed proposal the Minister considers to be a key decision-making authority.

- (3) If the key decision-making authority, or one or more of the key decision-making authorities, is or are another Minister or other Ministers, the Minister must consult and, if possible, agree with that Minister or those Ministers on the implementation issues.
- (4) If neither the key decision-making authority, nor any of the key decision-making authorities, as the case requires, is another Minister, the Minister must consult and, if possible, agree with that key decision-making authority or those key decision-making authorities on the implementation issues.
- (5) If the Minister and the other Minister or Ministers referred to in subsection (3) cannot agree on an implementation issue, the Minister must refer the matter or matters in dispute to the Governor for decision, and the decision of the Governor on that matter or matters is final and without appeal.
- (6) If the Minister and the decision-making authority or decision-making authorities referred to in subsection (4) cannot agree on an implementation issue, the Minister must appoint an appeals committee to consider and report to the Minister on the matter or matters in dispute.
- (7) Sections 106, 107, 108, 109 and 110 apply to and in relation to a matter in respect of which the Minister has appointed an appeals committee under subsection (6) as if that matter were the subject of an appeal from a decision of the Minister.

- (8) If the implementation agreement or decision is that the assessed proposal may be implemented, or may be implemented subject to implementation conditions, the Minister must within 30 days of the agreement or decision being made —
- (a) cause copies of a statement setting out the implementation agreement or decision to be served on —
 - (i) the Authority; and
 - (ii) each key decision-making authority and any other decision-making authority to which or whom notice of the Authority's decision to assess the proposal was given under section 38G(1)(b)(iii) or (5); and
 - (iii) the proponent of the assessed proposal; and
 - (iv) the person who referred the assessed proposal (if it was not referred by a person referred to in subparagraph (ii) or (iii));and
 - (b) cause the statement to be published as soon as is practicable after it is served under paragraph (a).
- (9) Section 45A sets out some kinds of implementation conditions that may be agreed or decided in relation to the assessed proposal, but nothing in that section prevents any other implementation condition from being agreed or decided.
- (10) Despite anything in this section —
- (a) an implementation issue cannot be agreed or decided under this section during the period of 21 days referred to in section 100(3a)(b); and

- (b) if an appeal is lodged under section 100(1)(d) in respect of the report mentioned in subsection (1) —
 - (i) an implementation issue cannot be agreed or decided under this section while the appeal is pending; and
 - (ii) if the decision on the appeal is to remit the assessed proposal to the Authority for further assessment or reassessment — an implementation issue cannot be agreed or decided under this section before the report on that further assessment or reassessment has been published under section 44(3)(a).

- (11) Subsection (12) applies if —
 - (a) a statement has been published under subsection (8)(b) in relation to the assessed proposal; and
 - (b) the Minister is satisfied that there is no reason why the assessed proposal should not be implemented.

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

- (13) If the implementation agreement or decision is that the assessed proposal may not be implemented, the Minister must within 30 days of the agreement or decision being made give written notice of the implementation agreement or decision to —
 - (a) the Authority; and
 - (b) each key decision-making authority and any other decision-making authority to which or

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

- (c) the proponent of the assessed proposal; and
 - (d) the person who referred the assessed proposal (if it was not referred by a person referred to in paragraph (b) or (c)).
- (14) If notice is given under subsection (13) of an implementation agreement or decision for a significant amendment of an approved proposal, that implementation agreement or decision does not affect the implementation of the approved proposal.

45A. Implementation conditions

- (1) The following list sets out things the proponent of the assessed proposal can be required to do under implementation conditions —
- (a) substantially commence implementation of the proposal within a specified period or before a specified date;
 - (b) at the proponent's expense, take environmental protection, abatement or restoration measures on the subject land, or on other land, in order to directly or indirectly offset the impacts of the implementation of the proposal on the environment;
 - (c) contribute moneys to be used for the purpose of taking environmental protection, abatement or restoration measures on the subject land or other land;
 - (d) give an environmental undertaking in relation to other land;
 - (e) arrange for an environmental protection covenant to be given by a specified person

other than the proponent in relation to other land;

- (f) at the proponent's expense, prepare, implement and adhere to environmental management systems, environmental management plans and environmental improvement plans;
- (g) at the proponent's expense, arrange for audits as to whether or not the implementation conditions have been complied with to be carried out at specified times by a person nominated or approved by the CEO and report to the CEO on the findings of those audits.

(2) In subsection (1) —

other land means land other than the subject land;

specified means specified in an implementation condition;

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

- (3) If the implementation agreement or decision authorises the assessed proposal to be implemented only if it is implemented in 2 or more stages, the implementation agreement or decision may include implementation conditions specifying requirements in relation to the implementation of a stage of the proposal that must be met to the satisfaction of the CEO before the implementation of the next stage can take place.
- (4) An implementation condition may require the proponent to pay fees or charges payable under section 48AA(1) in relation to the assessed proposal.

45B. Implementation of derived proposal

- (1) In this section —
section 38E declaration means a declaration under section 38E that a proposal is a derived proposal.
- (2) Subject to subsection (3), when the Minister is notified under section 38E(6)(b) of a section 38E declaration, the previous Ministerial statement relating to the derived proposal takes effect and the Minister must cause written notice of the taking effect of the Ministerial statement to be served on —
 - (a) the Authority; and
 - (b) each decision-making authority that received the Ministerial statement under section 45(8)(a)(ii); and
 - (c) the proponent of the derived proposal; and
 - (d) the person who referred the derived proposal (if it was not referred by a person referred to in paragraph (b) or (c)).
- (3) If the previous Ministerial statement relating to the derived proposal included implementation conditions relating generally to 2 or more future proposals, the Minister may, in the notice under subsection (2), specify which of those implementation conditions apply to the derived proposal and, subject to sections 46 and 46A, the conditions and procedures so specified are the implementation conditions relating to the derived proposal.

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

- (1) The Minister, after receiving a written request from the proponent to do so, may —
 - (a) approve an amendment to an approved proposal; or
 - (b) amend implementation conditions relating to an approved proposal; or
 - (c) approve an amendment to an approved proposal and amend implementation conditions relating to the approved proposal.
- (2) The Minister may, by written notice, request the proponent to provide the Minister with additional information about an amendment to which a request under subsection (1) applies to enable the Minister to decide whether or not to approve or make the requested amendment.
- (3) The Minister must not approve or make an amendment requested under subsection (1) if the Minister considers that the requested amendment is a significant amendment.
- (4) Whether or not there has been a request under subsection (1), the Minister may amend an approved proposal if the Minister considers that the amendment is of a minor nature and is necessary and desirable in order to correct in the description of the proposal —
 - (a) a clerical mistake or unintentional error or omission; or
 - (b) a figure that has been miscalculated; or
 - (c) a misdescription of any person, thing or property.

- (5) Whether or not there has been a request under subsection (1), the Minister may amend implementation conditions relating to an approved proposal if the Minister considers that the amendment is of a minor nature and is necessary and desirable in order to —
- (a) standardise the implementation conditions applying to different proposals; or
 - (b) correct in the implementation conditions —
 - (i) a clerical mistake or unintentional error or omission; or
 - (ii) a figure that has been miscalculated; or
 - (iii) a misdescription of any person, thing or property;
- or
- (c) make an administrative change to the format of the implementation conditions that does not alter the obligations of the proponent.
- (6) The Minister must cause notice of amendments approved or made under subsection (1), (4) or (5) —
- (a) to be given in writing to —
 - (i) the Authority; and
 - (ii) each decision-making authority that was consulted under this Act in relation to the implementation conditions; and
 - (iii) the proponent of the proposal;
- and
- (b) to be published.

- (7) If the Minister refuses to approve or make an amendment as requested under subsection (1), the Minister must give written notice of the refusal to the proponent and the proponent may refer the requested amendment to the Authority under section 38(1) as a significant amendment of an approved proposal.
- (8) Without limiting this Division, where notice has been given under subsection (7) in relation to a requested amendment of implementation conditions —
 - (a) the Minister may make a request under section 46(1) whether or not the Minister considers that the implementation conditions, or any of them, should be amended; or
 - (b) the Minister may agree with any decision-making authority that was consulted under this Act in relation to the existing implementation conditions that the proposed amendment to conditions is a significant amendment that must be referred by the decision-making authority under section 38(4) as a significant proposal.

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

- (1) Without limiting section 45C, an amendment approved or made under section 45C(1) may comprise or include —
 - (a) the division of an approved proposal into 2 or more proposals (the *separate proposals*) and the division of the implementation agreement or decision for the approved proposal into implementation agreements or decisions for each of the separate proposals; or

- (b) the consolidation of 2 or more approved proposals into 1 proposal (the *consolidated proposal*) and the consolidation of the implementation agreements or decisions for the approved proposals to form an implementation agreement or decision for the consolidated proposal.
- (2) If subsection (1)(a) applies, the notice given and published under section 45C(6) must be in the form of statements relating to each of the separate proposals and those statements supersede the previous Ministerial statement relating to the approved proposal.
- (3) If subsection (1)(b) applies, the notice given and published under section 45C(6) must be in the form of a statement relating to the consolidated proposal and that statement supersedes the previous Ministerial statements relating to the approved proposals.

29. Section 46 amended

- (1) Delete section 46(1) and insert:
 - (1) If the Minister considers that the implementation conditions relating to an approved proposal, or any of them, should be amended (whether because of an amendment to the proposal approved under section 45C or for any other reason), the Minister may request the Authority to inquire into and report on the matter within the period specified in the request.

- (2) In section 46(4):
- (a) delete “section 39B” and insert:

section 38E(4)
 - (b) delete “changed.” and insert:

amended.
- (3) In section 46(6)(a) delete “changed; and” and insert

amended; and
- (4) In section 46(8):
- (a) delete “changed” and insert:

amended
 - (b) delete “section 45 applies” and insert:

sections 45 and 45A apply
- (5) After section 46(8) insert:
- (8A) Despite subsection (8), the Minister’s obligations under section 45(3) or (4) as applied by subsection (8) do not extend to a decision-making authority unless the Minister considers that the report under subsection (6) recommends an amendment to an implementation condition that would, if made, affect the

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decision-making functions of that decision-making authority.

- (6) In section 46(9):
- (a) delete “section 45(5)” and insert:

section 45(8)

- (b) delete “change” and insert:

amend

- (7) Delete section 46(10).

Note: The heading to amended section 46 is to read:

Amending implementation conditions after inquiry

30. Section 46A amended

- (1) In section 46A(1) delete “section 45(5)” and insert:

section 45(8)(b)

- (2) Delete section 46A(2)(a)(ii) and insert:

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

31. Sections 46B to 48 replaced

Delete sections 46B, 46C, 47 and 48 and insert:

47. Duties of proponents after service of Ministerial statement

- (1) If a Ministerial statement has been published and the proponent does not ensure that any implementation of the proposal to which the statement relates is carried out in accordance with the implementation conditions, the proponent commits an offence.
- (2) Subsection (1) does not apply to an implementation condition mentioned in section 45A(1)(a).
- (3) In order to enable the CEO to assess compliance with the implementation conditions in a Ministerial statement, the CEO may by written notice given to the proponent —
 - (a) require the proponent to give the CEO reports and information about the implementation of the proposal to which the statement relates; and
 - (b) require the proponent to undertake tests, surveys, investigations, monitoring or other work and give the CEO reports and information about the tests, surveys, investigations, monitoring or work.
- (4) If, without reasonable excuse, the proponent refuses or fails to comply with a requirement made under subsection (3), the proponent commits an offence.
- (5) If a notification has been given under section 45(13) and the proponent does anything to implement the proposal to which the notification relates, the proponent commits an offence.

47A. Duration and withdrawal of Ministerial statement

- (1) The Ministerial statement relating to an approved proposal continues to have effect unless it is withdrawn or taken to have been withdrawn under this section.
- (2) This subsection applies if —
 - (a) the Ministerial statement relating to an approved proposal contains a condition mentioned in section 45A(1)(a) (the *commencement condition*); and
 - (b) the CEO gives the Minister and the proponent of the proposal written notice that, in the CEO's opinion, the commencement condition has not been complied with.
- (3) This subsection applies if the proponent of an approved proposal requests the Minister, in writing, to withdraw the Ministerial statement relating to the proposal and the Minister is satisfied —
 - (a) that the proposal has been implemented and that the implementation conditions, if any, have been complied with or no longer need to be complied with; or
 - (b) that the impacts of the implementation of the proposal can be satisfactorily mitigated by way of licensing or some other form of regulatory control under this Act or another written law.
- (4) If subsection (2) or (3) applies, the Minister may withdraw the Ministerial statement if the Minister considers that it is appropriate to do so.
- (5) If under subsection (4) the Minister withdraws the Ministerial statement relating to an approved proposal, the Minister must cause notice of the withdrawal to be served on —
 - (a) the Authority and the CEO; and

- (b) each decision-making authority that received the Ministerial statement under section 45(8)(a)(ii); and
 - (c) the proponent of the proposal; and
 - (d) the person who referred the proposal (if it was not referred by a person referred to in paragraph (b) or (c)).
- (6) The Minister must cause notice of the withdrawal to be published as soon as is practicable after it is served under subsection (5).
- (7) If the Ministerial statement relating to an approved proposal specifies that it has effect for a specified period, it is taken to have been withdrawn when that period ends.
- (8) If a Ministerial statement is withdrawn or taken to have been withdrawn under this section, the statement has no further effect.

48. Control of implementation of proposals

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

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- (3) This subsection applies if, under implementation conditions, the implementation of the approved proposal is subject to requirements made by —
 - (a) a decision-making authority; or
 - (b) another public authority with functions or expertise relevant to the proposal.
- (4) If subsection (3) applies, the decision-making authority or other public authority may monitor that implementation of the approved proposal, or cause it to be monitored, for the purpose of determining whether the implementation conditions of that kind are being complied with.
- (5) If the decision-making authority or other public authority finds that any implementation conditions of that kind is not being complied with, it —
 - (a) may exercise any power in respect of the non-compliance that is exercisable by it under a written law or otherwise; and
 - (b) in any event, must report the non-compliance to the Minister.
- (6) The Minister may exercise one or more of the powers set out in subsection (7) in relation to the approved proposal if —
 - (a) the Minister receives any relevant report made under subsection (2)(b) or (5)(b); or
 - (b) the Minister is not satisfied with any relevant monitoring conducted under this section, any relevant exercise of power under this section or any relevant report made under this section.

- (7) The powers of the Minister under subsection (6) are as follows —
- (a) after making reasonable endeavours to consult the proponent of the approved proposal — power to cause to be served on that proponent a written notice issued by the Minister requiring that proponent —
 - (i) forthwith to stop the implementation of the proposal; and
 - (ii) not to resume the implementation of the proposal during a period specified in that notice being a period ending not more than 28 days after the day on which that notice is served;
 - (b) power to cause to be served on the proponent of the relevant proposal a written notice issued by the Minister requiring that proponent to take the steps specified in the notice within the period so specified for the purpose of —
 - (i) complying with the relevant implementation condition; or
 - (ii) preventing, controlling or abating any pollution or environmental harm caused by any non-compliance with the relevant implementation condition;
 - (c) power to cause the taking of steps necessary for the purpose of —
 - (i) complying with the relevant implementation condition; or
 - (ii) preventing, controlling or abating any pollution or environmental harm caused by any non-compliance with the relevant implementation condition;

- (d) if the Minister considers that the relevant condition or procedure should be changed — power to make a request under section 46(1).
- (8) Subject to section 101(4), the cost of taking any steps referred to in subsection (7)(c) is a debt due to the Crown by the proponent concerned and may be recovered from the proponent by the Minister by action in a court of competent jurisdiction and must, if so recovered, be credited to the Consolidated Account.
- (9) A proponent who does not comply with a notice served on the proponent under subsection (7)(a) or (b) commits an offence.
- (10) Subsection (9) does not apply to the resumption of the implementation of a proposal before the end of the period specified in a notice under subsection (7)(a)(ii) if the Minister has served a written notice on the proponent authorising implementation to be resumed.
- (11) It is not necessary to publish in the *Gazette* a notice served under subsection (7)(a) or (b) or (10).

32. Part IV Division 2A inserted

After Part IV Division 2 insert:

Division 2A — Payments relating to proposals

48AA. Fees and charges for referral and assessment of proposals

- (1) Without limiting section 123(1) and (2), regulations may be made under section 123(1) prescribing, or providing for the determination of, fees or charges that are payable by proponents in prescribed circumstances in relation to the referral, assessment and implementation of proposals under Division 1 or 2.

- (2) Moneys paid as fees and charges under subsection (1) are to be used for the purpose of defraying the costs incurred by the Department in receiving and assessing proposals and monitoring the implementation of proposals.

33. Section 48A amended

- (1) In section 48A(1)(b)(i) delete “and any relevant decision-making authority”.
- (2) In section 48A(2) delete paragraph (b)(ii) and (iii) and insert:
- (ii) the responsible authority,

34. Section 48BA inserted

After section 48A insert:

48BA. Request for further information about a referred scheme

- (1) In this section —
information period means the 28 day period set by section 48A(1)(a), (b) or (c) or the 60 day period set by section 48A(1)(b).
- (2) This subsection applies if the Authority considers that it does not have enough information about a scheme referred to it under the relevant scheme Act to enable it to decide —
- (a) whether or not to assess the scheme; or
- (b) whether or not the scheme is by its nature incapable of being made environmentally acceptable.

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- (3) If subsection (2) applies, the Authority may, by written notice (a *requisition*), request any person to provide it with additional information about the scheme before the end of a period specified in the notice (the *compliance period*).
- (4) In determining whether an information period has ended the following are to be disregarded —
 - (a) if a requisition is complied with within the compliance period — the period from the day on which it was issued until the day on which it was complied with;
 - (b) if a requisition is not complied with within the compliance period — the compliance period.

35. Section 48B amended

- (1) In section 48B(1) delete “shall, subject to this section,” and insert:

must

- (2) Delete section 48B(2).

36. Section 48C amended

- (1) Delete section 48C(4) and insert:

- (3A) The Authority may cause to be published —
 - (a) any report made in compliance with a requirement made under subsection (1)(a) or (aa); or
 - (b) any information provided in compliance with a requirement made under subsection (1)(b).

- (4) When publishing a report or information under subsection (3A) the Authority may —
- (a) declare the report or information to be available for public review; and
 - (b) specify the period within which, the extent to which and the manner in which public authorities or persons may make submissions to the Authority in respect of the report or information.
- (2) In section 48C(5) delete “made available for public review under subsection (4) or” and insert:
- declared to be available for public review under subsection (4)(a) or made available for public review under
- (3) Delete section 48C(5)(a)(i) and insert:
- (i) at its own expense, publish notice that the report or information is available for public review; and
- (4) In section 48C(6):
- (a) delete “subsections (3), (4) and (5),” and insert:

subsections (3) to (5),
 - (b) in paragraph (b), delete “subsections (3), (4) and (5)” and insert:

subsections (3) to (5)

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37. Section 48D amended

- (1) In section 48D(1):
- (a) delete paragraph (d) and insert:
 - (d) the Authority’s recommendations as to whether or not that scheme may be implemented and, if it recommends that the scheme be implemented, as to the conditions, if any, to which that scheme should be subject.
 - (b) delete “and may make such recommendations in that report as it sees fit.”
- (2) In section 48D(3)(b)(iii) delete “relates and any relevant decision-making authority.” and insert:

relates.

38. Sections 48F and 48G deleted

Delete sections 48F and 48G.

39. Sections 48EA, 48F and 48G inserted

At the beginning of Part IV Division 4 insert:

48EA. Terms used

In this Division —

implementation conditions means the conditions, if any, agreed or decided in relation to a scheme under section 48F or 48J(d);

implementation issue means —

- (a) whether or not the scheme may be implemented; and
- (b) the conditions, if any, to which the scheme, if implemented, should be subject;

scheme means the scheme to which a report published under section 48D(3) relates.

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

- (1) After causing a report to be published under section 48D(3) the Minister must consult and, if possible, agree with the responsible Minister on the implementation issues.
- (2) If an agreement is made under this section, or a decision is made under section 48J(d), that the scheme may be implemented and as to the conditions, if any, to which the scheme should be subject, the Minister must —
 - (a) cause copies of a statement which sets out the implementation issues agreed or decided on to be delivered to —
 - (i) the Authority; and
 - (ii) the responsible Minister; and
 - (iii) any other Minister to whom a copy of the report has been given under section 48D(3)(b)(ii) and the responsible authority;
 - and
 - (b) cause that statement to be published as soon after the delivery referred to in paragraph (a) as is practicable.

- (3) Despite anything in this section or section 48J —
 - (a) an agreement or decision on any of the implementation issues relating to the scheme cannot be made under this section or section 48J during the period of 21 days referred to in section 100(3a)(c); and
 - (b) if an appeal is lodged under section 100(1)(e) in respect of the report, an agreement or decision on any of the implementation issues relating to the scheme cannot be made under this section or section 48J while the appeal is pending except for the purposes of section 101(2d)(a).

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

- (1) A responsible authority may, after the publication of a statement under section 48F(2)(b) that sets out implementation conditions and before the responsible Minister or the Governor grants final approval of the scheme to which that statement relates, request the responsible Minister to initiate a review of any implementation conditions.
- (2) If the responsible Minister agrees to a request under subsection (1), the responsible Minister and the Minister must consult each other and attempt to agree on whether or not the implementation conditions should be altered and, if so, to what extent.
- (3) If implementation conditions are altered by agreement under this section or a decision under section 48J(e), the Minister must —
 - (a) cause copies of a statement setting out those conditions as altered to be delivered to —
 - (i) the Authority; and
 - (ii) the responsible Minister; and

- (iii) the responsible authority;
 - and
 - (b) cause that statement to be published as soon after the service referred to in paragraph (a) as is practicable.
- (4) Conditions altered by agreement under this section or a decision under section 48J(e) are taken for the purposes of this Act to have been agreed under section 48F or decided under section 48J.

40. Section 48H amended

In section 48H(1) delete “condition agreed under section 48F or decided under section 48J” and insert:

implementation condition

41. Section 48J amended

- (1) Delete section 48J(d) and insert:

(d) on an implementation issue; or

- (2) In section 48J(e) delete “conditions referred to in section 48G(2)” and insert:

implementation conditions

42. Section 51 deleted

Delete section 51.

43. Section 51A amended

- (1) In section 51A insert in alphabetical order:

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

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

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

soil conservation notice has the same meaning as it has in the SLC Act Part V.

- (2) In section 51A in the definition of *purpose permit* delete “section 51E(8).” and insert:

section 51E(8);

44. Sections 51B to 51D replaced

Delete sections 51B, 51C and 51D and insert:

51B. Declaration of environmentally sensitive areas by regulation

- (1) Regulations may declare as an environmentally sensitive area for the purposes of this Part —
- (a) an area of the State specified in the regulations; or
 - (b) an area of the State of a class specified in the regulations.

- (2) Before regulations are made declaring an area of the State as an environmentally sensitive area for the purposes of this Part —
 - (a) the CEO must, in a prescribed manner, notify each owner or occupier of land in that area of the State of the proposed regulations and invite comments about the proposed regulations to be made within the period specified in the notification; and
 - (b) the Minister must take into account any comments about the proposed regulations made by an owner or occupier of land in that area of the State pursuant to an invitation under paragraph (a).
- (3) Subsection (1) does not apply to regulations proposing to declare an area of the State as an environmentally sensitive area if a declaration of that area as an environmentally sensitive area already has effect under subsection (1).
- (4) The CEO must notify the agency (as defined in the *Public Sector Management Act 1994* section 3(1)) principally assisting the Minister administering the *Transfer of Land Act 1893* in its administration of the declaration or amendment of an environmentally sensitive area with a view to that agency including information as to the environmentally sensitive area in information disseminated by it as to property interests in land.

51C. Unauthorised clearing of native vegetation

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

- (a) the clearing is done in accordance with a clearing permit; or

- (b) the clearing is of a kind set out in Schedule 6;
or
- (c) the clearing is of a kind prescribed for the purposes of this paragraph and is not done in an environmentally sensitive area; or
- (d) the clearing is done after the person has received notice under section 51DA(5) that the CEO has decided that the person should not be required to obtain a clearing permit for the clearing.

51D. Section 51C(a) does not apply to certain land

- (1) In this section —
Commissioner means the person for the time being holding or acting in the office of the Commissioner of Soil and Land Conservation under the SLC Act.
- (2) Section 51C(a) does not apply to clearing on land the subject of an agreement to reserve unless —
 - (a) the clearing permit was granted with the written approval of the Commissioner; or
 - (b) the clearing is done with the written approval of the Commissioner.
- (3) Section 51C(a) does not apply to clearing —
 - (a) on land the subject of a conservation covenant;
or
 - (b) on land the subject of an environmental protection covenant; or
 - (c) in contravention of a soil conservation notice.

51DA. Referral of proposed clearing to CEO for decision on whether a clearing permit should be obtained

- (1) This section applies to clearing unless —
 - (a) it is on land the subject of an agreement to reserve; or
 - (b) it is on land the subject of a conservation covenant; or
 - (c) it is on land the subject of an environmental protection covenant.
- (2) A person who proposes to do clearing to which this section applies (the *referrer*) may refer the proposed clearing to the CEO in the form and in the manner approved by the CEO.
- (3) The CEO must consider proposed clearing referred under subsection (2) and decide whether or not the referrer should be required to obtain a clearing permit for the proposed clearing.
- (4) In making a decision under subsection (3) the CEO must have regard to —
 - (a) whether the area proposed to be cleared (the *area*) is small relative to the total remaining vegetation —
 - (i) within the region in which the area is situated; or
 - (ii) of the ecological community of which the vegetation proposed to be cleared forms part;and
 - (b) whether there are any known or likely significant environmental values within the area; and

- (c) whether the state of scientific knowledge about vegetation within the region in which the area is situated is adequate; and
 - (d) whether the issues that would arise as a result of the proposed clearing are likely to require conditions to manage or mitigate effects on the environment.
- (5) The CEO must give the referrer notice in writing of a decision made by the CEO under subsection (3).
- (6) If the CEO considers that the proposed clearing would contravene a soil conservation notice, no decision is to be made under subsection (3) and the CEO must give the referrer notice in writing that the proposed clearing cannot be done.
- (7) The CEO must publish —
 - (a) the referral of proposed clearing under subsection (2); and
 - (b) the notice given under subsection (5) or (6).
- (8) The referrer may, in writing, request the CEO to treat the referral of proposed clearing under subsection (2) as an application for a clearing permit under section 51E(1) if the referrer —
 - (a) receives notice under subsection (5) that the CEO has decided that the referrer should be required to obtain a clearing permit for the proposed clearing; or
 - (b) does not receive any notice under subsection (5) or (6) within the period of 21 days after referring the proposed clearing.

- (9) If a request is made under subsection (8), the referral may be dealt with under section 51E as an application that complies with section 51E(1) and (2) if —
- (a) the referral was made in the form and manner mentioned in subsection (2); and
 - (b) the referral met the requirements set out in section 51E(1)(b) and (d) and (2); and
 - (c) the request is accompanied by the fee referred to in section 51E(1)(c).

45. Section 51E amended

- (1) In section 51E(1):
- (a) delete “shall —” and insert:

must —
 - (b) delete paragraph (d) and insert:

(d) contain or be accompanied by any information required as indicated in the form or in material accompanying the form.
- (2) After section 51E(1) insert:
- (1A) If the CEO requires further information to determine the application, the CEO may, by written notice given to the applicant, require the applicant to give the CEO further specified information within a specified time.

- (3) Delete section 51E(3) to (6) and insert:
- (3) If an application does not comply with subsections (1) and (2), or further information is not provided in accordance with subsection (1A), the CEO must decline to deal with the application and advise the applicant accordingly.
 - (4) If, under subsection (3), the CEO declines to deal with the application, the CEO does not have to perform any function under any of subsections (4A) to (12) in relation to the application.
 - (4A) The CEO must invite comments on the application within a period specified by the CEO from any public authority or person which or who has, in the opinion of the CEO, a direct interest in the subject matter of the application.
 - (4B) The CEO must publish —
 - (a) the application; and
 - (b) the information mentioned in subsection (1)(d).
 - (4C) When publishing the application and information under subsection (4B) the CEO must —
 - (a) invite any person who wishes to comment on the application and information to do so; and
 - (b) specify the period within which comments can be made.
 - (5) The CEO must, subject to this Division —
 - (a) grant a clearing permit subject to such of the conditions referred to in section 51H as the CEO specifies in the permit; or
 - (b) refuse to grant a clearing permit.

- (5A) In determining whether to grant a clearing permit and the conditions to which the clearing permit is to be subject, the CEO must take into account any comments made pursuant to an invitation under subsection (4A) or (4C) in respect of the application.
 - (6) The CEO must give the applicant written notice of the refusal to grant a clearing permit.
- (4) After section 51E(10) insert:
- (10A) The CEO must publish notice of —
 - (a) the grant of a clearing permit; or
 - (b) a refusal to grant a clearing permit.
- (5) In section 51E(11) delete “(5)(b), (6) or (7)(a)” and insert:
- (5), (5A), (6), (7)(a) or (10A)

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

How applications for clearing permits are made and dealt with

46. Section 51F replaced

Delete section 51F and insert:

51F. Effect of referred proposal on decisions about clearing

- (1) In this section —
clearing decision means —
 - (a) a decision under section 51DA(3) as to whether or not a clearing permit is needed for proposed clearing; or

- (b) a decision under section 51E(5) to grant or refuse to grant a clearing permit for proposed clearing.
- (2) For the purposes of this section, proposed clearing is related to a referred proposal if the clearing, while not part of the referred proposal, is connected or associated with it in such a way that the clearing would not need to be done if the implementation of the referred proposal did not proceed.
- (3) Despite subsection (2), clearing that is proposed so that tests, surveys, investigations or other work —
 - (a) can be done to comply with a requirement made under section 40(2)(a), (aa) or (b); or
 - (b) can be done under section 40(2a),for the purposes of assessing a referred proposal is not related to the referred proposal for the purposes of this section.
- (4) While any decision-making authority is precluded by section 41 from making a decision that could have the effect of causing or allowing a referred proposal to be implemented, the CEO must not make a clearing decision concerning proposed clearing that is related to the referred proposal.
- (5) The CEO must not make a clearing decision concerning proposed clearing that is related to a referred proposal if the decision is contrary to, or otherwise than in accordance with, a Ministerial statement.
- (6) Subsections (4) and (5) do not apply if the proposed clearing is for the purpose of doing minor or preliminary work to which the Authority has consented under section 41A(3).

- (7) If a decision-making authority makes a decision that has the effect of preventing the implementation of a proposal to which proposed clearing is related, the CEO does not have to make a clearing decision concerning the proposed clearing while the decision-making authority's decision has effect.

47. Section 51H amended

In section 51H(1) before “offsetting” insert:

directly or indirectly

48. Section 51I amended

- (1) Delete section 51I(2)(b) and (c) and insert:
- (b) establish and maintain vegetation on other land in order to directly or indirectly offset the loss of the cleared vegetation;
 - (c) contribute moneys to be used for the purpose of establishing or maintaining vegetation on other land;
 - (ca) give an environmental undertaking in relation to specified other land;
 - (cb) arrange for an environmental protection covenant to be given by a specified person other than the permit holder in relation to specified other land;

(2) After section 51I(2) insert:

(2A) If a condition of a clearing permit requires the holder of the permit to give or arrange the giving of an environmental undertaking as referred to in subsection (2)(ca) or (cb), the condition can require that the holder of the permit not cause or allow clearing on any land on which clearing is authorised by the permit until the environmental undertaking is given.

(3) In section 51I(4) insert in alphabetical order:

give includes enter into;

other land means land other than land cleared under the clearing permit;

49. Section 51J amended

Delete section 51J(2) and insert:

(2) If a clearing permit is subject to a condition referred to in section 51I(2)(ca), a reference in this Division to a contravention of a condition includes a reference to a contravention of the environmental undertaking given or entered into by the permit holder.

50. Section 51K amended

(1) In section 51K(1):

(a) in paragraph (c) delete “section 51I(2)(b) or (c)” and insert:

section 51I(2)(b), (ca) or (cb)

- (b) after paragraph (c) insert:
 - (ca) in the case of a purpose permit, adding, deleting, modifying or redescribing a purpose for which clearing may be done under the permit; or

(2) Delete section 51K(2) and insert:

- (2) A clearing permit may be amended —
 - (a) on application by the holder of the permit; or
 - (b) on the initiative of the CEO.

51. Sections 51KA and 51KB inserted

After section 51K insert:

51KA. Application to amend clearing permit

- (1) An application under section 51K(2)(a) for an amendment to a clearing permit must —
 - (a) be made in the manner and form approved by the CEO; and
 - (b) be accompanied by the fee prescribed by or determined under the regulations; and
 - (c) contain or be accompanied by any information required as indicated in the form or in material accompanying the form.
- (2) If the CEO requires further information to determine the application, the CEO may, by written notice given to the applicant, require the applicant to give the CEO further specified information within a specified time.

- (3) If an application for an amendment to a clearing permit does not comply with subsection (1), or further information is not provided in accordance with subsection (2), the CEO must decline to deal with the application and advise the applicant accordingly.
- (4) On an application under section 51K(2)(a) for an amendment to a clearing permit the CEO must, subject to this Division —
 - (a) amend the clearing permit; or
 - (b) refuse to amend the clearing permit.
- (5) The CEO must give the applicant written notice of the following actions under this section—
 - (a) an amendment of a clearing permit;
 - (b) a refusal to amend a clearing permit.
- (6) Without limiting subsection (5)(a), notice of an amendment can be given in the form of a revised clearing permit.
- (7) The CEO must publish notice of a decision under this section to —
 - (a) amend a clearing permit; or
 - (b) refuse to amend a clearing permit.

51KB. Effect of referred proposal on application to amend clearing permit

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

- (2) While any decision-making authority is precluded by section 41 from making a decision in relation to a referred proposal, the CEO must not make a proposed amendment that is related to the referred proposal.
- (3) The CEO must not make a proposed amendment that is related to a referred proposal if the proposed amendment is contrary to, or otherwise than in accordance with, a Ministerial statement.
- (4) If a decision-making authority makes a decision that has the effect of preventing the implementation of a referred proposal to which a proposed amendment is related, the CEO does not have to make a decision as to the proposed amendment while the decision-making authority's decision has effect.

52. Section 51L amended

In section 51L(2):

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

contravention
- (b) in paragraph (c) delete “respect; or” and insert:

respect.
- (c) delete paragraph (d).

53. Section 51M amended

(1) Delete section 51M(1) and (2) and insert:

- (1) This section applies to the amendment of a clearing permit under section 51K(2)(b), or the revocation or suspension of a clearing permit under section 51L(1).
- (2) Before amending, revoking or suspending a clearing permit (the *proposed action*) the CEO must give the holder of the permit a written notice under this subsection.

(2) In section 51M(3) delete “is to —” and insert:

must —

(3) In section 51M(5):

- (a) in paragraph (a) delete “gives the CEO written notice” and insert:

advises the CEO in writing

- (b) in paragraph (b) delete “notice” (1st occurrence) and insert:

advice

(4) In section 51M(6) delete “is to” and insert:

must

- (5) Delete section 51M(8) and insert:
- (8) Subsections (1) to (7) do not apply to anything done by the CEO under section 110(1) to give effect to a decision of the Minister under section 107(2) or 109(3) on an appeal.
- (6) Delete section 51M(9).
- (7) In section 51M(10) delete “is to” and insert:
- must
- (8) After section 51M(11) insert:
- (12) The CEO must publish notice of the amendment, revocation or suspension of a clearing permit.

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

Procedure for CEO when amending, revoking or suspending clearing permit

54. Section 51MA inserted

After section 51M insert:

51MA. Surrendering clearing permit

- (1) The holder of a clearing permit may apply to the CEO to surrender the permit.
- (2) An application to surrender a clearing permit must —
- (a) be made in the form and in the manner approved by the CEO; and

- (b) contain or be accompanied by any information required as indicated in the form or in material accompanying the form; and
 - (c) be accompanied by the fee prescribed by or determined under the regulations.
- (3) If the CEO requires further information to determine the application, the CEO may, by written notice given to the applicant, require the applicant to give the CEO further specified information within a specified time.
- (4) If the application does not comply with subsection (2), or further information is not provided in accordance with subsection (3), the CEO must decline to deal with the application and advise the applicant accordingly.
- (5) If, under subsection (4), the CEO declines to deal with the application, the CEO does not have to perform any function under subsections (6) to (10) in relation to the application.
- (6) The CEO must publish the application.
- (7) The CEO must consider the application and must —
 - (a) accept the surrender; or
 - (b) if not satisfied that the conditions of the clearing permit have been complied with, refuse to accept the surrender.
- (8) The CEO must give the holder of the clearing permit written notice of the CEO's decision on the application.
- (9) If the CEO accepts the surrender the clearing permit ceases to be in force when the notice under subsection (8) is given.

- (10) The CEO must publish notice of —
 - (a) acceptance of the surrender; or
 - (b) refusal to accept the surrender.

55. Section 51O amended

- (1) In section 51O(1):
 - (a) in the definition of *decision* delete “matter;” and insert:

matter.
 - (b) delete the definition of *planning instrument*.
- (2) In section 51O(3) delete “and published”.
- (3) In section 51O(4) after “any” insert:

development approval,

56. Section 51P amended

After section 51P(3) insert:

- (4) Without limiting section 51F(5) or 51KB(3), subsection (3) does not authorise the imposition of a condition that is contrary to, or not in accordance with, a Ministerial statement.

57. Section 51Q replaced

Delete section 51Q and insert:

51Q. CEO to keep a record of clearing permits and related matters

The CEO must keep a public record of —

- (a) such particulars of the following as are prescribed —
 - (i) applications for clearing permits and amendments of clearing permits;
 - (ii) clearing permits and amendments of clearing permits;
 - (iii) the surrender, suspension and revocation of clearing permits;
 - (iv) undertakings mentioned in section 51E(9);
 - (v) notifications received under section 51N(1);
 - (vi) environmental protection covenants;
- and
- (b) such other information and documents relating to clearing permits as are prescribed.

58. Section 51R amended

Delete section 51R(1) and (2).

59. Section 51S deleted

Delete section 51S.

60. Part V Division 3 replaced

Delete Part V Division 3 and insert:

Division 3 — Licences

Subdivision 1 — Preliminary

52. Terms used

In this Division —

controlled work means —

- (a) work at premises that is designed to enable a prescribed activity that is not authorised by a licence to be carried out at the premises; and
 - (b) work at premises that is designed to change the way of carrying out a prescribed activity that is authorised by a licence to be carried out at the premises if the change will —
 - (i) cause an emission that is not authorised by the licence; or
 - (ii) result in an alteration in the nature or volume of an emission authorised by the licence;
- and
- (c) any other thing that is specified by the regulations as being controlled work for the purposes of this definition,

but does not include anything that is specified by the regulations as not being controlled work for the purposes of this definition;

work includes —

- (a) the construction or alteration of any building or structure; and

- (b) the installation or alteration of any plant or equipment.

53. Purpose of licence

- (1) A licence may be granted for the following purposes —
 - (a) to authorise the carrying out of controlled work;
 - (b) to authorise the carrying out of a prescribed activity;
 - (c) to deal with the carrying out of an activity that would be a prescribed activity if it met the prescribed threshold for that category of activity.
- (2) A licence may be granted or amended so as to cover any or all of the work and activities referred to in subsection (1).
- (3) Without limiting subsection (1), a licence authorising the carrying out of a prescribed activity may provide that the prescribed activity is only authorised to be carried out at premises specified in the licence.
- (4) A licence authorising or dealing with the carrying out of work or an activity may prohibit, authorise, control or regulate any act, omission, emission or impact on the environment related to the work or activity to an extent, and in a manner, considered by the CEO to be necessary or convenient for the purposes of this Act relating to the prevention, control, abatement or mitigation of pollution or environmental harm.
- (5) For the purposes of subsection (4) it does not matter whether the act, omission, emission or impact on the environment occurs on premises on which the work or activity is carried out or not.
- (6) Subsection (4) does not limit Subdivision 5.

Subdivision 2 — Requirement for licence

53A. Licence for controlled work

- (1) A person who carries out controlled work, or causes or allows controlled work to be carried out, commits an offence unless —
 - (a) the carrying out of the controlled work is authorised by a licence; and
 - (b) the person —
 - (i) is the holder of the licence; or
 - (ii) is directly or indirectly engaged, authorised or permitted by the holder of the licence to carry out the controlled work.
- (2) Subsection (1) does not apply to controlled work carried out in accordance with a requirement in a notice given or issued under Division 4.

53B. Licence for prescribed activity

- (1) A person who carries out a prescribed activity, or causes or allows a prescribed activity to be carried out, commits an offence unless —
 - (a) the carrying out of the prescribed activity is authorised by a licence; and
 - (b) the person —
 - (i) is the holder of the licence; or
 - (ii) is directly or indirectly engaged, authorised or permitted by the holder of the licence to carry out the prescribed activity.
- (2) Subsection (1) does not apply to a prescribed activity carried out in accordance with a requirement in a notice given or issued under Division 4.

Subdivision 3 — Applications

53C. Kinds of application

- (1) A person may apply to the CEO for a licence.
- (2) The holder of a licence may apply to the CEO —
 - (a) for the amendment of the licence; or
 - (b) to transfer the licence; or
 - (c) to surrender the licence.

53D. Requirements as to applications

- (1) An application under section 53C must —
 - (a) be made in the form and in the manner approved by the CEO; and
 - (b) contain or be accompanied by any information required as indicated in the form or in material accompanying the form.
- (2) If the CEO requires further information to determine the application, the CEO may, by written notice given to the applicant, require the applicant to give the CEO further specified information within a specified time.
- (3) If the application does not comply with subsection (1), or further information is not provided in accordance with subsection (2), the CEO must decline to deal with the application and advise the applicant accordingly.
- (4) If, under subsection (3), the CEO declines to deal with the application, the CEO does not have to perform any function under section 53E, 54, 55, 59 or 60 in relation to the application.

53E. Consultation in respect of application for licence or for amendment of licence

(1) In this section —

application means an application under section 53C for a licence or for the amendment of a licence;

designated area means —

- (a) a catchment area or water reserve constituted under the *Country Areas Water Supply Act 1947* or the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*; or
- (b) an Underground Water Pollution Control Area constituted under the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*; or
- (c) a watercourse or wetland to and in relation to which the *Rights in Water and Irrigation Act 1914* Part III Division 1B applies; or
- (d) a proclaimed area declared under section 26B, or irrigation district constituted under section 28, of the *Rights in Water and Irrigation Act 1914*;

Minister (Water Resources) means the Minister administering the *Water Agencies (Powers) Act 1984*.

(2) The CEO must invite comments on an application within a period specified by the CEO from —

- (a) any public authority or person which or who has, in the opinion of the CEO, a direct interest in the subject matter of the application; and

- (b) in the case of an application for a licence for the discharge of waste into a designated area or for an amendment relating to that discharge, a person nominated by the Minister (Water Resources).
- (3) The CEO must publish —
 - (a) an application; and
 - (b) the information mentioned in section 53D(1)(b).
- (4) When publishing the application and information under subsection (3) the CEO must —
 - (a) invite any person who wishes to comment on the application and information to do so; and
 - (b) specify the period within which comments can be made.

Subdivision 4 — Licence provisions

54. How applications are dealt with

- (1) On an application under section 53C(1) for a licence and payment of the application fee prescribed by or determined under the regulations, the CEO must, subject to this Division —
 - (a) grant a licence subject to such of the conditions referred to in section 61 as the CEO specifies in the licence; or
 - (b) refuse to grant a licence.
- (2) In determining whether to grant a licence and the conditions to which the licence is to be subject, the CEO —
 - (a) must take into account any comments made pursuant to an invitation under section 53E(2) or (4)(a) in respect of the application; and

- (b) must have regard to —
 - (i) any prescribed standards the CEO considers relevant; and
 - (ii) any development approval or planning instrument the CEO considers relevant; and
 - (iii) whether the applicant would have, and be capable of exercising, substantial control over the carrying out of work or activity that would be authorised or dealt with by the licence if the licence were granted; and
 - (iv) any other matter the CEO considers relevant;and
 - (c) if the licence is to authorise the carrying out of a prescribed activity, must have regard to whether in the opinion of the CEO the conditions of any relevant licence in force in relation to controlled work to enable the prescribed activity to be carried out have been complied with.
- (3) If under subsection (1)(b) the CEO refuses to grant a licence, the CEO must give written notice of the refusal to the applicant.
 - (4) The CEO must publish notice of —
 - (a) the grant of a licence; or
 - (b) a refusal to grant a licence.

54A. Duration of licence

Unless it is surrendered or revoked, a licence continues in force for the period specified in the licence.

55. Amendment of licence

- (1) On an application under section 53C(2)(a) for the amendment of a licence and payment of the application fee prescribed by or determined under the regulations, the CEO must, subject to this Division —
 - (a) amend the licence; or
 - (b) refuse to amend the licence.
- (2) A licence may be amended by the CEO on the CEO's initiative.
- (3) The CEO may amend a licence under subsection (1)(a) or (2) by —
 - (a) removing or varying any condition to which the licence is subject; or
 - (b) subjecting the licence to a new condition; or
 - (c) redescribing the boundaries or area of any premises referred to in the licence; or
 - (d) adding, deleting, modifying or redescribing any work or activity the carrying out of which is authorised or dealt with by the licence; or
 - (e) correcting in the licence —
 - (i) a clerical mistake or unintentional error or omission; or
 - (ii) a figure which has been miscalculated; or
 - (iii) the misdescription of any person, thing or property;

or

 - (f) making an administrative change to the format of the licence that does not alter the obligations of the holder of the licence; or
 - (g) adding a discharge point or emission point; or

- (h) deleting any discharge point or emission point which is no longer in use; or
 - (i) amending the licence in conformity with an approved policy or prescribed standard or with an exemption conferred under this Act; or
 - (j) amending the licence to give effect to a decision of the Minister under this Act (whether on an appeal or otherwise); or
 - (k) extending the duration of the licence.
- (4) In determining whether to amend a licence under this section, the CEO —
- (a) if subsection (1) applies, must take into account any comments made pursuant to an invitation under section 53E(2) or (4)(a) in respect of the application; and
 - (b) must have regard to —
 - (i) any prescribed standards the CEO considers relevant; and
 - (ii) any development approval or planning instrument the CEO considers relevant; and
 - (iii) any other matter the CEO considers relevant;
- and
- (c) if acting under subsection (3)(d), must have regard to whether the holder of the licence would have, and be capable of exercising, substantial control over the carrying out of the work or activity in question; and

- (d) if the amendments are to authorise the carrying out of a prescribed activity, must have regard to whether the conditions of any relevant licence in force in relation to controlled work to enable the prescribed activity to be carried out have been complied with.
- (5) If under subsection (1)(b) the CEO refuses to amend a licence, the CEO must give written notice of the refusal to the applicant.
- (6) The CEO must publish notice of —
 - (a) the amendment of a licence; or
 - (b) a refusal to amend a licence.

56. Revocation or suspension of licence

- (1) The CEO may revoke a licence.
- (2) The CEO may suspend a licence —
 - (a) in respect of all the work or all the activities authorised or dealt with by the licence; or
 - (b) in respect of some of the work or some of the activities authorised or dealt with by the licence.
- (3) The grounds for revocation or suspension of a licence are that —
 - (a) the CEO is satisfied that there has been a contravention of any of the conditions to which the licence is subject; or
 - (b) the carrying out of work or an activity authorised or dealt with by the licence is exempted by the regulations from requiring a licence; or

- (c) information contained in or supporting the application was false or misleading in a material respect; or
- (d) the holder of the licence has not paid a prescribed fee in respect of the licence; or
- (e) the current business address of the holder of the licence is unknown to the CEO; or
- (f) a development approval or planning instrument required to carry out controlled work or a prescribed activity under the licence is no longer in force; or
- (g) in the opinion of the CEO, the holder of the licence no longer has, or is no longer capable of exercising, substantial control over the carrying out of work or an activity authorised or dealt with by the licence.

57. Notice and submissions in respect of proposed amendment, revocation or suspension

- (1) Before amending, revoking or suspending a licence (the *proposed action*) the CEO must give the holder of the licence a written notice under this section.
- (2) The notice must —
 - (a) state details of the proposed action; and
 - (b) invite the holder to make representations to the CEO to show why the action should not be taken; and
 - (c) state the period (at least 21 days after the notice is given to the holder) within which representations may be made.
- (3) The representations must be made in writing.

- (4) The CEO may take the proposed action —
 - (a) at any time after the holder of the licence advises the CEO in writing that the holder does not intend to make any representations or any further representations; or
 - (b) if such advice is not given — after the end of the period stated in the notice within which representations may be made.
- (5) The CEO must have regard to any representations properly made by the holder of the licence.
- (6) Subsections (1) to (5) do not apply to the amendment of a licence if the holder applied for the amendment.

58. Notice of amendment, revocation or suspension

- (1) The CEO must give the holder of a licence written notice of any amendment, revocation or suspension of the licence.
- (2) Without limiting subsection (1), notice of an amendment can be given in the form of a revised licence document.
- (3) The CEO must publish notice of any amendment, revocation or suspension of the licence.

58A. Actions taken to give effect to decision on appeal

Sections 57 and 58 do not apply to anything done by the CEO under section 110 to give effect to a decision of the Minister under section 107(2) or 109(3) on an appeal.

58B. Effect of suspension

- (1) While a licence is suspended it continues in force and is capable of being revoked or transferred.

- (2) Despite subsection (1), a licence that is suspended does not authorise the carrying out of controlled work or a prescribed activity.
- (3) In the case of a suspension under section 56(2)(b), subsection (2) applies only to the work or activities in respect of which the licence has been suspended.

59. Transfer of licence

- (1) If an application (a *transfer application*) is made under section 53C(2)(b) for the transfer of a licence to a person (the *transferee*) the applicant must give notice of the application to the transferee.
- (2) On a transfer application and payment of the application fee prescribed by or determined under the regulations, the CEO must, subject to this Division —
 - (a) transfer the licence; or
 - (b) refuse to transfer the licence.
- (3) In determining whether to transfer the licence, the CEO must have regard to —
 - (a) any prescribed standards the CEO considers relevant; and
 - (b) any development approval or planning instrument the CEO considers relevant; and
 - (c) whether the transferee would have, and be capable of exercising, substantial control over the carrying out of work or activity authorised or dealt with by the licence if the licence were transferred; and
 - (d) any other matter the CEO considers relevant.
- (4) The CEO must give written notice of the CEO's decision on the transfer application to the applicant and the transferee.

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- (5) The CEO must publish notice of the CEO's decision on the transfer application.

60. Surrender of licence

- (1) On an application under section 53C(2)(c) to surrender a licence and payment of the application fee prescribed by or determined under the regulations, the CEO must, subject to this Division —
 - (a) accept the surrender; or
 - (b) refuse to accept the surrender.
- (2) In determining whether to accept the surrender of a licence, the CEO must have regard to —
 - (a) any prescribed standards the CEO considers relevant; and
 - (b) any development approval or planning instrument the CEO considers relevant; and
 - (c) any other matter the CEO considers relevant.
- (3) The CEO must give the holder of the licence written notice of the CEO's decision on the application to surrender the licence.
- (4) If the CEO accepts the surrender the licence ceases to be in force when the notice under subsection (3) is given.
- (5) The CEO must publish notice of the CEO's decision on the application.

60A. Effect of referred proposal on decisions about licences

- (1) For the purposes of this section, the grant, amendment or transfer of a licence (a ***proposed grant, amendment or transfer***) is related to a referred proposal if the proposed grant, amendment or transfer is connected or associated with the referred proposal in such a way that

the proposed grant, amendment or transfer would not need to be made if the implementation of the referred proposal did not proceed.

- (2) While any decision-making authority is precluded by section 41 from making a decision in relation to a referred proposal, the CEO must not make a proposed grant, amendment or transfer that is related to the referred proposal.
- (3) The CEO must not make a proposed grant, amendment or transfer that is related to a referred proposal if the proposed grant, amendment or transfer is contrary to, or otherwise than in accordance with, a Ministerial statement.
- (4) Subsections (2) and (3) do not apply to the grant, amendment or transfer of a licence to enable the doing of minor or preliminary work to which the Authority has consented under section 41A(3).
- (5) If a decision-making authority makes a decision that has the effect of preventing the implementation of a referred proposal to which a proposed grant, amendment or transfer is related, the CEO does not have to perform any function under section 54(1), 55(1) or 59(2) concerning the proposed grant, amendment or transfer while the decision-making authority's decision has effect.
- (6) This section does not apply to anything done by the CEO under section 110(1) to give effect to a decision of the Minister under section 107(2) or 109(3) on an appeal.

60B. Relationship between licences and approved policies

- (1) In considering —
 - (a) an application for a licence; or

- (b) an application for an amendment of a licence;
or
 - (c) an application for the transfer of a licence,

the CEO must ensure that the licence, amendment or transfer is consistent with any approved policy.
- (2) The CEO must not amend or must refuse to grant or transfer a licence if the CEO considers that the associated effect on the environment would be inconsistent with any approved policy.
- (3) Despite subsections (1) and (2) —
 - (a) if the CEO is satisfied that, as a result of environmental circumstances having changed, the environment or an environmental value of the area concerned requires a higher level of protection than would be provided by the standards required by or under any approved policy or by prescribed standards, the CEO may grant or amend a licence so as to make the licence subject to conditions which specify standards that are more stringent than those required by or under the approved policy or by the prescribed standards; and
 - (b) if the CEO is satisfied that, as a result of the approval under section 31(d) of a new approved policy or as a result of an approved policy as amended being confirmed under section 37(3)(a), any condition to which an existing licence is subject is inconsistent with that approved policy, the CEO may amend that licence to make it consistent with that approved policy.
- (4) Subsection (3) does not authorise the imposition of a condition that is contrary to, or not in accordance with, a Ministerial statement.

- (5) For the purposes of the application of section 74A(1)(b), if conditions more stringent than others required by or under an approved policy or by a prescribed standard are imposed under subsection (3)(a), the conditions so imposed must be complied with instead of or in addition to those other conditions.

Subdivision 5 — Conditions

61. Licence conditions

- (1) A licence may be granted or transferred subject to conditions the CEO considers to be necessary or convenient for the purposes of this Act relating to the prevention, control, abatement or mitigation of pollution or environmental harm.
- (2) Section 61A sets out some kinds of conditions that may be attached to a licence.
- (3) The regulations may prescribe further kinds of conditions that may be attached to a licence.
- (4) Nothing in section 61A or regulations made under subsection (3) prevents other conditions from being attached to a licence.
- (5) Without limiting subsection (3), the regulations may prescribe conditions to which every licence, or every licence of a kind specified in the regulations, is subject unless otherwise specified in the licence.
- (6) Without limiting subsections (1) to (5), a licence may be subject to a condition that the holder of the licence comply with a requirement to pay a levy imposed under the *Waste Avoidance and Resource Recovery Levy Act 2007* in relation to waste received at premises to which the licence relates.

- (7) Without limiting subsections (1) to (5), a licence may be subject to a condition that the holder of the licence comply with a requirement to pay a levy imposed under Part VIIB Division 2A if the licence authorises a monitored activity.
- (8) Except as provided in section 60B a condition must not be inconsistent with an approved policy or a prescribed standard.

61A. Some kinds of conditions

- (1) In this section —
specified means specified by the CEO in the licence concerned.
- (2) The following list sets out things that the holder of a licence can be required to do (at the expense of the holder) under conditions attached to the licence —
 - (a) design, construct or operate any facilities or plant in accordance with specified criteria;
 - (b) install or operate any equipment for preventing, controlling, abating or monitoring pollution or environmental harm in accordance with specified criteria;
 - (c) take specified measures for the purpose of minimising the likelihood of pollution or environmental harm;
 - (d) take specified measures to prevent, control, abate or mitigate any emission or potential emission resulting from an activity authorised by the licence to be carried out;
 - (e) meet specified criteria, or comply with specified limits, as to the characteristics, volume, rate, duration and effects of emissions;

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

- (s) have something required to be done under a condition done by —
 - (i) a person of a class approved by the CEO; or
 - (ii) a laboratory registered by the National Association of Testing Authorities;
- (t) do something required to be done under a condition —
 - (i) within a specified period or before a specified date; or
 - (ii) in a specified form or manner.
- (3) Without limiting section 62, the holder of a licence commits an offence if, having been required under a condition attached to the licence to provide a report on monitoring data, or analysis of it, to the CEO, the holder —
 - (a) fails to do so within the specified period or before the specified date; or
 - (b) fails to do so in the specified form or manner.
- (4) Without limiting subsection (2), a condition referred to in subsection (2)(h) can require the holder of a licence to carry out a specified monitoring programme for the purpose of supplying the CEO with information relating —
 - (a) to the characteristics and volume of any waste to which the licence relates that is being held or stored; or
 - (b) to the characteristics, volume and effects of any pollutant being or likely to be emitted into the environment from premises where an activity is being carried out as authorised by the licence, and to the characteristics of the environment.

62. Contravening licence conditions

The holder of a licence who contravenes a condition to which the licence is subject commits an offence.

63. Offences as to conditions by persons other than holder of licence

(1) In this section —

licensed action means the carrying out of work or an activity authorised or dealt with by a licence (the *licence*).

(2) This subsection applies to an act or omission if —

- (a) it occurs in the carrying out of work or an activity constituting or relating to a licensed action; and
- (b) it is an act or omission of a person other than the holder of the licence; and
- (c) it would, if it had been an act or omission of the holder of the licence, have contravened a condition to which the licence is subject.

(3) If subsection (2) applies to an act or omission the person mentioned in subsection (2)(b) commits an offence.

(4) If it is proved that subsection (2) applies to an act or omission, the holder of the licence is taken for the purposes of section 62 to have contravened the condition mentioned in subsection (2)(c) whether or not the person mentioned in subsection (2)(b) is charged with an offence under subsection (3) in relation to the act or omission.

Subdivision 6 — Miscellaneous

64. CEO to keep records of licences and related matters

The CEO must keep a public record of —

- (a) such particulars of the following as are prescribed —
 - (i) applications for licences, amendments of licences and transfers of licences;
 - (ii) licences, amendments of licences and transfers of licences;
 - (iii) the surrender, suspension and revocation of licences;
- and
- (b) such other information and documents relating to licences as are prescribed.

61. Section 64A replaced

Delete section 64A and insert:

64A. CEO to keep records of notices

The CEO must keep a public record of such particulars of notices given under this Division as are prescribed.

62. Section 66 amended

Delete section 66(5).

63. Section 68A amended

- (1) In section 68A(1) delete the definition of *relevant premises* and insert:

relevant premises means premises at which conduct is being or has been engaged in under an authorisation;

- (2) Delete section 68A(2) and insert:

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

- (3) Delete section 68A(7)(b) and insert:

- (b) anything that a person could be required to do under a condition attached to a licence;

- (4) In section 68A(10) delete “sections 66,” and insert:

sections 66(1) and (2),

- (5) After section 68A(10) insert:

- (10A) A closure notice given in respect of an authorisation suspended under section 56(2) ceases to have effect

when the suspension ceases to have effect unless the licence is revoked under section 56(1).

- (10B) When a closure notice registered under section 66(2) as applied by subsection (10) ceases to have effect under subsection (10A) or is revoked under section 65(4)(b) as applied by subsection (10), the CEO must deliver to the Western Australian Planning Commission and to the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, a certificate signed by the CEO and certifying that the cessation or revocation took effect on the date specified in that certificate.
- (10C) On receiving a certificate delivered under subsection (10B), the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, must cancel the registration of the relevant closure notice and endorse or note accordingly the appropriate Register or register or record in respect of the land to which that certificate relates.

64. Section 70 amended

- (1) In section 70(1) delete the definition of *unlawful clearing*.
- (2) In section 70(1) insert in alphabetical order:

unlawful clearing means —

- (a) anything constituting a contravention of section 51C or 51J; or
- (b) anything constituting a contravention of an environmental protection covenant;

watercourse has the meaning given in Schedule 5 clause 2;

wetland has the meaning given in Schedule 5 clause 2.

- (3) Delete section 70(4) and (5) and insert:
- (4) A vegetation conservation notice must specify —
- (a) the name and address of the person to whom it is given; and
 - (b) the reason for which it is given.
- (4A) A vegetation conservation notice given under subsection (2)(b) may require any person bound by it —
- (a) to take, within or for the duration of a specified period, such specified measures (the **required action**) as the CEO considers necessary for one or more of the following purposes —
 - (i) to repair any damage caused by the clearing;
 - (ii) to re-establish and maintain vegetation on any area affected by the clearing to a condition as near as possible to the condition of the vegetation before the clearing occurred;
 - (iii) to prevent the erosion, drift or movement of sand, soil, dust or water;
 - (iv) to ensure that specified land, or a specified watercourse or wetland, will not be damaged or detrimentally affected, or further damaged or detrimentally affected, by the clearing;
 - and
 - (b) to monitor, keep records of and report to the CEO on the required action.
- (5) Before a vegetation conservation notice containing a requirement under subsection (4A)(a) is given to a person the CEO must, by written notice given to the

person, invite the person to make submissions to the CEO within the period specified in the notice on any matter relevant to the determination of whether or not the person should have to take the required action.

- (4) In section 70(10) delete “action required by a vegetation conservation notice to be taken” and insert:

the required action, or any of it,

65. Part V Division 5 heading replaced

Delete the heading to Part V Division 5 and insert:

Division 5 — Defences

66. Sections 74 and 74A replaced

Delete sections 74 and 74A and insert:

74. Defence of emergency or accident

- (1) It is a defence to proceedings for an offence under this Part in respect of an emission or an act causing environmental harm if the person charged with that offence (the *alleged offender*) —
- (a) proves —
- (i) that the emission or act occurred for the purpose of preventing danger to human life or health or irreversible damage to a significant portion of the environment;
- or

- (ii) that the emission or act occurred as a result of an accident caused otherwise than by the negligence of the alleged offender and that the alleged offender took all reasonable precautions to prevent the emission or act;
 - and
 - (b) proves that as soon as was reasonably practicable after the emission or act occurred the alleged offender notified particulars of the emission or act in writing to the CEO.
- (2) It is a defence to proceedings for an offence under section 49A(2) or (3) if the person charged with that offence (the *alleged offender*) —
- (a) proves —
 - (i) that the waste was discharged or abandoned for the purpose of preventing danger to human life or health or irreversible damage to a significant proportion of the environment; or
 - (ii) that the waste was discharged or abandoned as a result of an accident caused otherwise than by the negligence of the alleged offender and that the alleged offender took all reasonable precautions to prevent the discharge or abandonment;
 - and
 - (b) proves that as soon as was reasonably practicable after the waste was discharged or abandoned the alleged offender notified particulars of the discharge or abandonment in writing to the CEO.

- (3) It is a defence to proceedings for an offence under section 51C if the person charged with that offence (the *alleged offender*) —
- (a) proves —
 - (i) that the clearing was done for the purpose of preventing danger to human life or health or irreversible damage to a significant proportion of the environment; or
 - (ii) that the clearing was done as a result of an accident caused otherwise than by the negligence of the alleged offender;
 - and
 - (b) proves that as soon as was reasonably practicable after the clearing was done the alleged offender notified particulars of the clearing in writing to the CEO.
- (4) This section has effect subject to section 74E.

74A. Defence of authority of this Act

- (1) It is a defence to proceedings under this Part for causing pollution, in respect of an emission, or for causing serious environmental harm or material environmental harm, or for discharging or abandoning waste in water to which the public has access if the person charged with that offence proves that the pollution, emission, environmental harm, discharge or abandonment occurred —
- (a) in the implementation of a proposal in accordance with a Ministerial statement; or
 - (b) in accordance with —
 - (i) a prescribed standard; or
 - (ii) a requirement contained in a closure notice, an environmental protection

- notice, a vegetation conservation notice
or a prevention notice; or
 - (iii) an approved policy; or
 - (iv) a declaration under section 6; or
 - (v) an exemption under section 75; or
 - (vi) an exemption given under the
regulations;
- or
- (c) as authorised by, and in accordance with the
conditions of —
 - (i) a clearing permit; or
 - (ii) a licence; or
 - (iii) a licence, permit or approval granted,
issued or given under the regulations;
- or
- (d) in the exercise of any power conferred under
this Act.
- (2) A licence does not authorise an emission unless the
emission is specified in the licence as an authorised
emission.

67. Sections 74C to 74E inserted

After section 74B insert:

74C. Defence of due diligence

- (1) It is a defence to proceedings for a Tier 1 offence if the
person charged with that offence proves —
 - (a) that the person took reasonable precautions and
exercised due diligence to prevent the
commission of the offence; and

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- (b) that as soon as was reasonably practicable after the occurrence that gave rise to the charge the person notified particulars of the occurrence in writing to the CEO.
- (2) It is a defence to proceedings for an offence under section 51J(1), 53A(1), 53B(1), 62 or 63(3) if the person charged with that offence proves —
 - (a) that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence; and
 - (b) that as soon as was reasonably practicable after the occurrence that gave rise to the charge the person notified particulars of the occurrence in writing to the CEO.
- (3) It is a defence to proceedings for an offence under section 62 in which the prosecution relies on the operation of section 63(4) if the person charged with that offence (the *alleged offender*) proves —
 - (a) that the person mentioned in section 63(2)(b) took reasonable precautions and exercised due diligence to prevent the occurrence that gave rise to the charge; and
 - (b) that as soon as was reasonably practicable after the occurrence that gave rise to the charge the person mentioned in section 63(2)(b), or the alleged offender, notified particulars of the occurrence in writing to the CEO.
- (4) Subsection (3) does not limit the application of subsection (2) to proceedings for an offence under section 62 in which the prosecutor relies on the operation of section 63(4).
- (5) This section has effect subject to section 74E.

74D. Defence of lack of knowledge of effect of licence

- (1) It is a defence to proceedings for an offence under section 63(3) if the person charged with that offence proves that the person did not know, and could not reasonably be expected to have known, that the carrying out of the work or activity mentioned in section 63(2)(a) constituted or was related to a licensed action as defined in section 63(1).
- (2) This section has effect subject to section 74E.

74E. Notice of defence

The defence referred to in section 74(1), (2) or (3), 74C(1), (2) or (3) or 74D(1) is not available to a person unless the person notifies the CEO of the person's intention to rely on that defence within 21 days after the day on which —

- (a) the relevant court hearing notice is served on the person; or
- (b) if no court hearing notice is served on the person in respect of the relevant offence, the person is informed of the place and time at which the person is alleged to have committed that offence and of the nature of that offence.

68. Part V Division 6 heading inserted

Before section 75 insert:

Division 6 — General

69. Section 86E amended

In section 86E(1):

- (a) in paragraph (a) delete “section 48(4) or” and insert:

section 48(7) or

- (b) in paragraph (c) delete “section 68A(11)(a) or” and insert:

section 68A(11)(a), 70(10)(a) or

70. Section 86G amended

- (1) In section 86G(2) delete “section 48(5), 68A(11)(b), 69(3), 73(4a)” and insert:

section 48(8), 68A(11)(b), 69(3), 70(10)(b), 73(4a)

- (2) In section 86G(4):

- (a) in paragraph (a) delete “section 68A(11)(b), 73(4a)” and insert:

section 68A(11)(b), 70(10)(b), 73(4a)

- (b) in paragraph (b) delete “section 68A(11)(b), 73(4a)” and insert:

section 68A(11)(b), 70(10)(b), 73(4a)

71. Part VB inserted

After Part VA insert:

Part VB — Environmental protection covenants

86H. Terms used

In this Part —

native vegetation has the meaning given in section 51A;

occupier of land has the meaning given in section 51A;

owner of land means —

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

relevant land registration officer means —

- (a) where the land is under the operation of the *Transfer of Land Act 1893* or the *Land Administration Act 1997* — the Registrar of Titles; and
- (b) where the land is alienated from the Crown but is not under the operation of the *Transfer of Land Act 1893* — the Registrar of Deeds and Transfers.

86I. CEO may enter into environmental protection covenant

- (1) The CEO may enter into an environmental protection covenant with the owner of land if it is a condition of a clearing permit, or of a Ministerial statement relating to a proposal, that the owner enter into the covenant.
- (2) An environmental protection covenant requires the consent in writing of each person who is an owner or occupier of the land to which the covenant applies at the time it is entered into.

86J. Form of environmental protection covenant

- (1) An environmental protection covenant must —
 - (a) be prepared by the CEO; and
 - (b) identify the land to which it applies; and
 - (c) identify each person who is an owner or occupier of that land.
- (2) The CEO may, for the purpose of preparing an environmental protection covenant, by written notice require the owner of the land to which the covenant will apply to provide the CEO with specified surveys or other specified information within a specified time.
- (3) An environmental protection covenant may contain such provisions as the CEO and the owner of the land agree.
- (4) Without limiting subsection (3), an environmental protection covenant may —
 - (a) restrict the use of land to which it applies; and
 - (b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land; and

- (c) restrict the nature of work that may be carried out on the land.
- (5) An environmental protection covenant —
 - (a) may be expressed to have effect for a period of time specified in the covenant or in perpetuity; and
 - (b) may be expressed to be irrevocable.
- (6) The costs and expenses of preparing and registering an environmental protection covenant must be borne —
 - (a) if it is a condition of a clearing permit that the covenant be entered into — by the holder of the clearing permit; or
 - (b) if it is a condition of a Ministerial statement that the covenant be entered into — by the proponent of the proposal.
- (7) The CEO may require the payment of the costs and expenses referred to in subsection (6) before entering into the covenant.

86K. Registration of environmental protection covenant

- (1) The CEO may deliver a memorial of an environmental protection covenant to the relevant land registration officer.
- (2) The memorial must be in a form approved by the relevant land registration officer.
- (3) The relevant land registration officer must register the memorial and accordingly endorse or note the appropriate register or record in respect of the land to which the environmental protection covenant applies.

86L. Binding effect of environmental protection covenant

An environmental protection covenant —

- (a) binds the owner of land by whom it was given for so long as the covenant subsists and that person continues to be the owner of the land; and
- (b) binds each occupier of the land who consented to the covenant for so long as the covenant subsists and that person continues to be an occupier of the land; and
- (c) while a memorial of the covenant remains registered under section 86K(3), binds each successive owner or occupier of the land.

86M. Application for amendment of environmental protection covenant

- (1) An owner of land who is bound by an environmental protection covenant under section 86L(a) or (c) may apply to the CEO for the amendment of the environmental protection covenant.
- (2) An application under subsection (1) for the amendment of an environmental protection covenant must —
 - (a) be made in the form and in the manner approved by the CEO; and
 - (b) contain or be accompanied by any information required as indicated in the form or in material accompanying the form; and
 - (c) be accompanied by the fee prescribed by or determined under the regulations.
- (3) If the CEO requires further information to determine the application, the CEO may, by written notice given to the applicant, require the applicant to give the CEO further specified information within a specified time.

- (4) If the application does not comply with subsection (2) or further information is not provided in accordance with subsection (3), the CEO must decline to deal with the application and advise the applicant accordingly.
- (5) If, under subsection (4), the CEO declines to deal with the application, the CEO does not have to perform any function under section 86N(1) or (4) in relation to the application.

86N. Amendment of environmental protection covenant

- (1) On an application under section 86M(1) for the amendment of an environmental protection covenant the CEO must —
 - (a) amend the covenant; or
 - (b) refuse to amend the covenant.
- (2) The CEO may amend an environmental protection covenant on the CEO's initiative —
 - (a) to correct in the covenant —
 - (i) a clerical mistake or unintentional error or omission; or
 - (ii) a figure which has been miscalculated; or
 - (iii) the misdescription of any person, thing, area, property or activity;
 - or
 - (b) to make an administrative change to the format of the covenant which does not alter the obligations of the covenantor; or
 - (c) to bring the covenant into conformity with an approved policy or with an exemption conferred under this Act; or

- (d) to give effect to a decision of the Minister under this Act (whether on an appeal or otherwise); or
 - (e) as agreed to by each person who is bound by the covenant.
- (3) The CEO must give written notice of any amendment under this section of an environmental protection covenant —
- (a) to each person who is bound by the covenant; and
 - (b) if the covenant is registered under section 86K, to the relevant land registration officer.
- (4) If under subsection (1) the CEO refuses to amend an environmental protection covenant, the CEO must give written notice of the refusal to the applicant.

86O. Enforcement of environmental protection covenant

- (1) A person bound by an environmental protection covenant who contravenes the covenant commits an offence.
- (2) Section 51R applies to any proceedings under this section as if the proceedings were proceedings under Part V Division 2.

86P. Duties upon passing interests in affected land

- (1) While a memorial of an environmental protection covenant remains registered under section 86K, each owner or occupier of the land to which the covenant relates must —
 - (a) before agreeing with another person in writing that the other person will succeed the owner or occupier in ownership or occupation or both, as

the case requires, of that land, notify the other person in writing of the following —

- (i) the content of the covenant;
- (ii) the fact that the covenant will be binding on the other person if the other person succeeds the owner or occupier in ownership or occupation or both;

and

- (b) within 14 days after ceasing to be an owner or occupier of the land to which the covenant relates, notify the CEO in writing of that cessation and of the name and address of each person who succeeds the owner or occupier in the ownership or occupation or both, as the case requires, of that land.

- (2) A person who contravenes subsection (1) commits an offence.

86Q. Discharge of environmental protection covenant

- (1) In this section —

revocable environmental protection covenant means an environmental protection covenant that is not expressed to be irrevocable.

- (2) A person who is bound by a revocable environmental protection covenant may apply in writing to the CEO for the discharge of the covenant.
- (3) On an application under subsection (2) for the discharge of a revocable environmental protection covenant the CEO must —
 - (a) subject to subsection (5), discharge the covenant; or
 - (b) refuse to discharge the covenant.

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- (4) Subject to subsection (5), a revocable environmental protection covenant may be discharged by the CEO on the CEO's initiative.
- (5) The CEO may discharge a revocable environmental protection covenant under this section if, and only if, the CEO is of the opinion that —
 - (a) the covenant is no longer necessary; or
 - (b) there is other just cause for discharging the covenant.
- (6) If a revocable environmental protection covenant is discharged under this section —
 - (a) the CEO must give written notice of the discharge to each person bound by the covenant; and
 - (b) if the covenant is registered under section 86K(3), the CEO must give a certificate under section 86R(1) to the relevant land registration officer.
- (7) If under subsection (3)(b) the CEO refuses to discharge a revocable environmental protection covenant, the CEO must give written notice of the refusal to the applicant.

86R. Cancelling registration of memorial

- (1) If an environmental protection covenant registered under section 86K(3) is discharged under section 86Q, the CEO must give the relevant land registration officer a certificate in a form approved by the relevant land registration officer and signed by the CEO certifying that the covenant was discharged on the date specified in the certificate.

- (2) The relevant land registration officer must, on receiving a certificate under subsection (1), cancel the registration of the memorial of the environmental protection covenant and endorse or note the appropriate register or record accordingly.

72. Section 89 amended

- (1) In section 89(1):
- (a) delete “with such assistance as he may require”;
 - (b) after paragraph (e) insert:
 - (ea) the implementation or operation of an environmental monitoring programme; or
 - (c) in paragraph (f)(ii):
 - (i) delete “permit, works approval” and insert:

permit, environmental protection covenant
 - (ii) delete “this Act.” and insert:

this Act;
 - (d) after paragraph (f) insert:

or
 - (g) determining whether an offence under this Act has been, is being or is likely to be committed.
- (2) In section 89(3) delete “with such assistance as he may require”.

73. Section 90 replaced

Delete section 90 and insert:

89A. Use of assistance and force

- (1) An inspector may use assistance and force that is reasonably necessary in the circumstances when exercising a power under section 89 but cannot use force against a person.
- (2) If the use of reasonable force is likely to cause significant damage to property, the inspector is not entitled to use force without the prior authority of the CEO in the particular case.
- (3) An inspector may request a police officer or other person to assist the inspector in exercising a power under this Part, and that person may assist the inspector in the exercise of the power.
- (4) A person while assisting an inspector at the request of the inspector and in accordance with this Act —
 - (a) has the same powers as are conferred on an inspector under this Part; and
 - (b) is subject to the same responsibilities as an inspector under this Part but is not required to give notice under section 89(4); and
 - (c) has the same protection from liability as an inspector.
- (5) Nothing in this section derogates from the powers of a police officer.

90. Powers of inspectors to obtain information

- (1) An inspector may —
 - (a) direct the occupier of any premises from which there has been, is, or is likely to be, an emission, or onto which any waste has been or is being discharged, to produce to the inspector —
 - (i) any books or other sources of information relating to that emission or to any manufacturing, industrial or trade processes carried on at those premises;
or
 - (ii) any data from any monitoring equipment or monitoring programme in respect of that emission;or
 - (b) direct any person to produce to the inspector any books or other sources of information in the custody or possession of that person relating to —
 - (i) any emission; or
 - (ii) the manufacture, sale or distribution for sale of any prescribed equipment or material.
- (2) An inspector may direct a person to produce to the inspector any licence, registration, permit, approval, certificate or authority granted and issued under this Act to the person or alleged by the person to have been so granted and issued.
- (3) An inspector may —
 - (a) conduct any examination or inquiry the inspector considers necessary to ascertain

whether there has been compliance with the Act; and

- (b) question any person to ascertain whether or not there has been compliance with this Act and direct that person to do either or both of the following —
 - (i) answer any question put to the person;
 - (ii) produce any books or other sources of information in the custody or possession of that person relating to compliance with the Act.
- (4) A direction given under subsection (1), (2) or (3)(b)(ii) —
 - (a) must be given in writing to the person required to produce the document, books or other sources of information or data; and
 - (b) must specify the time at which, or the period within which, the document, books or other sources of information or data are to be produced to the inspector; and
 - (c) may require that the document, books or other sources of information or data be produced to the inspector —
 - (i) at a place specified in the direction; and
 - (ii) by a means specified in the direction.
- (5) A direction under subsection (3)(b)(i) —
 - (a) may be given orally or in writing; and
 - (b) must specify the time at which, or period within which, the answer must be given to the inspector; and

- (c) may require any of the following —
 - (i) that the answer be given orally or in writing;
 - (ii) if the answer is directed to be given in writing, be given by means specified in the direction;
 - (iii) that the answer be verified by a statutory declaration.
- (6) A person who does not comply with a direction given to the person under subsection (1), (2) or (3) commits an offence.
- (7) An inspector may do any of the following in relation to any books or other sources of information or data produced to the inspector in compliance with a direction under this section —
 - (a) examine them;
 - (b) take copies of or data or extracts from them;
 - (c) download or print them out.
- (8) An inspector may record an answer given orally under this section, including by making an audiovisual recording.

74. Section 92F deleted

Delete section 92F.

75. Section 92H amended

In section 92H(1)(a) delete “section 89(3); or” and insert:

section 89(1) or (3); or

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76. Section 99 amended

Delete section 99(4).

77. Part VIA Division 1 heading replaced

Delete the heading to Part VIA Division 1 and insert:

Division 1 — Prescribed offences and modified penalties

78. Section 99AA inserted

Before section 99A insert:

99AA. Term used: prescribed offence

In this Division —

prescribed offence means —

- (a) a Tier 1 offence under a section listed in the Table; or
- (b) a Tier 2 offence.

Table

s. 6(7)	s. 47(1)
s. 47(4)	s. 48(9)
s. 49(3)	s. 50(2)
s. 50A(2)	s. 51C
s. 69(5)	s. 71(5)

79. Section 99A amended

(1) Delete section 99A(1) and insert:

- (1) This section applies to a person if the CEO is of the opinion that —
 - (a) the person has committed a prescribed offence; and
 - (b) there is sufficient evidence to support the allegation of the offence; and
 - (c) having regard to the nature and particulars of the alleged offence and to the particulars of the circumstances relating to the alleged offence, the alleged offence can adequately be dealt with under this Division.

- (1A) For the purposes of subsection (1)(c), the CEO must have regard to —
 - (a) the potential or actual effect on the environment of any occurrence giving rise to the allegation of the offence; and
 - (b) in the case of a prescribed offence other than an offence under section 49A(2) or (3), whether, as soon as was reasonably practicable after the occurrence giving rise to the allegation of the offence, the alleged offender notified particulars of the occurrence in writing to the CEO; and
 - (c) in the case of a prescribed offence other than an offence under section 49A(2) or (3), whether, after the occurrence giving rise to the allegation of the offence, the alleged offender took all reasonable and practicable steps to minimise and remedy any adverse environmental effects of that occurrence; and

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- (d) whether the alleged offender cooperated with officers and employees of the Department and provided information and assistance when so requested; and
- (e) whether the alleged offender has taken reasonable steps to ensure that the circumstances giving rise to the allegation of the offence do not reoccur.

- (2) In section 99A(2) delete “Tier 2” and insert:

prescribed

80. Section 99E amended

Delete section 99E(3) and insert:

- (3) If this subsection applies, the CEO must publish —
- (a) a notice of payment of the modified penalty; and
 - (b) such particulars as are prescribed.

81. Section 99J amended

- (1) In section 99J(1) delete “may, within 35 days after the alleged offence is believed to have been committed, give” and insert:

may give

- (2) After section 99J(2) insert:
- (3) The infringement notice must be served within 12 months after the day on which the alleged infringement notice offence is believed to have been committed.

82. Section 99Z amended

In section 99Z(2) delete the definition of *monetary benefits* and insert:

monetary benefits means —

- (a) monetary, financial or economic benefits of any kind; and
- (b) monetary savings, or a reduction in expenditure, achieved by the avoidance of charges, fees or other costs that would have been incurred by the offender if the offender had not committed the offence.

83. Part VIA Division 5 inserted

At the end of Part VIA insert:

Division 5 — Injunctions

99ZC. Injunctions to prevent improper conduct

- (1) In this section —
- contravention* includes the continuation of a contravention;
- court* means the Supreme Court;

improper conduct means an act or omission constituting a contravention of, or involvement in a contravention of, section 41A(1), 47(1) or (5), 49(2), (3), (4) or (5), 50(1) or (2), 50A(1) or (2), 50B(1) or (2), 51C, 51J(1), 53A(1), 53B(1), 62 or 63(3);

involvement in a contravention means —

- (a) aiding, abetting, counselling, or procuring the contravention; or
 - (b) inducing the contravention, whether by threats or promises or otherwise; or
 - (c) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (d) conspiring with others to effect the contravention; or
 - (e) attempting to do anything constituting involvement in a contravention under paragraph (a), (b), (c) or (d).
- (2) Without limiting any other power the court may have to grant injunctive relief, it is declared that the court may grant an injunction to prevent a person from engaging in improper conduct (a ***conduct injunction***).
- (3) The CEO may apply for a conduct injunction.
- (4) If the court is satisfied that it would be appropriate to grant a conduct injunction, the injunction may be granted —
- (a) whether or not it is proved that the person intends to engage, or to engage again, or to continue to engage, in improper conduct of the kind sought to be prevented by the injunction; and
 - (b) whether or not the person has previously engaged in improper conduct of that kind.

- (5) An interim conduct injunction may be granted before final determination of an application for a conduct injunction.
- (6) The court must not require, as a condition of granting an interim conduct injunction, that an undertaking be given as to damages or costs.
- (7) The taking of proceedings against any person for an offence under this Act is not affected by —
 - (a) the making of an application for a conduct injunction; or
 - (b) the grant or refusal of a conduct injunction or an interim conduct injunction; or
 - (c) the rescission, variation or expiry of a conduct injunction or an interim conduct injunction.

84. Section 100 amended

- (1) In section 100(3) delete “section 45(1) (or under section 45(1))” and insert:

section 45(3) or (4) (or under section 45(3) or (4))

- (2) In section 100(3a):
 - (a) in paragraphs (a), (b) and (c) delete “14” and insert:

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 - (b) delete paragraph (e) and insert:

 - (d) under subsection (3), within 14 days after the publication of the Ministerial statement setting out the agreement.

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- (3) Delete section 100(4)(a) and (b) and insert:
- (a) a notice served on the proponent under section 48(7)(b); or
 - (b) the taking of any steps under section 48(7)(c) or (d),

85. Section 101 amended

- (1) In section 101(1):
- (a) delete paragraphs (b) and (c) and insert:
 - (b) in the case of an appeal referred to in section 100(1)(a), remit the proposal to the Authority for the making of a fresh decision as to whether or not the proposal is to be assessed; or
 - (c) in the case of an appeal referred to in section 100(1)(a), remit the proposal to the Authority for assessment and for that purpose make a direction under section 43; or
 - (b) delete paragraph (e) and insert:
 - (e) in the case of an appeal against a notice served under section 48(7)(b), set aside or alter that notice; or
 - (c) in paragraph (f) delete “section 48(4)(c)” and insert:

section 48(7)(c)

- (2) In section 101(3):
- (a) in paragraph (b) delete “section 45(6)” and insert:

section 45(10)
 - (b) delete paragraph (c) and insert:
 - (c) referred to in section 100(3) as to conditions or procedures agreed under section 45(3) or (4) otherwise than as applied by section 46(8) prevents the implementation of the proposal concerned; or
 - (d) referred to in section 100(3) as to conditions or procedures agreed under section 45(3) or (4) as applied by section 46(8) does not prevent the implementation, or continued implementation, of the proposal concerned subject to the implementation conditions; or
 - (c) delete paragraph (e) and insert:
 - (e) against a notice served under section 48(7)(b) suspends the operation of that notice; or
 - (d) in paragraph (f) delete “section 48(4)(c)” and insert:

section 48(7)(c)
 - (e) delete “or (2d).” and insert:

or (2d) or section 107(2).

- (3) In section 101(4) delete “section 48(5)” and insert:

section 48(8)

86. Section 102 replaced

Delete section 102 and insert:

101B. Appeals against decisions as to environmental protection covenants

- (1) Subject to section 105, an applicant —
- (a) under section 86M(1) for the amendment of an environmental protection covenant; or
 - (b) under section 86Q(2) for the discharge of an environmental protection covenant,

who is aggrieved by the refusal of the CEO under section 86N(1)(b) or 86Q(3)(b) to amend or discharge the covenant, may, within 21 days after being notified of the refusal, lodge with the Minister an appeal in writing setting out the grounds of the appeal.

- (2) Pending the determination of the relevant appeal lodged under subsection (1), the decision against which the appeal is lodged continues to have effect.

102. Appeals against decisions as to licences

- (1) This subsection applies if —
- (a) an applicant for a licence is aggrieved by the refusal of the CEO to grant the licence under section 54(1)(b); or
 - (b) an applicant for the amendment of a licence is aggrieved by the refusal of the CEO to amend the licence under section 55(1)(b); or

- (c) an applicant for the transfer of a licence is aggrieved by the refusal of the CEO to transfer the licence under section 59(2)(b); or
 - (d) an applicant for a licence or transfer of a licence is aggrieved by the specification by the CEO of any condition in the licence under section 61(1) (a *condition specification*).
- (2) Subject to section 105, if subsection (1) applies the applicant may lodge an appeal with the Minister within 21 days after being notified of the refusal or condition specification.
- (3) This subsection applies if the holder of a licence is aggrieved by —
- (a) the amendment of the licence under section 55(2); or
 - (b) the suspension of the licence under section 56(2); or
 - (c) the refusal to accept the surrender of the licence under section 60(1)(b).
- (4) Subject to section 105, if subsection (3) applies the holder may lodge an appeal with the Minister within 21 days after being notified of the amendment, suspension or refusal.
- (5) Subject to section 105, the former holder of a licence who is aggrieved by the revocation of the licence under section 56(1) may lodge an appeal with the Minister within 21 days after being notified of that revocation.
- (6) If a person who is not the applicant referred to in subsection (1)(d) is aggrieved by a condition specification, the person may lodge an appeal with the Minister within the period within which the applicant can lodge an appeal about that condition specification.

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- (7) If a person who is not the holder of a licence is aggrieved by an amendment referred to in subsection (3)(a), the person may lodge an appeal with the Minister within the period within which the holder can lodge an appeal about that amendment.
- (8) An appeal under this section must be in writing and must set out the grounds of the appeal.
- (9) Pending the determination of an appeal lodged under subsection (2), (4), (5) or (6) in respect of a refusal, condition specification, revocation or suspension, the decision against which that appeal is lodged continues to have effect.
- (10) Pending the determination of an appeal lodged under subsection (4) in respect of an amendment, the amendment is taken not to have been made.
- (11) Pending the determination of an appeal lodged under subsection (7), the amendment continues to have effect.

87. Section 105 replaced

Delete section 105 and insert:

105. Matters on which appeals cannot be lodged

An appeal cannot be lodged —

- (a) under section 101A, 101B(1), 102 or 103 in respect of anything done by the CEO under section 110(1) to give effect to a decision of the Minister under section 107(2) or 109(3) on an appeal; or
- (b) under section 101A(2) in respect of the amendment of a clearing permit by amending it under section 51K(1)(e), (f), (g) or (h); or

- (c) under section 102(4) in respect of the amendment of a licence by amending it under section 55(3)(e), (f), (h), (i) or (j).

88. Section 106 amended

- (1) In section 106(1)(b) delete “section 101A, 102,” and insert:

section 101A, 101B(1), 102,
- (2) Delete section 106(4) and insert:
 - (4) Subsection (1) does not apply if an appeals committee has been appointed.
 - (5) If an appeal is lodged under section 100 by a person other than a decision-making authority and the decision-making authority has made submissions to the Minister in respect of the proposal to which the appeal relates —
 - (a) the Appeals Convenor must have regard to those submissions when reporting on, and otherwise dealing with, the appeal; and
 - (b) if an appeals committee has been appointed, it must have regard to those submissions when considering and reporting to the Minister on the appeal.

89. Section 107 amended

- (1) Delete section 107(1).

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- (2) In section 107(2) delete “made under subsection (1),” and insert:

mentioned in section 106(1)(a), (b) or (d),

Note: The heading to amended section 107 is to read:

Minister’s powers on appeal

90. Section 107B amended

After section 107B(3) insert:

- (4) If an appeal under section 100, 101A, 101B(1), 102, 103 or 104(1), as enacted at any time, is lodged with the Appeals Convenor, it is taken to have been lodged with the Minister.
- (5) Subsection (4) extends, and is taken to have always extended, to appeals lodged before the coming into operation of the *Environmental Protection Amendment Act 2020* section 90.

91. Section 110 amended

After section 110(2) insert:

- (3) If implementation conditions are changed on an appeal under section 100(3), a statement setting out the implementation conditions as changed must be published by the Minister and section 45(8)(b) applies.

92. Part VIIB inserted

After section 110J insert:

Part VIIB — Environmental monitoring programmes

Division 1 — Preliminary

110K. Terms used

In this Part —

environmental monitoring programme means a monitoring programme established to monitor the effect on the environment of one or more prescribed activities, including pollution or environmental harm resulting from the activity or activities;

levy means a levy imposed under Division 2A;

monitoring station means equipment or a facility for collecting and obtaining data, and taking measurements, for the purposes of an environmental monitoring programme.

Division 2 — Environmental monitoring programmes

110L. Regulations as to environmental monitoring programmes

Regulations may —

- (a) provide for the investigations, consultation or other processes to be carried out or undertaken to determine if an environmental monitoring programme is needed; and
- (b) provide for the development, establishment, implementation and operation of an environmental monitoring programme; and

- (c) provide for the powers that may be exercised for the purposes of —
 - (i) determining whether an environmental monitoring programme is needed; and
 - (ii) developing, establishing, implementing or operating an environmental monitoring programme;and
- (d) without limiting paragraph (c)(ii) —
 - (i) provide for the installation, maintenance and operation of monitoring stations and for agreements to be entered for those purposes; and
 - (ii) require persons who own or occupy land to provide assistance relating to the installation, maintenance and operation of monitoring stations on the land;and
- (e) provide for and regulate the ownership, use and dissemination of data collected and obtained in the implementation and operation of an environmental monitoring programme; and
- (f) require the CEO to review and report on an environmental monitoring programme.

110M. Funding for environmental monitoring programmes

- (1) This subsection applies to the following moneys —
 - (a) any amount paid by way of levy; and
 - (b) any amount paid by way of penalty under section 110Q; and
 - (c) any amount of a kind prescribed for the purposes of this section.

- (2) Moneys to which subsection (1) applies are to be used for the following purposes —
- (a) determining whether an environmental monitoring programme is needed;
 - (b) developing, establishing, implementing and operating environmental monitoring programmes;
 - (c) the refund of amounts overpaid by way of levy, and the payment of rebates, under the regulations;
 - (d) a purpose of a prescribed kind;
 - (e) any other purpose relating to environmental monitoring programmes that is approved by the Minister.

Division 3 — Collection of levy

110N. Payment of levy

- (1) A levy is due and payable —
- (a) at the time or times prescribed; and
 - (b) in the manner 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.

110O. Financial assurance

The regulations may make provision —

- (a) empowering the CEO to require the holder of a licence, or a person required to hold a licence, to provide a financial assurance for the purpose of securing or guaranteeing payment of a levy; and

- (b) with respect to the form, amount, maintenance and termination of the financial assurance; and
- (c) with respect to the conditions and procedures under which the financial assurance may be called on or used; and
- (d) with respect to matters necessary for, or incidental to, the effective operation of a financial assurance.

110P. 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 an instalment is not paid at or before the time due for the payment of the instalment, the whole of the amount of the levy unpaid becomes due and payable at that time.

110Q. 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.

110R. 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) an amount of a levy that is due and payable;
- (b) an amount payable under section 110P.

110S. Evading levy

- (1) A person who evades or attempts to evade payment of all or any amount of a levy commits an offence.

Penalty for this subsection: a fine of \$10 000 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 any amount of the levy and any penalty under section 110Q.

93. Section 112 replaced

Delete section 112 and insert:

112. False information

A person who, in purporting to comply with a requirement or request under this Act to give information to the Minister, the Authority, the CEO, a police officer, an inspector or an authorised person, gives or causes to be given information that to the person's knowledge is false or misleading in a material particular commits an offence.

94. Section 112A amended

In section 112A(2) delete “information) if the individual objected at the time of doing so on the ground that it might incriminate the individual.” and insert:

information).

95. Section 114 amended

(1) Delete section 114(1) and insert:

(1) Proceedings in respect of a Tier 1 offence, whether by way of —

(a) giving a modified penalty notice under section 99A(2)(b); or

(b) prosecution for the offence,

as determined by the CEO, are not to be instituted otherwise than by the CEO.

(2) In section 114(1b) delete “section 79(2), a prosecution for a Tier 3 offence” and insert:

section 79(2) and (3), a prosecution for a Tier 3 offence or an offence under a regulation

(3) Delete section 114(3) and insert:

(3) A prosecution for an offence under section 49A(2) or (3), 81(2), 82(2), 83 or 93 may be instituted by any of the following —

(a) the CEO;

- (b) a police officer, acting with the consent of the CEO;
- (c) the chief executive officer of a local government, acting with the consent of the CEO.

(4) In section 114(4) after “instituted by” insert:

the CEO or

96. Section 116A and 116B inserted

After section 116 insert:

116A. Proof not required of certain matters

In proceedings for an offence under this Act, each of the following matters is taken to have been proved in the absence of proof to the contrary —

- (a) that the prosecutor is authorised to institute the prosecution;
- (b) that a signature on the prosecution notice alleging the offence is the signature of a person authorised to institute the prosecution;
- (c) that at a specified time a specified person was the CEO, an authorised officer or an inspector or a person assisting an inspector under section 89A;
- (d) that at a specified time a specified authorised person or a specified inspector was authorised to do a specified thing.

116B. Proof of remotely sensed images

(1) In this section —

captured includes taken;

image includes —

(a) a photograph; and

(b) a digital image;

image data source means a website, database, data storage facility or other body or source of information —

(a) containing or including either or both of the following —

(i) remotely sensed images;

(ii) digital or electronic information from which remotely sensed images can be produced;

and

(b) declared by the regulations to be an image data source for the purposes of this section;

official document means a document purporting to be signed by the CEO or a person appointed under the *Land Administration Act 1997* section 30 to be an authorised land officer;

remotely sensed image means an aerial photograph or any other image of land captured using airborne equipment or equipment mounted in or on a satellite.

(2) In this section a reference to the *capture* of an image includes a reference to the capture of digital or electronic information from which the image was produced.

- (3) For the purposes of this section, a remotely sensed image derived from an image data source —
 - (a) is taken to have been captured on the date recorded or shown in the image data source as being the date on which the image was captured; and
 - (b) is taken to be an image of the land recorded or shown in the image data source as being the land to which the image relates.
- (4) In proceedings under this Act a remotely sensed image of land is evidence of the vegetation on the land, and its condition, on the date on which the image was captured.
- (5) Subsection (4) applies to an image even if it, or the information from which it was produced, has been modified or enhanced so that colours, tones or brightness more accurately represent what would be visible with the naked eye.
- (6) In proceedings under this Act an official document certifying the matters set out in subsection (7) or any of those matters is, in the absence of proof to the contrary, taken to be proof of the matters certified.
- (7) The matters that may be certified are —
 - (a) that an image comprising or specified in the document is, or is a true copy of, a remotely sensed image of land; and
 - (b) that an image comprising or specified in the document is derived from an image data source; and

- (c) that the image data source from which an image comprising or specified in the document is derived records or shows a date specified in the document as being the date on which the image was captured; and
 - (d) that the image data source from which an image comprising or specified in the document is derived records or shows land specified in the document as being the land to which the image relates; and
 - (e) that a remotely sensed image of land comprising or specified in the document has been marked to correctly identify, and correctly show the boundaries of, the land according to records held by the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5.
- (8) In subsection (7)(e) a reference to the marking of an image is a reference to the marking or modification of the image, or the information from which it was produced, by the application of computer software or by other means.
- (9) An image, or a document comprising or specifying an image, must not be admitted pursuant to this section as evidence that the land has been cleared unless the court is satisfied that, after the time at which the image was captured, the Minister, the CEO or a person acting with the authority of the Minister or of the CEO has entered upon and inspected the land for the purposes of ascertaining whether the land has been so cleared.

97. Section 120 amended

Delete section 120(ba).

98. Section 121B inserted

After section 121A insert:

121B. Dealing with moneys paid or contributed under this Act

- (1) This section applies when section 45A(1)(c), 48AA(2), 51I(2)(c), 110M(2) or any other provision of this Act requires or authorises the payment or contribution of moneys (the *moneys*) to be used for a purpose specified in the provision (the *specified purpose*).
- (2) Regulations may prescribe the manner in which the moneys are to be managed and expended.
- (3) Without limiting subsection (2), regulations may —
 - (a) provide that, despite the *Financial Management Act 2006* section 38, income derived from the investment of the moneys may be applied for the specified purpose; and
 - (b) prescribe reporting requirements in relation to the use, management and expenditure of the moneys; and
 - (c) require or authorise the payment of the moneys into an account maintained for the specified purpose.
- (4) This section does not affect the operation of Part VIIA.

99. Section 122B inserted

After section 122A insert:

122B. Forms and other matters relating to documentation

- (1) In this section —
 - approved* means approved by the CEO;
 - documentation* includes a document, application, report, return, certificate, decision, statement or recommendation and information or data;
 - publish* includes keep a public record of and make available for public inspection;
 - submit* includes make, provide or produce.
- (2) Forms may be prescribed or approved for use in submitting documentation under this Act.
- (3) If a form is prescribed or approved for use in submitting documentation, the documentation must be submitted in, and in accordance with, that form but deviations from the form not materially affecting the substance, nor likely to mislead, do not invalidate the form used.
- (4) Regulations may make provision with respect to —
 - (a) publishing documentation submitted or obtained under, or created for the purposes of, this Act; and
 - (b) measures and procedures for maintaining confidentiality in respect of documentation, including —
 - (i) the making of a request that documentation not be published; and

- (ii) the manner in which a request of that kind is to be made, received and dealt with.
- (5) Without limiting subsection (4)(a), regulations may require or authorise the publication of documentation that is not otherwise required or authorised under this Act to be published.
- (6) Subject to the measures or procedures referred to in subsection (4)(b) —
 - (a) documentation must or can be published if this Act requires or authorises it to be published; and
 - (b) if a manner is prescribed for use in publishing documentation, it must be published in that manner.

100. Part VIIIA inserted

After section 124 insert:

Part VIIIA — Bilateral agreements with the Commonwealth

124A. Terms used

In this Part, unless the contrary intention appears —

bilateral agreement means an agreement referred to in the Commonwealth Environment Act section 45(2) to which the State is a party;

bilateral matter means a matter in respect of which an application has been made in accordance with regulations referred to in section 124D;

guidelines includes policies, plans and information;

State entity means the Minister, the CEO or the Authority.

124B. Effect of Part

This Part has effect despite any other provision of this Act.

124C. Additional function of Authority

- (1) It is a function of the Authority to facilitate the implementation of bilateral agreements.
- (2) A reference in any enactment to the Authority's functions includes a reference to its function under subsection (1).

124D. Application for a matter to be dealt with as a bilateral matter

Regulations may provide for procedures under which a person may apply for a matter to be dealt with under this Act as a bilateral matter where, under a bilateral agreement, the performance of functions in respect of the matter by a State entity will or may have effect for the purposes of the Commonwealth Environment Act.

124E. Performance of functions in respect of bilateral matters

- (1) A State entity may perform functions under this Act in respect of a bilateral matter in a manner that is consistent with, and enables the implementation of, a bilateral agreement.
- (2) When performing functions under this Act in respect of a bilateral matter a State entity may have regard to guidelines in accordance with a bilateral agreement.

- (3) Without limiting subsection (1) or section 17, for the purposes of performing functions under Part IV in respect of a bilateral matter the Authority may, in relation to a proposal —
- (a) have regard to requirements made by a bilateral agreement when making requirements or taking other action under section 40; and
 - (b) prepare guidelines and publish material as required under a bilateral agreement; and
 - (c) require the proponent to do anything necessary to give effect to a bilateral agreement; and
 - (d) make its assessment and report in a manner that satisfies the requirements of a bilateral agreement.
- (4) Without limiting subsection (1), when consulting with other Ministers and decision-making authorities or making decisions for the purposes of Part IV in respect of a bilateral matter, the Minister may —
- (a) rely on a report of the Authority, including any part of the report relating to matters of national environmental significance under the Commonwealth Environment Act; and
 - (b) impose implementation conditions for the purpose of the implementation of a bilateral agreement.
- (5) Without limiting subsection (1), when performing functions under Part V Division 2 in respect of a bilateral matter the CEO may —
- (a) have regard to requirements made by a bilateral agreement; and
 - (b) prepare guidelines and publish material as required under a bilateral agreement; and

- (c) require a person to do anything necessary to give effect to a bilateral agreement; and
 - (d) make any assessment and report required by a bilateral agreement in a manner that satisfies the requirements of a bilateral agreement; and
 - (e) attach conditions to a clearing permit for the purpose of the implementation of a bilateral agreement.
- (6) When performing functions under Part VII in relation to an appeal in respect of a bilateral matter the following are to have regard to the effect of subsections (1) to (5) on the performance of functions —
- (a) the Minister;
 - (b) the Authority;
 - (c) the CEO;
 - (d) the Appeals Convenor;
 - (e) an appeals panel;
 - (f) an appeals committee.

124F. Fees in relation to bilateral matters

- (1) Regulations may prescribe, or provide for the determination of, fees payable to a State entity, or a delegate of a State entity, in respect of things done, or to be done, by or on behalf of the State entity or delegate in respect of a bilateral matter.
- (2) Regulations relating to a fee in respect of a matter may prescribe, or provide for the determination of, a greater or additional fee if the matter is, or is to be, dealt with as a bilateral matter.

- (3) Schedule 2 items 2 and 2A apply in relation to fees mentioned in this section.

124G. Disclosure of information for the purposes of bilateral agreements

- (1) Subject to this section, the provisions of this Act in relation to the confidentiality and disclosure of information apply to information obtained in or for the purposes of the performance of functions in accordance with this Part.
- (2) To facilitate the implementation of a bilateral agreement information that a State entity has may be disclosed to a person that performs functions under the Commonwealth Environment Act.
- (3) A person does not commit an offence under section 120 if the disclosure of information referred to in that section is made under, or for the purposes of the implementation of, a bilateral agreement.

124H. Regulations

Without limiting section 123(1) and (2), regulations may prescribe all matters that are required or permitted by this Part to be prescribed or that are necessary or convenient to be prescribed for —

- (a) giving effect to the purposes of this Part; or
(b) facilitating the implementation of bilateral agreements.

101. Part IX Division 4 inserted

At the end of Part IX insert:

Division 4 — Transitional provisions for *Environmental Protection Amendment Act 2020*

Subdivision 1 — General provision

133A. Term used: amending Act

In this Division —

amending Act means the *Environmental Protection Amendment Act 2020*.

Subdivision 2 — Transitional provisions relating to clearing matters

133B. Declaration of environmentally sensitive areas

(1) In this section —

former section means section 51B of this Act as in force before the coming into operation of section 44 of the amending Act;

new section means section 51B as in force after the coming into operation of section 44 of the amending Act;

regulations means regulations made under the new section.

(2) Until regulations come into operation the declaration of an environmentally sensitive area by notice made under the former section continues to have effect as if it had been made by regulations.

133C. Clearing permit applications

- (1) In this section —
- commencement** means the coming into operation of section 45 of the amending Act;
- existing application** means an application for a clearing permit made under section 51E before the commencement that has neither been withdrawn nor dealt with under section 51E(3) or (5) before the commencement.
- (2) On and from the commencement an existing application is taken to have been the referral under and in accordance with section 51DA(2) (the **deemed referral**) of a proposal for the clearing specified in the existing application.
- (3) If the CEO did not comply with section 51E(4)(c) in relation to an existing application before the commencement, section 51DA(3) to (6) apply to the deemed referral, and if the person who made the existing application —
- (a) receives notice under section 51DA(5) that the CEO has decided that a clearing permit is needed for the proposed clearing; or
 - (b) does not receive any notice under section 51DA(5) within the period of 21 days beginning on the commencement,
- the person may, in writing, request the CEO to treat the deemed referral as an application for a clearing permit under section 51E(1).
- (4) If the CEO complied with section 51E(4)(c) in relation to an existing application before the commencement,

the person who made the existing application is taken to have —

- (a) received notice under section 51DA(5) that the CEO has decided that a clearing permit is needed for a proposed clearing; and
 - (b) requested the CEO under section 51DA(8) to treat the deemed referral as an application for a clearing permit under section 51E(1).
- (5) If a request is made under subsection (3), or if subsection (4) applies, the deemed referral is to be treated as an application for a clearing permit under section 51E, and section 51DA(9) does not apply.

133D. Clearing injunctions

- (1) In this section —

clearing injunction has the meaning given in section 51S(2) of this Act as in force before the commencement;

commencement means the coming into operation of sections 59 and 83 of the amending Act;

conduct injunction has the meaning given in section 99ZC(2);

existing application means an application for a clearing injunction made under section 51S of this Act as in force before the commencement that has neither been withdrawn nor finally determined before the commencement.

- (2) A clearing injunction in force immediately before the commencement has effect on and after the commencement as if it were a conduct injunction.
- (3) An existing application has effect on and after the commencement as if it were an application for a conduct injunction made under section 99ZC(3).

Subdivision 3 — Transitional provisions relating to works approvals and licences

133E. Terms used

In this Subdivision —

commencement means the coming into operation of section 60 of the amending Act;

existing Act means this Act as in force immediately before being amended by the amending Act;

former provisions means Part V Division 3 of this Act as in force before the commencement;

new licence means a licence granted under the new provisions;

new provisions means Part V Division 3 as in force after the commencement.

133F. Works approvals

- (1) Despite section 60 of the amending Act a works approval in effect under the former provisions immediately before the commencement (the *works approval*) continues to have effect on and after the commencement.
- (2) The provisions of the existing Act are to be taken to continue in force to the extent necessary to give effect to subsection (1).
- (3) Subsection (1) has effect subject to subsection (4) and to the former provisions as continued in force by subsection (2).
- (4) The CEO may, by notice in writing to the occupier, amend the works approval so that it conforms with the new provisions and the form of licences issued under the new provisions and, from the service of that notice, the works approval as so amended is taken to be a new

licence granted to the occupier in respect of the works specified in the works approval as so amended and has effect accordingly.

- (5) Without limiting subsection (4), a works approval may be amended under that subsection to specify emissions authorised by the works approval.

133G. Licences

- (1) Despite section 60 of the amending Act a licence in effect under the former provisions immediately before the commencement (the *licence*) continues to have effect on and after the commencement.
- (2) The provisions of the existing Act are to be taken to continue in force to the extent necessary to give effect to subsection (1).
- (3) Subsection (1) has effect subject to subsection (4) and to the former provisions as continued in force by subsection (2).
- (4) Despite subsection (1) the licence may be amended under Part V Division 3 Subdivisions 3 and 4 and, from the giving of notice of the amendment under section 58, the licence as so amended is taken to be a new licence granted to the occupier in respect of the prescribed activities specified in the conditions of the licence as so amended and has effect accordingly.

133H. Existing applications for works approvals or licences

- (1) In this section —
existing application means an application for a works approval or licence made under the former provisions that has neither been withdrawn nor finally determined before the commencement.

- (2) An existing application has effect on and after the commencement as if it were an application for a new licence made under the new provisions.

133I. Existing applications as to existing works approvals

- (1) In this section —
existing application means an application for the amendment, surrender or transfer of a works approval (the *works approval*) made under the former provisions that has neither been withdrawn nor finally determined before the commencement.
- (2) Without limiting section 133F(1) and (2), those provisions apply in relation to an existing application.
- (3) If an existing application has neither been withdrawn nor finally determined before the time at which the works approval becomes a new licence under section 133F(4), the existing application has effect from that time as if it were an application under the new provisions for the amendment, surrender or transfer of the new licence as the case requires.

133J. Existing applications as to existing licences

- (1) In this section —
existing application means an application for the amendment, surrender or transfer of a licence (the *licence*) made under the former provisions that has neither been withdrawn nor finally determined before the commencement.
- (2) Without limiting section 133G(1) and (2), those provisions apply in relation to an existing application.
- (3) If an existing application has neither been withdrawn nor finally determined before the time at which the licence becomes a new licence under section 133G(4),

the existing application has effect from that time as if it were an application under the new provisions for the amendment, surrender or transfer of the new licence as the case requires.

133K. Appeals in respect of refusal to grant works approvals and licences

- (1) In this section —
pending appeal means an appeal against the refusal of the CEO to grant a works approval or licence made under the former provisions that has neither been withdrawn nor finally determined before the commencement.
- (2) A decision made before the commencement to uphold an appeal against the refusal of the CEO to grant a works approval or licence under the former provisions is taken on and after the commencement to be a decision to uphold an appeal against the refusal of the CEO to grant a licence under the new provisions.
- (3) The provisions of the existing Act are to be taken to continue in force on and after the commencement to the extent necessary to enable —
 - (a) any pending appeal to be withdrawn or finally determined; and
 - (b) an appeal against the refusal of the CEO, before the commencement, to grant a works approval or licence under the former provisions to be lodged and dealt with.
- (4) If under the provisions of the existing Act as continued in force by subsection (3) the Minister makes a decision to uphold an appeal against the refusal of the CEO to grant a works approval or licence under the former provisions, that decision is taken to be a

decision to uphold an appeal against the refusal of the CEO to grant a licence under the new provisions.

133L. Other appeals in respect of works approvals and licences

(1) In this section —

pending appeal means an appeal against a specified decision that has neither been withdrawn nor finally determined before the commencement;

specified decision means a decision of the CEO under the former provisions —

- (a) to refuse to transfer a works approval or licence; or
- (b) to specify a condition in a works approval or licence; or
- (c) to amend, revoke or suspend a works approval or licence.

(2) The provisions of the existing Act are to be taken to continue in force on and after the commencement to the extent necessary to enable —

- (a) any pending appeal to be withdrawn or finally determined; and
- (b) an appeal against a specified decision made before the commencement to be lodged and dealt with.

(3) If under the provisions of the existing Act as continued in force by subsection (2) the Minister makes a decision as to an appeal, the provisions of the existing Act are to be taken to continue in force to the extent necessary to enable the CEO to do anything necessary to implement and give effect to the Minister's decision.

(4) If —

- (a) under the provisions of the existing Act as continued in force by subsection (2) the Minister makes a decision to uphold an appeal against a specified decision relating to a works approval or licence; and
- (b) under section 133F(4) or 133G(4) the works approval or licence is taken to be a new licence,

the decision on the appeal has effect, subject to any necessary modifications, in relation to the new licence.

Subdivision 4 — Other matters

133M. Referred proposals

- (1) In subsection (2) —
referral means referral to the Authority under section 38.
- (2) Each of the following is taken to be a referral of a significant amendment of an approved proposal —
 - (a) the referral by the proponent, before the coming into operation of section 28 of the amending Act (the *commencement*), of a revised proposal after the publication of a statement under section 45(5) of this Act as in force before the commencement in relation to a proposal;
 - (b) the referral, before the coming into operation of section 31 of the amending Act (the *commencement*), of a new proposal as required by section 46B(2) of this Act as in force before the commencement;
 - (c) the referral by the proponent, after the coming into operation of section 28 of the amending Act, of a revised proposal in respect of a proposed change if, when it is dealt with in

accordance with subsection (6), the proposed change is not approved.

- (3) In subsection (4) —
commencement means the coming into operation of section 26 of the amending Act;
proposed change means a change to a proposal to which section 43A of this Act as in force before the commencement applied.
- (4) If at the commencement the Authority has yet to determine whether to consent to a proposed change, the proposed change is taken to have been requested under section 43A(1)(b).
- (5) In subsection (6) —
commencement means the coming into operation of section 28 of the amending Act;
proposed change means a change to a proposal to which section 45C of this Act as in force before the commencement applied.
- (6) If at the commencement the Minister has yet to determine whether to approve of a proposed change, the proposed change must be dealt with as if section 45C of this Act as in force before commencement had not been repealed.
- (7) In subsection (8) —
commencement means the coming into operation of section 16 of the amending Act;
section 39 means section 39 of this Act as in force before the commencement.
- (8) If a request made under section 39(2) has not been dealt with before the commencement, the request must

be dealt with as if section 39(3) and (4) had not been repealed.

133N. Chair and Deputy Chair

(1) In this section —

commencement means the coming into operation of section 6 of the amending Act.

(2) Subject to this Act —

- (a) a person holding office as Chairman of the Authority immediately before the commencement holds office after the commencement as Chair of the Authority; and
- (b) a person holding office as Deputy Chairman of the Authority immediately before the commencement holds office after the commencement as Deputy Chair of the Authority.

133O. Transitional regulations

(1) In this section —

publication day, for regulations made under subsection (2), means the day on which those regulations are published in the *Gazette*;

specified means specified or described in regulations made under subsection (2);

transitional matter —

- (a) means a matter that needs to be dealt with for the purpose of effecting the transition required because of the enactment of the amending Act; and
- (b) includes a saving or application matter.

- (2) If there is no sufficient provision in this Division for dealing with a transitional matter, the Governor may make regulations prescribing matters —
 - (a) required to be prescribed for the purpose of dealing with the transitional matter; or
 - (b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.
- (3) Regulations made under subsection (2) may provide that specified provisions of this Act —
 - (a) do not apply to or in relation to a specified matter; or
 - (b) apply with specified modifications to or in relation to a specified matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than publication day for those regulations but not earlier than the day on which the relevant provision of the amending Act came into operation, the regulations have effect according to their terms.
- (5) If regulations made under subsection (2) contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before publication day for those regulations; or
 - (b) to impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day for those regulations.

133P. Interpretation Act 1984 not affected

Except to the extent that this Division or regulations made under section 133O expressly provide differently, the *Interpretation Act 1984* Part V applies in relation to the amendments effected by the amending Act.

102. Schedule 1 Part 1 Division 1 amended

(1) In Schedule 1 Part 1 Division 1 item 2 column 2 delete “or (4)”.

(2) In Schedule 1 Part 1 Division 1 after row 2 insert:

2A	47(5)	\$500 000	\$100 000
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(3) In Schedule 1 Part 1 Division 1 item 3 column 2 delete “48(6)” and insert:

48(9)

103. Schedule 1 Part 1 Division 2 amended

(1) In Schedule 1 Part 1 Division 2 item 2 column 2 delete “or (4)”.

(2) In Schedule 1 Part 1 Division 2 after row 2 insert:

2A	47(5)	\$1 000 000	\$200 000
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(3) In Schedule 1 Part 1 Division 2 item 3 column 2 delete “48(6)” and insert:

48(9)

104. Schedule 1 Part 2 Division 1 amended

- (1) In Schedule 1 Part 2 Division 1 item 1D column 2 delete “50D” and insert:

50D(2)

- (2) In Schedule 1 Part 2 Division 1 delete items 2, 3, 4, 5, 5A, 6, 7, 7A and 8.
- (3) In Schedule 1 Part 2 Division 1 insert in alphanumerical order:

2	53A(1)	\$62 500	\$12 500
3	53B(1)	\$62 500	\$12 500
4	62	\$62 500	\$12 500
5	63(3)	\$62 500	\$12 500

- (4) In Schedule 1 Part 2 Division 1 insert in alphanumerical order:

11B	86O(1)	\$62 500	\$12 500
11C	86P(2)	\$62 500	\$12 500

105. Schedule 1 Part 2 Division 2 amended

- (1) In Schedule 1 Part 2 Division 2 item 1D column 2 delete “50D” and insert:

50D(2)

- (2) In Schedule 1 Part 2 Division 2 delete items 2, 3, 4, 5, 5A, 6, 7, 7A and 8.

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(3) In Schedule 1 Part 2 Division 2 insert in alphanumerical order:

2	53A(1)	\$125 000	\$25 000
3	53B(1)	\$125 000	\$25 000
4	62	\$125 000	\$25 000
5	63(3)	\$125 000	\$25 000

(4) In Schedule 1 Part 2 Division 2 insert in alphanumerical order:

11B	86O(1)	\$125 000	\$25 000
11C	86P(2)	\$125 000	\$25 000

106. Schedule 1 Part 2 Division 3 amended

(1) In Schedule 1 Part 2 Division 3 item 1 column 2 delete “47(3)” and insert:

47(4)

(2) In Schedule 1 Part 2 Division 3 delete item 2.

(3) In Schedule 1 Part 2 Division 3 item 3 column 2 delete “62A(2)” and insert:

61A(3)

(4) In Schedule 1 Part 2 Division 3 item 15 column 2 delete “90(2)” and insert:

90(6)

- (5) In Schedule 1 Part 2 Division 3 item 21 column 3 delete “\$50 000” and insert:

\$100 000

- (6) In Schedule 1 Part 2 Division 3 item 22 column 3 delete “\$50 000” and insert:

\$100 000

107. Schedule 1 Part 3 amended

In Schedule 1 Part 3 insert in alphanumerical order:

9A	90(6)	\$5 000	\$1 000
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108. Schedule 2 amended

- (1) In Schedule 2 item 1 insert in alphabetical order:

fee includes charge;

- (2) In Schedule 2 item 2(a) before “the time” insert:

subject to this Act,

- (3) After Schedule 2 item 2(c) insert:

(ca) when a fee submitted in respect of an application made under this Act is taken to have been received for the purposes of this Act;

- (4) Delete Schedule 2 item 2(e) and insert:
- (e) penalties for, and other consequences of, failure to pay fees, late payment of fees or underpayment of fees;
- (5) In Schedule 2 item 2A:
- (a) in paragraph (b) delete “regulations.” and insert:
- regulations;
- (b) after paragraph (b) insert:
- (c) prescribing fees that are payable before or when the authorisation is amended, transferred or surrendered.
- (6) In Schedule 2 item 14 delete “premises, whether or not those premises are prescribed premises or a public place.” and insert:
- premises or a place.
- (7) Delete Schedule 2 item 26 and insert:
26. Prescribing a specified activity as a prescribed activity for the purposes of Part V, either generally or in circumstances specified for that category of activity.
- (8) After Schedule 2 item 35A insert:
- 35B. Providing for notices, orders or other documents to be given, sent or served under this Act by electronic communication (as

defined in the *Electronic Transactions Act 2011* section 5(1)
and providing for the proof of that giving, sending or service.

- (9) In Schedule 2 item 36 delete “The” and insert:

Without limiting section 122B, the

- (10) After Schedule 2 item 36A insert:

36B. Establishing or recognising a scheme or system for the accreditation of persons as environmental practitioners for purposes related to this Act.

36C. Specifying timelines for steps in processes contained in Part V.

- (11) In Schedule 2 item 37 delete “\$5 000.” and insert:

\$20 000.

109. Schedule 5 amended

In Schedule 5 clause 2 delete the definition of “*threatened ecological community*” and insert:

threatened ecological community means —

- (a) a threatened ecological community as defined in the *Biodiversity Conservation Act 2016* section 5(1); or
- (b) any other ecological community listed, designated or declared as threatened, endangered or vulnerable under or for the purposes of a written law; or
- (c) a listed threatened ecological community as defined in the Commonwealth Environment Act section 528;

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110. Schedule 6 amended

- (1) In Schedule 6 item 1 delete “written law.” and insert:

prescribed enactment.
- (2) In Schedule 6 item 2:
 - (a) in paragraph (a) delete “an implementation agreement or decision; or” and insert:

a Ministerial statement; or
 - (b) delete paragraph (c)(ii).
- (3) Delete Schedule 6 item 3 and insert:
 3. Clearing in the performance of functions that the CEO, as defined in the *Conservation and Land Management Act 1984* section 3, has under section 33(1)(a) or (aa) of that Act.
- (4) In Schedule 6 item 10:
 - (a) in paragraph (e) delete “section 26,” and insert:

section 26; or
 - (b) after paragraph (e) insert:
 - (f) to comply with a notice given under section 33(1);
or
 - (g) as authorised under section 36(b),

(5) After Schedule 6 item 10 insert:

- 10A. Clearing that is done by a local government under the *Bush Fires Act 1954* section 33(4) if the person who is given a notice mentioned in item 10(f) fails to comply with it.
- 10B. Clearing that is done by the occupier of land, or an energy operator, under the *Energy Operators (Powers) Act 1979* section 54.

(6) After Schedule 6 item 14 insert:

- 15. Clearing that is done by the owner or occupier of land to comply with a notice given under the *Local Government Act 1995* section 3.25(1) in respect of something prescribed in Schedule 3.1 Division 1 item 5A, 8 or 9 of that Act.
- 16. Clearing that is done by a local government under the *Local Government Act 1995* section 3.26 if the person who is given a notice mentioned in item 15 fails to comply with it.

111. Amendments as to gender neutral language

(1) Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 3(1) def. of <i>public authority</i>	his	an
s. 6(5)	on him or it	
s. 6(5)	his or its intention	the intention of the Minister or Authority

s. 111

Provision	Delete	Insert
s. 6(7) s. 76(1) s. 80(1) s. 86(4)	he (each occurrence)	the person
s. 7(6) s. 87(4)(b) s. 88(5)(b) s. 94(2)(b) s. 101(2) s. 124(2)	his	the
s. 9	his	the Authority member's
s. 12(1)	his knowledge	the Authority member's knowledge
s. 12(1)	his interest	the interest
s. 16(e) s. 29(1)(a) s. 31(c) s. 37(1) and (3) s. 44(3) s. 48D(3) s. 69(2) and (4) s. 101(2d)(a) and (b)	he	the Minister

Provision	Delete	Insert
s. 18(1) s. 31(e) s. 36(1)(a)	his	the Minister's
s. 24	him or it (1 st occurrence)	the Minister or the Authority
s. 24 s. 25(2)	by him or it	
s. 25(1)(a) and (b) s. 25(2)	he or it	the Minister or the Authority
s. 25(1)(a)	him or it	
s. 25(3) s. 29(4) s. 40(8)	his	the member's
s. 29(1) s. 31(a)(i) s. 37(3) s. 48D(3)	to him	
s. 29(1)	by him	by the Minister
s. 29(2)(b) s. 42(1)(b)	chairman of	member presiding over
s. 29(4)	chairman	member presiding over

s. 111

Provision	Delete	Insert
s. 40(8)		
s. 44(3)(b)(i) s. 124(1)(c)	him	the Minister
s. 48H(3) s. 101(2d)(a)	him	the responsible Minister
s. 65(6) s. 89(4) s. 99(2)	on him	
s. 65(6)	of him	of the person
s. 65(7)	his	the person's
s. 67	when he ceases	as soon as practicable after ceasing
s. 67(a) and (b)	him	that owner or occupier
s. 69(3) and (5) s. 79(3)(c) s. 87(4)(b) s. 88(5)(b) s. 94(2)(b) s. 95(2) s. 96(3)	him	the person

Provision	Delete	Insert
s. 97(2) s. 104(1)		
s. 71(1) s. 75(1) and (4) s. 95(1)	he (each occurrence)	the CEO
s. 75(1)	his	the CEO's
s. 80(2)	him	the occupier
s. 81(1)(a) s. 82(1)	he (each occurrence)	the authorised person or police officer
s. 81A(2b) Sch. 7 cl. 4(1)(b)	he or she (each occurrence)	the person
s. 82(1)	him (each occurrence)	the authorised person or police officer
s. 82(3) s. 87(3)	he (each occurrence)	the authorised person
s. 83(a)	him	that occupier or person
s. 87(3)	him (each occurrence)	the authorised person
s. 88(1)(f)	him	the CEO

s. 111

Provision	Delete	Insert
s. 88(4)	him (each occurrence)	the inspector
s. 88(4)	he (each occurrence)	the inspector
s. 89(4) s. 99(2)	on him	
s. 91(2)	his	the inspector's
s. 91A(1)	he	the inspector or authorised person
s. 93	of his powers under	power conferred by
s. 97(1)(b)	who has in his possession	has possession of
s. 99(1)(d) and (2)	him	the police officer
s. 99(1)	he (each occurrence)	the police officer
s. 107B(3)	his or her	the Appeals Convenor's
s. 108(2)	him	the member
s. 118(4)	his or her capacity as such	that capacity
s. 120	him (each occurrence)	the person

(2) Delete section 91A(2) and insert:

- (2) A person who, being in charge of a vehicle or vessel and being informed by a person that the person is an inspector or an authorised person, fails to stop the vehicle or vessel when so required by that person commits an offence.

112. Other provisions amended

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 3(1) def. of <i>books</i>	section 3	section 5
s. 3(1) def. of <i>final approval</i> par. (e)	section 87(2), as read with section 32,	section 29 or 31
s. 40A(1)(b)(i)	section 40(2)(a) or (b);	section 40(2)(a), (aa) or (b);
s. 48C(7) def. of <i>public review</i> par. (e)	sections 84 and 87(1),	section 84,
s. 48E(2)	48A,	48A(1)(b) and (c), (2) and (3),
s. 68A(1) def. of <i>authorisation</i> s. 86A def. of <i>authorisation</i>	a works approval,	

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Provision	Delete	Insert
s. 72(1)(b) s. 119(b)	works approval or	
s. 73(1)(a) and (4)(a) s. 73A(1)(a)	works approval,	
s. 86A def. of <i>responsible person</i> par. (b)	the exemption	the declaration or exemption
s. 99H def. of <i>infringement notice offence</i>	by the regulations	
s. 109(2)	section 102(2) in respect of the amendment of a licence under section 59(1)(a) or (b)	section 102(4) in respect of the amendment of a licence under section 55(3)(a) or (b)
s. 110(2)	published in such manner as is prescribed.	published.
s. 110C(a)	a licensee	the holder of a licence
Sch. 2 it. 2A	works approval or	
Sch. 2 it. 36A	a licensee	the holder of a licence

Part 3 — Other Acts amended

113. *Biodiversity Conservation Act 2016* amended

- (1) This section amends the *Biodiversity Conservation Act 2016*.
- (2) In section 43(1)(b) before “in” insert:

or (1A)

- (3) In section 97(f)(i) delete “section 3(1); or” and insert:

section 44A; or

114. *Bush Fires Act 1954* amended

- (1) This section amends the *Bush Fires Act 1954*.
- (2) In section 24C delete the definition of *rubbish tip* and insert:

rubbish tip means disposal premises as defined in the
*Waste Avoidance and Resource Recovery Levy
Act 2007* section 3;

115. *Contaminated Sites Act 2003* amended

- (1) This section amends the *Contaminated Sites Act 2003*.
- (2) In section 92 before “117” insert:

116A,

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116. *Mining Act 1978* amended

- (1) This section amends the *Mining Act 1978*.
- (2) In section 6:
 - (a) in subsection (1a)(b) delete “section 38(5)” and insert:

section 38(4)
 - (b) in subsection (1d) after “38” insert:

or 38A

117. *Planning and Development Amendment Act 2020* amended

- (1) In this section —
section 71 means the *Planning and Development Amendment Act 2020* section 71.
- (2) Despite the *Planning and Development Amendment Act 2020* section 2, if section 71 has not come into operation before the day on which section 55(1) of this Act comes into operation, section 71 —
 - (a) does not come into operation; and
 - (b) is deleted on that day.

118. *Waste Avoidance and Resource Recovery Act 2007* amended

- (1) This section amends the *Waste Avoidance and Resource Recovery Act 2007*.

- (2) In section 74(a) delete “a licensee, or occupier” and insert:

the holder of a licence, or a person

- (3) In section 93 before “117” insert:

116A,

119. Waste Avoidance and Resource Recovery Levy Act 2007 amended

- (1) This section amends the *Waste Avoidance and Resource Recovery Levy Act 2007*.
- (2) In section 3 delete the definition of *disposal premises*.
- (3) In section 3 insert in alphabetical order:

disposal premises means premises at which a licensable waste activity is carried out;

licensable waste activity means an activity —

- (a) which involves receiving waste; and
- (b) the carrying out of which is an offence under the EP Act section 53B unless authorised by a licence;
- (4) Delete section 6 and insert:

6. Liability to pay levy

The holder of a licence in respect of a licensable waste activity, or in the case of a licensable waste activity in respect of which a licence is not in force, a person required under the EP Act to hold a licence in respect

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of the activity, is liable to pay the amount of any levy imposed in respect of waste received at the disposal premises at which the activity is carried out.

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Notes

This is a compilation of the *Environmental Protection Amendment Act 2020*. For provisions affected by editorial changes see the editorial changes table.

Compilation table

Short title	Number and year	Assent
<i>Environmental Protection Amendment Act 2020</i>	40 of 2020	19 Nov 2020
<i>Environmental Protection Amendment Act 2020 with editorial changes as at 6 Dec 2023</i>		

Editorial changes table

The *Legislation Act 2021* Part 3 authorises the Parliamentary Counsel to make editorial changes to laws. This power cannot be used to change the effect of a law, unless section 29 (Clerk’s amendment to Act) of that Act applies. If an editorial change is made to a law, the law has effect as if the change had been made by another law that amended the law and commenced on the day on which the change is made.

To view the editorial changes included in a version of a law, see the compare document for that version on the WA Legislation website.

Provision/s affected	Authorising provision of <i>Legislation Act 2021</i> Part 3	Effective date of change
s. 2(1)(b)(ii)	s. 29	6 Dec 2023