



Australian Capital Territory

# **Environment Protection Act 1997**

**A1997-92**

**Republication No 0B**

**Effective: 1 March 2000 – 16 March 2000**

Republication date: 24 September 2020

Last amendment made by A1999-79

Not all amendments are in force: see last endnote

## **About this republication**

### **The republished law**

This is a republication of the *Environment Protection Act 1997* effective from 1 March 2000 to 16 March 2000.

### **Kinds of republications**

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### **Editorial changes**

The *Legislation (Republication) Act 1996*, part 3, division 2 authorised the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation (Republication) Act 1996*, s 14 and s 16). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.



Australian Capital Territory

## ENVIRONMENT PROTECTION ACT 1997

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Updated as at 1 March 2000

### TABLE OF PROVISIONS

Section

#### PART I—PRELIMINARY

1. Short title
2. Commencement
3. Objects
4. Interpretation
5. Things taken to have an impact causing environmental harm
6. Relationship with *Bushfire Act 1936* and *Fire Brigade Act 1957*
7. Construction consistent with certain other laws
8. Application in respect of people and certain things is limited
9. Civil remedies and common law not affected
10. Criminal liability of Crown agents

#### PART II—ADMINISTRATION

##### *Division 1—Environment Management Authority*

11. Appointment
12. Functions and powers
13. Delegations
14. Authorised officers
15. Analysts
16. Identity cards
17. Disclosure of interests
18. Legal immunity

##### *Division 2—Public inspection of documents*

19. Inspection of documents
20. Copies of documents

*Environment Protection Act 1997*

**TABLE OF PROVISIONS—continued**

Section	
21.	Exclusion of material
	<i>Division 3—Register of contaminated sites</i> (Not in operation— <i>see</i> Note 5)
21A, 21B.	(Not in operation— <i>see</i> Note 5)
	<b>PART III—ENVIRONMENTAL DUTIES</b>
22.	General environmental duty
23.	Duty to notify of actual or threatened environmental harm
23A.	(Not in operation— <i>see</i> Note 5)
	<b>PART IV—ENVIRONMENT PROTECTION POLICIES</b>
24.	Contents
25.	Consultation
26.	Promulgation
27.	Formal changes
28.	Revocation
29.	Inspection
30.	Legal character
	<b>PART V—ACCREDITED CODES OF PRACTICE</b>
31.	Accrediting codes of practice
32.	Notification of accredited codes of practice
33.	Deemed compliance with general environmental duty
	<b>PART VI—ECONOMIC MEASURES</b>
34.	Schemes for economic measures
35.	Bubble licences
36.	Tradeable permits
37.	Regulations may make provision for schemes
	<b>PART VII—ENVIRONMENTAL PROTECTION AGREEMENTS</b>
38.	Entering agreements
39.	Form and terms of agreements
40.	Effect of agreements
41.	Notification of environmental protection agreements
	<b>PART VIII—ENVIRONMENTAL AUTHORISATIONS</b>
	<i>Division 1A—Interpretation</i> (Not in operation— <i>see</i> Note 5)
41A.	(Not in operation— <i>see</i> Note 5)
	<i>Division 1—Requirements to hold and comply with an authorisation</i>
42.	Conducting prescribed classes of activities
43.	Authority may require an environmental authorisation
44.	Conducting activities other than prescribed activities
45.	Compliance with an authorisation

*Environment Protection Act 1997*

**TABLE OF PROVISIONS—continued**

Section	
	<i>Division 2—Grant, variation, cancellation and suspension</i>
46.	Kinds of authorisation
47.	Application
48.	Public consultation
49.	Grant
50.	Notification of grant
51.	Kinds of conditions
52.	Period of authorisation
53.	Authorisation fees
54.	Determination of fee instalments
55.	Non-payment of fees
56.	Refund and remission of fees
57.	Annual review of certain authorisations
58.	Review of accredited environmental authorisations
59.	Notification of review of environmental authorisations
60.	Variation
61.	Matters required to be taken into account for certain decisions under this Division
62.	Notice of intention to vary an authorisation
63.	Suspension and cancellation
64.	Notice of intention to suspend or cancel an authorisation
65.	Effect of suspension
66.	Surrender of environmental authorisation
67A.	(Not in operation— <i>see</i> Note 5)
67.	Notification of ceasing activity
	<b>PART IX—ENVIRONMENTAL PROTECTION</b>
	<i>Division 1—Environmental improvement plans</i>
68.	Contents of an environmental improvement plan
69.	Authority may require an environmental improvement plan
70.	Submission of environmental improvement plan
71.	Approval of environmental improvement plan
72.	Accreditation of voluntary improvement plans
	<i>Division 2—Environmental audits</i>
73.	Interpretation
74.	Conduct of audits
75.	Certain auditors to be approved
76.	Authority may require an environmental audit
76A, 76B.	(Not in operation— <i>see</i> Note 5)
77.	Authority’s response to environmental audit report
78.	Protection for reports of voluntary audits

*Environment Protection Act 1997*

**TABLE OF PROVISIONS—continued**

Section	
79.	Protection does not extend to environment protection orders <i>Division 3—Emergency plans</i>
80.	Interpretation
81.	Contents of an emergency plan
82.	Authority may require an emergency plan
83.	Submission of emergency plan
84.	Approval of emergency plan <i>Division 4—Financial assurances</i>
85.	Authority may require a financial assurance
86.	Show cause why financial assurance should not be provided
87.	Non-provision of financial assurance
88.	Claim on or realisation of a financial assurance
89.	Notice before claim on or realisation of a financial assurance
90.	Recovery of extra costs
91.	Moneys held by Territory as financial assurance <i>Division 5—Assessment and remediation</i> (Not in operation— <i>see</i> Note 5)
91A-91I.	(Not in operation— <i>see</i> Note 5)
	<i>Division 6—Costs of assessment and remediation</i> (Not in operation— <i>see</i> Note 5)
91J-91R.	(Not in operation— <i>see</i> Note 5)
	<b>PART X—FUNCTIONS OF THE MINISTER</b>
92.	Decisions by Minister
93.	Directions of Minister
94.	Environmental Assessments and Inquiries
	<b>PART XI—AUTHORISED OFFICERS' POWERS</b>
	<i>Division 1—Preliminary</i>
95.	Interpretation <i>Division 2—Entry and inspection generally</i>
96.	Entry of premises—routine inspections
97.	Entry of premises—search warrants
98.	Identity cards must be produced
99.	Inspection of premises—routine inspections
100.	Inspection of premises—search warrant
101.	Inspection of premises—seriousness and urgency
102.	Procedure where samples taken
103.	Consent to entry
104.	Search warrants <i>Division 3—Emergency powers</i>
105.	Emergency situations

*Environment Protection Act 1997*

**TABLE OF PROVISIONS**—continued

Section	
106.	Taking or directing action
107.	Entry and exercise of powers
	<i>Division 4—Seizure, retention and disposal of things</i>
108.	Seizure
109.	Retention to adduce evidence
110.	Disposal
	<i>Division 5—Other powers</i>
111.	Power to require name and address
	<b>PART XII—ANALYSTS’ POWERS</b>
112.	Entry of premises
113.	Evidence of analysis
	<b>PART XIII—ENFORCEMENT</b>
	<i>Division 1—On-the-spot fines</i>
114.	Interpretation
115.	Infringement notices
116.	First notice
117.	Final notice
118.	Discharge of liability
119.	Application for withdrawal of infringement notices
120.	Withdrawal of infringement notices
121.	Prosecution of minor environmental offences
122.	Non-antecedent value of infringement notice offences
123.	Service of notices
124.	Evidence
	<i>Division 2—Environment protection orders</i>
125.	Environment protection orders
126.	Contravention of an environment protection order
	<i>Division 3—Injunctive orders</i>
127.	Application for order
128.	Making of order
129.	Interim order
130.	Costs—public interest
131.	Security for costs etc.
132.	Compensation
	<i>Division 4—Power to require information</i>
133.	Information discovery orders
134.	Contravention of information discovery order

*Environment Protection Act 1997*

**TABLE OF PROVISIONS—continued**

Section	
	PART XIV—ADMINISTRATIVE REVIEW
135.	Review of decisions
136.	Review of Minister's decisions
	PART XV—OFFENCES
	<i>Division 1—Environmental offences</i>
	<i>Subdivision A—General environmental offences</i>
137.	Causing serious environmental harm
138.	Causing material environmental harm
139.	Causing environmental harm
140.	Person may be found guilty of lesser charge
141.	Causing an environmental nuisance
142.	Placing a pollutant where it could cause harm
143.	No offence committed
144.	Liability limited to harm caused by excess pollutants
	<i>Subdivision B—Specific offences</i>
145.	Offences in Schedule 2
	<i>Division 2—Liability etc. of corporate officers</i>
146.	Conduct of directors, servants and agents
147.	Criminal liability of officers of body corporate
	<i>Division 3—Other offences</i>
148.	Notice to transferee on transfer of activity or place
149.	Notice to Authority of alteration to equipment and works
150.	Self-incrimination
151.	Obstructing etc. authorised officers
152.	False or misleading statements
	<i>Division 4—Defences</i>
153.	Due diligence
154.	Defence of emergency
	<i>Division 5—General</i>
155.	Strict liability offences
156.	Continuing offences
157.	Additional court orders
158.	Matters to be considered in imposing penalty
	PART XVI—MISCELLANEOUS
159.	Authorised acts and omissions
159A.	(Not in operation— <i>see</i> Note 5)
160.	Recovery of clean-up costs
161.	Assessment of reasonable costs and expenses

*Environment Protection Act 1997*

**TABLE OF PROVISIONS—continued**

Section	
162.	Statutory declarations
163.	Environmental record of directors, servants and agents
164.	Evidentiary matters
165.	Determination of fees
166.	Regulations
167.	Review of Act

SCHEDULE 1

ACTIVITIES REQUIRING AN ENVIRONMENTAL AUTHORISATION

SCHEDULE 2

SPECIFIC OFFENCES



Australian Capital Territory

## **ENVIRONMENT PROTECTION ACT 1997**

An Act to provide for the protection of the environment and for related purposes

### **PART I—PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Environment Protection Act 1997*.<sup>1</sup>

#### **2.<sup>1</sup> Commencement**

(1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

#### **3.<sup>5</sup> Objects**

(1) The objects of this Act are—

- (a) to protect and enhance the quality of the Territory environment;
- (b) to prevent environmental degradation and adverse risks to human health and the health of ecosystems by promoting pollution prevention, clean production technology, reuse and recycling of materials and waste minimisation programs;

*Environment Protection Act 1997*

- (c) to require persons engaging in polluting activities to make progressive environmental improvements, including reductions of pollution at the source as such improvements become practical through technological and economic development;
- (d) to achieve effective integration of environmental, economic and social considerations in decision making processes;
- (e) to promote the concept of a shared responsibility for the environment by acknowledging environmental needs in economic and social decision making;
- (f) to promote the concept of a shared responsibility for the environment through public education about and public involvement in decisions about protection, restoration and enhancement of the environment;
- (g) to promote the principles of ecologically sustainable development;
- (h) to regulate, reduce or eliminate the discharge of pollutants and hazardous substances into the air, land or water consistent with maintaining environmental quality;
- (j) to allocate the costs of environmental protection and restoration equitably and in a manner that encourages responsible use of, and reduces harm to, the environment with polluters bearing the appropriate share of the costs that arise from their activities;
- (k) to facilitate the implementation of national environment protection measures under national scheme laws;
- (m) to provide for the monitoring and reporting of the environmental quality on a regular basis in conjunction with the Commissioner for the Environment;
- (n) to control the generation, storage, collection, transportation, treatment and disposal of waste with a view to reducing, minimising and where practical, eliminating harm to the environment;
- (p) to adopt a precautionary approach when assessing environmental risk to ensure that all aspects of environmental quality, including ecosystem sustainability and integrity and beneficial use of the environment, are considered in assessing, and making decisions in relation to, the environment; and
- (q) to co-ordinate all activities as are necessary to protect, restore or improve the Territory environment;

and this Act shall be construed and administered accordingly.

(2) For the purposes of paragraph (1) (g), ecologically sustainable development is to be taken to require the effective integration of economic and environmental considerations in decision making processes and to be achievable through implementation of the following principles:

- (a) the precautionary principle, namely, that if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (b) the inter-generational principle, namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (c) conservation of biological diversity and ecological integrity;
- (d) improved valuation and pricing of environmental resources.

**4.<sup>5</sup> Interpretation**

In this Act, unless the contrary intention appears—

“activity” means a current or proposed activity including a process, operation, project, venture or business;

“analyst” means an analyst under section 15;

“area of high conservation value” means—

- (a) an area identified in the Territory Plan as—
  - (i) a wilderness area;
  - (ii) a national park;
  - (iii) a nature reserve; or
  - (iv) a cemetery or burial ground;
- (b) a place, other than a structure or group of structures, included in the Heritage Places Register;
- (c) the area identified in the Territory Plan as the area to which the river corridor land use policy for the Murrumbidgee River applies; or
- (d) any other prescribed area;

“Assessment” means an Assessment made under Division 3 of Part IV of the Land Act;

*Environment Protection Act 1997*

- “authorisation fee”, in relation to an environmental authorisation, means the annual fee or the whole of period fee under section 53 in respect of the environmental authorisation;
- “authorised activity” means an activity in relation to which there is an environmental authorisation;
- “authorised officer” means an authorised officer under subsection 14 (3);
- “Authority” means the Environment Management Authority under section 11;
- “conduct” includes acts and omissions;
- “determined fee” means the fee—
- (a) determined under paragraph 165 (1) (a); or
  - (b) calculated at the rate, or by the formula or other method, determined under paragraph 165 (1) (b);
- for the purposes of the provision in which the expression occurs;
- “development” has the same meaning as in Part VI of the Land Act;
- “emergency plan” means an emergency plan described in section 81;
- “environment” means each of the following:
- (a) the components of the earth, including soil, the atmosphere and water;
  - (b) any organic or inorganic matter and any living organism;
  - (c) human made or modified structures and areas;
  - (d) ecosystems and their constituent parts, including people and communities;
  - (e) the qualities and characteristics of places and areas that contribute to their biological diversity and ecological integrity, scientific value, and amenity;
  - (f) the interactions and interdependencies within and between the things mentioned in paragraphs (a) to (e) (inclusive);
  - (g) the social, aesthetic, cultural and economic conditions that affect, or are affected by, the things mentioned in paragraphs (a) to (e) (inclusive);
- “environmental authorisation” means an environmental authorisation under Part VIII;

*Environment Protection Act 1997*

- “environmental harm” means any impact on the environment as a result of human activity that has the effect of degrading the environment (whether temporarily or permanently);
- “environmental nuisance” means an unreasonable interference with the enjoyment by the public, a section of the public or a person of a place or area, being an interference caused or likely to be caused by—
- (a) dust, fumes, light, noise, odour or smoke; or
  - (b) an unhealthy, unsightly or otherwise offensive condition because of pollution;
- “environmental protection agreement” means an environmental protection agreement under section 38;
- “environmental record” means the environmental record of a person both in the Territory and elsewhere and includes any action taken by the person for the purposes of this Act;
- “environment improvement initiative” means—
- (a) an environmental protection agreement that has as 1 of its terms a requirement that a party comply with a code of practice accredited under section 31;
  - (b) an environmental improvement plan accredited under section 72;
  - (c) a prescribed standard of the International Organization for Standardization; or
  - (d) a prescribed initiative;
- “environment protection order” means an environment protection order under section 125;
- “environment protection policy” means an environment protection policy as varied and in effect for the time being under Part IV;
- “financial assurance” means a financial assurance under section 85;
- “general environmental duty” means the duty of care described in subsection 22 (1);
- “Heritage Places Register” means the register of heritage places incorporated in the Territory Plan;
- “information discovery order” means an information discovery order under section 133;

*Environment Protection Act 1997*

“Inquiry” means an Inquiry conducted under Division 4 of Part IV of the Land Act;

“Land Act” means the *Land (Planning and Environment) Act 1991*;

“material environmental harm” means environmental harm—

- (a) that is significant, including environmental harm that becomes significant—
  - (i) over time;
  - (ii) due to its frequent recurrence; or
  - (iii) due to its cumulative effect with other relevant events;
- (b) that is to an area of high conservation value, other than harm that is trivial or negligible;
- (c) that results in loss or damage to property to the value of more than \$5,000; or
- (d) that results in necessary remedial action costing more than \$5,000;

**motor vehicle**—see *Road Transport (General) Act 1999*, dictionary.

“national scheme laws” means—

- (a) the *National Environment Protection Council Act 1994* of the Commonwealth; and
- (b) the *National Environment Protection Council Act 1994* of the Territory;

“newspaper” means a newspaper published and circulating in the Territory;

“pollutant” means—

- (a) a gas, liquid or solid;
- (b) dust, fumes, odour or smoke;
- (c) an organism (whether alive or dead), including a virus and a prion;
- (d) energy, including heat, noise or radioactivity, or light or other electromagnetic radiation;
- (e) anything prescribed; or
- (f) a combination of 1 or more of the things described in paragraphs (a) to (e) (inclusive);

that, when discharged, emitted, deposited or disturbed, may cause environmental harm;

*Environment Protection Act 1997*

“pollute” includes to cause or fail to prevent the discharge, emission, depositing, disturbance or escape of a pollutant;

“prescribed activity” means—

- (a) a class A activity listed in clause 2 of Schedule 1;
- (b) a class B activity listed in clause 3 of Schedule 1; or
- (c) an activity in respect of which a person has been given a notice under subsection 43 (1);

“serious environmental harm” means environmental harm—

- (a) that is very significant, including environmental harm that becomes very significant—
  - (i) over time;
  - (ii) due to its frequent recurrence; or
  - (iii) due to its cumulative effect with other relevant events;
- (b) that is to an area of high conservation value and is significant, including environmental harm that becomes significant—
  - (i) over time;
  - (ii) due to its frequent recurrence; or
  - (iii) due to its cumulative effect with other relevant events;
- (c) that results in loss or damage to property to the value of more than \$50,000; or
- (d) that results in necessary remedial action costing more than \$50,000;

“Territory Plan” means the Territory Plan as in effect for the time being under the Land Act;

“this Act” includes the regulations;

“working day” means a day other than a Saturday, a Sunday, a public holiday or a day that is a holiday for public servants.

**5. Things taken to have an impact causing environmental harm**

For the purposes of this Act, a thing referred to in paragraphs (a) to (e) (inclusive) of the definition of “pollutant” shall be taken to cause environmental harm if—

- (a) the measure of the pollutant entering the environment exceeds the prescribed measure; or
- (b) the pollutant entering the environment is a prescribed pollutant.

**6. Relationship with *Bushfire Act 1936* and *Fire Brigade Act 1957***

(1) This Act does not apply in relation to the exercise or purported exercise, in good faith, by the Chief Fire Control Officer or a person under his or her control of a power or authority under subsection 5N (1) of the *Bushfire Act 1936* for the purpose of extinguishing or preventing the spread of a fire.

(2) This Act does not apply in relation to the exercise or purported exercise, in good faith, by the Fire Commissioner, a person under his or her control, a member of a fire brigade or a police officer of a power or function under section 7 of the *Fire Brigade Act 1957* for the purpose of protecting life or property or controlling or extinguishing a fire.

**7. Construction consistent with certain other laws**

(1) This Act shall be construed and administered in a manner that is consistent with an environment law or a health law unless the contrary intention appears from this Act or that law.

(2) This Act shall be taken to be consistent with an environment law or a health law to the extent that it is capable of operating concurrently with that law.

(3) In this section—

“environment law” means a law of the Territory that has as 1 of its objects or purposes the protection of the environment;

“health law” means a law of the Territory that has as 1 of its objects or purposes the protection of public health.

**8.<sup>5</sup> Application in respect of people and certain things is limited**

(1) This Act does not apply in relation to noise made by or a pollutant emitted into the air by—

- (a) a train;
- (b) a Commonwealth jurisdiction aircraft within the meaning of the *Aircraft Services Act 1995* of the Commonwealth;
- (c) a person using only his or her body;
- (d) an animal; or
- (e) a motor vehicle being driven on a road, unless the motor vehicle—
  - (i) is being driven on the road for the purpose of conducting reliability trials or speed tests; and

*Environment Protection Act 1997*

(ii) has been exempted under the road transport legislation from the provisions of that legislation about attaching silencers to the exhaust pipes of motor vehicles, rules of the road and speed limits during the trials or tests.

(2) This Act does not apply to environmental harm that results, or is alleged to result solely from the appearance or siting, or both, of a structure (other than a structure naturally occurring).

(3) In this section—

*road*—see *Road Transport (Vehicle Registration) Act 1999*.

*road transport legislation*—see *Road Transport (General) Act 1999*, section 6.

**9. Civil remedies and common law not affected**

(1) Except as expressly provided by this Act, nothing in this Act shall be taken to affect any civil right or remedy available to a person in respect of conduct to which this Act applies.

(2) Compliance with this Act is not, of itself, evidence that a common law duty of care has been satisfied.

**10. Criminal liability of Crown agents**

(1) Despite subsection 7 (4) of the *Interpretation Act 1967*, except as expressly provided by this Act, an agent of the Crown is not immune from criminal liability under this Act in respect of an act or omission in that capacity within the scope of his or her authority.

(2) Subsection (1) does not apply in relation to a prosecution for an offence against section 45, subsection 137 (3), 138 (3) or 139 (3) or section 141 or 142, or a minor environmental offence within the meaning of Division 1 of Part XIII.

(3) In subsection (1)—

“agent” includes an instrumentality, officer or employee of the Crown and a contractor or other person who performs a function on behalf of the Crown.

## **PART II—ADMINISTRATION**

### ***Division 1—Environment Management Authority***

#### **11. Appointment**

- (1) For the purposes of this Act there shall be an Environment Management Authority.
- (2) The Chief Executive shall create and maintain an office in the Public Service the duties of which include performing the functions of the Environment Management Authority.
- (3) The Authority shall be the public servant for the time being performing the duties of the Public Service office referred to in subsection (2).

#### **12. Functions and powers**

- (1) In addition to the functions conferred on the Authority by or under the other provisions of this Act, the Authority has the following functions:
  - (a) to administer this Act;
  - (b) such other functions as are conferred on the Authority by or under another law of the Territory.
- (2) In the performance of his or her functions, the Authority shall have regard to the objects set out in section 3.
- (3) In addition to the specific powers provided by this Act, the Authority has such powers as are necessary and convenient for the performance of his or her functions.

#### **13. Delegations**

The Authority may, by instrument, delegate any of the Authority's powers under this Act to a public employee, other than this power of delegation.

#### **14. Authorised officers**

- (1) There shall be 1 or more authorised officers for the purposes of this Act.
- (2) The Chief Executive shall create and maintain 1 or more offices in the Public Service the duties of which include performing the functions of an authorised officer.
- (3) The following persons shall be authorised officers:
  - (a) the Authority;

*Environment Protection Act 1997*

- (b) any public servant for the time being performing the duties of a Public Service office of authorised officer referred to in subsection (2);
- (c) any other public servant appointed in writing by the Authority for the purpose.

(4) In addition to the powers conferred on an authorised officer by or under this Act, an authorised officer has such other powers as are conferred on the officer by or under another law of the Territory.

**15. Analysts**

- (1) There shall be 1 or more analysts for the purposes of this Act.
- (2) The following persons shall be analysts:
  - (a) any public servant for the time being performing the duties of the Public Service office of Government Analyst referred to in subsection 183A (2) of the *Drugs of Dependence Act 1989*;
  - (b) any other person appointed in writing by the Authority for the purpose.

**16. Identity cards**

- (1) The Chief Executive shall issue to the Authority an identity card that specifies the Authority's name and office, and on which appears a recent photograph of the Authority.
- (2) The Authority shall issue to an authorised officer an identity card that specifies the authorised officer's name and office, and on which appears a recent photograph of the authorised officer.
- (3) The Authority shall issue to an analyst an identity card that specifies the analyst's name and office, and on which appears a recent photograph of the analyst.
- (4) On ceasing to occupy, or to act in—
  - (a) the office of the Authority; or
  - (b) to occupy, or to act in, an office of authorised officer or analyst;

a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive or the Authority, as the case may be.

Penalty for contravention of subsection (4): 1 penalty unit.

**17. Disclosure of interests**

(1) Where the Authority makes a disclosure about a matter under paragraph 9 (k) of the *Public Sector Management Act 1994*, the Authority shall not, unless the Chief Executive otherwise determines, make a decision with respect to the matter.

(2) Unless the Chief Executive determines that the Authority should make a decision with respect to the matter, the Chief Executive shall, by instrument, appoint another public servant to act as the Authority for the purpose of making a decision with respect to the matter.

(3) An appointment under subsection (2) shall be for the period specified in the instrument of appointment.

(4) For the purposes of making a decision with respect to the matter, the appointee may perform all the functions and exercise all the powers of the Authority.

(5) For the purposes of this Act a decision made by the appointee shall be taken to have been made by the Authority.

(6) Nothing in this section prevents the Authority from continuing to perform the functions and exercise the powers of the Authority with respect to any other matter during the period referred to in subsection (3).

**18. Legal immunity**

- (1) No civil or criminal proceedings lie against a person who is, or has been—
- (a) the Authority;
  - (b) an authorised officer; or
  - (c) an analyst;

in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function or duty, conferred on the person in that capacity for the purposes of this Act.

(2) Subsection (1) does not affect any liability that the Territory would, but for that subsection, have in respect of an act or omission referred to in that subsection.

(3) The Territory is vicariously liable in respect of a tort committed by a person in the performance or purported performance of a function conferred on the person for the purposes of this Act, where the performance or purported performance is in the course of his or her capacity as a public employee.

***Division 2—Public inspection of documents***

**19.<sup>5</sup> Inspection of documents**

(1) Subject to section 21, a person may inspect at any reasonable time any of the following documents kept by or on behalf of the Authority:

- (a) any environmental authorisation granted by the Authority including details of the conditions to which the authorisation is subject, the person holding that authorisation and whether the authorisation is in effect;
- (b) any environmental improvement plan submitted in compliance with a requirement by the Authority;
- (c) any emergency plan approved by the Authority;
- (d) codes of practice accredited under Part V;
- (e) any environmental protection agreement entered into by the Authority;
- (f) any environment protection order;
- (g) any document setting out the results of a review of an environmental authorisation;
- (h) results of monitoring or testing required by the Authority to be conducted under an environmental authorisation, environmental protection agreement or environment protection order;
- (j) environmental audit reports under Division 2 of Part IX;
- (k) the list of authorised officers;
- (l) any prescribed document.

(2) Where a person wishes to inspect a document specified in subsection (1) that is not in the Authority's possession, the Authority shall make arrangements for the person to inspect the document.

**20. Copies of documents**

(1) A person may, on payment of the reasonable copying costs, obtain a copy of a document specified in subsection 19 (1).

(2) Where a person wishes to obtain a copy of a document specified in subsection 19 (1) that is not in the Authority's possession, the Authority shall make arrangements for the person to obtain the copy.

**21.<sup>5</sup> Exclusion of material**

**(1)** Where for the purposes of this Act, a person provides a document to the Authority in relation to—

- (a) the grant, variation or review of an environmental authorisation;
- (b) the submission of an environmental improvement plan;
- (c) the approval of an emergency plan;
- (d) the entry into an environment protection agreement;
- (e) the making of an environment protection order;
- (f) setting out the results of monitoring or testing required by the Authority to be conducted; or
- (g) the submission of an environmental audit report;

the person may apply to the Authority to exclude so much of the document as is specified in the application from inspection by the public under section 19 on the ground that—

- (h) the disclosure would reveal a trade secret; or
- (j) the disclosure would, or would reasonably be expected to, adversely affect a person in respect of the lawful business affairs of that person;

and it would not be in the public interest for that part to be published.

**(2)** An application under subsection (1) shall—

- (a) be in writing; and
- (b) be made at the same time the document to which the application relates is provided to the Authority.

**(3)** If the Authority is satisfied that a ground referred to in subsection (1) exists for the exclusion of a document or part of a document, the Authority shall cause that part to be excluded from each copy of a document made available for public inspection under that subsection.

**(4)** Where a part of a document is excluded from the copy made available for public inspection, each copy shall include a statement to the effect that an unspecified part of the document has been excluded for the purpose of protecting the confidentiality of information included in that part.

**(5)** The Authority shall not permit the inspection of a document or part of a document under section 19 to which an application under subsection (1) relates—

- (a) until 28 days after the Authority has made a decision under subsection (1) excluding or refusing to exclude all or part of the document from inspection; or

*Environment Protection Act 1997*

- (b) if an application for review of that decision has been made to the Administrative Appeals Tribunal—until that matter has been determined by the Tribunal.

***Division 3—Register of contaminated sites<sup>5</sup>***

**21A, 21B.<sup>5</sup>** \* \* \* \* \*

### **PART III—ENVIRONMENTAL DUTIES**

#### **22. General environmental duty**

(1) A person shall take such steps as are practicable and reasonable to prevent or minimise environmental harm or environmental nuisance caused, or likely to be caused, by an activity conducted by that person.

(2) In determining whether a person has complied with the general environmental duty, regard shall first be had, and greater weight shall be given, to the risk of the environmental harm or environmental nuisance involved in conducting the activity, and, in addition, regard shall then be had to—

- (a) the nature and sensitivity of the receiving environment;
- (b) the current state of technical knowledge for the activity;
- (c) the financial implications of taking the steps referred to in subsection (1);
- (d) the likelihood and degree of success in preventing or minimising the environmental harm or environmental nuisance of each of the steps that might be taken; and
- (e) other circumstances relevant to the conduct of the activity.

(3) Subject to sections 125, 143 and 160, failure to comply with the general environmental duty does not of itself—

- (a) give rise to a civil right or remedy;
- (b) constitute an offence; or
- (c) constitute grounds for action under this Act.

#### **23. Duty to notify of actual or threatened environmental harm**

(1) Subject to subsection (2), this section applies to a person conducting an activity who becomes aware that the activity has caused, is causing or is likely to cause serious or material environmental harm from pollution (in this section called an “environmental situation”).

(2) This section does not apply if the environmental harm or potential environmental harm, as the case requires, is authorised by or under this Act or another law of the Territory.

(3) As soon as reasonably practicable after becoming aware of the environmental situation, the person shall notify the Authority of the environmental situation, its nature and the action taken to deal with the situation and any environmental harm that has been caused.

*Environment Protection Act 1997*

(4) Subject to subsection (5), a person shall not, without reasonable excuse, contravene subsection (3).

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(5) A person is not required to notify the Authority of an environmental situation if the person has reasonable grounds for believing that the environmental situation has already come to the notice of an authorised officer.

**23A.**<sup>5</sup> \* \* \* \* \*

## **PART IV—ENVIRONMENT PROTECTION POLICIES**

### **24. Contents**

Environment protection policies are documents prepared by the Authority, in accordance with this Part, setting out—

- (a) guidelines to which the Authority shall have regard in administering this Act generally or in relation to specified functions of the Authority;
- (b) guidelines for effective environment protection and management within a particular industry or for the community generally; or
- (c) matters that the Authority may take into account in relation to the making of a decision in the exercise of a discretion under this Act.

### **25. Consultation**

(1) After preparing a draft environment protection policy or a draft variation of an environment protection policy, the Authority shall publish in the *Gazette* and in a daily newspaper printed and circulating in the Territory a notice—

- (a) containing a brief description of the draft policy or variation;
- (b) indicating the place from which copies of the draft policy or variation may be obtained; and
- (c) inviting any person who wishes to do so to lodge any suggestions or comments about the draft policy or variation in writing with the Authority within 40 working days after publication of the notice.

(2) The Authority shall consider the suggestions and comments lodged in accordance with an invitation under paragraph (1) (c) and, if the Authority considers it appropriate to do so, may revise the draft policy or variation in accordance with any of those suggestions or comments.

(3) The Authority shall cause a copy of a draft environment protection policy or a draft variation of an environment protection policy (other than a variation of a formal nature) to be sent, without charge, to—

- (a) the Conservation Council of the South-East Region and Canberra (Inc.); and
- (b) the Canberra Business Council Inc..

**26. Promulgation**

- (1) The Authority shall notify an environment protection policy or a variation of an environment protection policy in the *Gazette*.
- (2) The Authority shall not notify an environment protection policy, or vary an environment protection policy, without first obtaining the written consent of the Minister.
- (3) For the purposes of subsection (1), it shall be sufficient notification if the notice—
  - (a) contains a brief description of the policy or variation;
  - (b) states that the policy or variation takes effect on the day of publication of the notice or, if the policy or variation takes effect on a later day, on that later day; and
  - (c) specifies the place at which the policy or variation may be inspected.
- (4) Where the Authority publishes a notice in the *Gazette* under subsection (1), the Authority shall publish a copy of the notice in a daily newspaper.

**27. Formal changes**

Sections 25 and 26 do not apply in relation to a variation of an environment protection policy that is for the sole purpose of making changes of a formal nature.

**28. Revocation**

- (1) The Authority shall notify the revocation of an environment protection policy in the *Gazette*.
- (2) The Authority shall not revoke an environment protection policy without first obtaining the written consent of the Minister.
- (3) For the purposes of subsection (1), it shall be sufficient notification if the notice—
  - (a) identifies the policy; and
  - (b) states that the revocation takes effect on the day of publication of the notice or, if the revocation takes effect on a later day, on that later day.
- (4) Where the Authority publishes a notice in the *Gazette* under subsection (1), the Authority shall publish a copy of the notice in a daily newspaper.

**29. Inspection**

A person may inspect an environment protection policy at the principal office of the Authority at any time at which the office is open for business.

**30. Legal character**

Despite any other law of the Territory, an environment protection policy—

- (a) shall be taken for all purposes to be an instrument of an administrative character; and
- (b) shall not be taken for any purpose to be an instrument of a legislative character.

**PART V—ACCREDITED CODES OF PRACTICE**

**31. Accrediting codes of practice**

(1) The Minister may, by notice in the *Gazette*, accredit a code of practice that sets out ways of achieving compliance with the general environmental duty when—

- (a) a specified activity or a group of related activities; or
- (b) some or all of the activities carried on within a particular industry;

is conducted that causes or is likely to cause environmental harm.

(2) The Minister shall not publish a notice under subsection (1) unless satisfied that the code of practice has been prepared in consultation with persons or organisations representing those conducting an activity or carrying on the industry to which the code relates, and the public.

(3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**32. Notification of accredited codes of practice**

(1) The Minister shall, within 10 working days after the date of a notice under subsection 31 (1), publish notice of the accreditation in a daily newspaper.

(2) A notice under subsection (1) shall contain a statement to the effect that a copy of the accredited code of practice is available for public inspection in accordance with section 19.

**33. Deemed compliance with general environmental duty**

A person shall be taken to have complied with the general environmental duty in conducting an activity if the person has substantially complied with the code of practice accredited under subsection 31 (1) for the activity.

## **PART VI—ECONOMIC MEASURES**

### **34. Schemes for economic measures**

The Authority may develop and implement schemes involving economic measures as a means of achieving the objects of this Act, examples of which include bubble licence schemes and tradeable permit schemes.

### **35. Bubble licences**

A bubble licence scheme may include 1 or both of the following:

- (a) the determination of the aggregate measure of a pollutant that is permitted to enter the environment as a result of activities conducted by a group of persons or on a group of sites;
- (b) the apportionment from time to time of the aggregate measure among the members of the group.

### **36. Tradeable permits**

A tradeable permit scheme may include any of the following:

- (a) the determination of the aggregate measure of a pollutant that is permitted to enter the environment, whether for the whole Territory or a particular part of the Territory;
- (b) the creation of tradeable emission permits or credits;
- (c) the allocation (whether by sale or otherwise) from time to time of tradeable permits or credits.

### **37. Regulations may make provision for schemes**

(1) The regulations may make provision in relation to schemes under this Part, including regulating or prohibiting certain conduct.

(2) Regulations under subsection (1) may be inconsistent with another Part of this Act or an instrument under another Part of this Act, to the extent to which they authorise or prohibit certain conduct that but for the regulations would not be authorised, and, in the event of an inconsistency, the regulations prevail.

## **PART VII—ENVIRONMENTAL PROTECTION AGREEMENTS**

### **38. Entering agreements**

The Authority may—

- (a) for the purposes of paragraph 42 (2) (a); or
- (b) otherwise for the purposes of giving effect to the objects of this Act;

enter into an environmental protection agreement in relation to an activity with the person who is conducting, or proposing to conduct, the activity.

### **39. Form and terms of agreements**

An environmental protection agreement—

- (a) shall be in writing executed by the parties to the agreement;
- (b) shall have effect for a specified period, unless terminated earlier in accordance with the agreement;
- (c) may contain terms providing for any matter that the parties agree is appropriate for the purpose of furthering the objects of this Act, for example, agreeing—
  - (i) to take specified action, to comply with an industry standard or code of practice or to comply with other specified standards (including prescribed standards), for the purpose of preventing, minimising or eliminating environmental harm caused by the activity;
  - (ii) to meet progressively higher standards for the prevention, minimisation or elimination of environmental harm caused by the activity;
  - (iii) to provide for the manner in which the agreement will operate if there is a change in the person who is conducting the activity;
  - (iv) to provide for the consequences of a party breaching the agreement, including the circumstances in which a party may terminate for breach; or
  - (v) to provide for the circumstances in which and the method by which a party may terminate the agreement; and
- (d) may be varied in writing by the parties, including by extending the term of the agreement.

**40. Effect of agreements**

(1) An environmental protection agreement does not relieve a party to the agreement from any obligation or duty under this Act or another law.

(2) No action or proceeding lies against a party to an environment protection agreement arising out of an act or omission by reason only that it constitutes a breach of the agreement.

**41. Notification of environmental protection agreements**

(1) The Authority shall, within 10 working days after the date on which an environmental protection agreement is entered into under section 38, publish notice of entry into the agreement in the *Gazette* and a daily newspaper.

(2) A notice under subsection (1) shall contain a statement to the effect that a copy of the environmental protection agreement is available for public inspection in accordance with section 19.

**PART VIII—ENVIRONMENTAL AUTHORISATIONS**

***Division 1A—Interpretation***<sup>5</sup>

**41A.**<sup>5</sup> \* \* \* \* \*

***Division 1—Requirements to hold and comply with an authorisation***

**42. Conducting prescribed classes of activities**

(1) A person shall not conduct an activity listed in Schedule 1 as a Class A activity unless the person holds an environmental authorisation in respect of that activity.

(2) A person shall not conduct an activity listed in Schedule 1 as a Class B activity unless the person—

- (a) is a party to an environmental protection agreement that is in effect in respect of that activity; or
- (b) holds an environmental authorisation in respect of that activity.

Penalty:

- (a) if the offender is a natural person—200 penalty units;
- (b) if the offender is a body corporate—1,000 penalty units.

**43. Authority may require an environmental authorisation**

(1) Subject to subsection (2), the Authority may notify a person in writing that the person is not to conduct, or continue to conduct, a specified activity unless the person holds an environmental authorisation in respect of that activity.

(2) The Authority may notify a person under subsection (1) if the Authority has reasonable grounds for believing—

- (a) that, in conducting the specified activity, the person has contravened, is contravening or is likely to contravene a provision of this Act; and
- (b) that, as a result, serious or material environmental harm has occurred, is occurring or is likely to occur.

(3) A notice under subsection (1) shall contain a statement to the effect that, if the person wishes to obtain an environmental authorisation in respect of the specified activity, the person must lodge an application under section 47 on or before the date specified in the notice, being a date not less than 10 working days after the date of the notice.

(4) The Authority may, on application or on his or her own initiative, revoke a notice under subsection (1) by notice in writing specifying the date on which the revocation takes effect.

**44. Conducting activities other than prescribed activities**

(1) A person who is served with a notice under subsection 43 (1) shall not conduct, or continue to conduct, the activity described in the notice unless the person holds an environmental authorisation in respect of that activity.

Penalty:

- (a) if the offender is a natural person—200 penalty units;
- (b) if the offender is a body corporate—1,000 penalty units.

(2) A person does not commit an offence against subsection (1)—

- (a) on or before the date specified in the notice by which an application for an environmental authorisation must be lodged;
- (b) if the person lodges an application on or before that date—while a decision on the application is pending; or
- (c) if the notice is revoked—on or after the date of revocation.

**45. Compliance with an authorisation**

(1) A person shall not contravene an environmental authorisation.

Penalty:

- (a) if the offender is a natural person—200 penalty units;
- (b) if the offender is a body corporate—1,000 penalty units.

(2) Where—

- (a) a court finds a person guilty of an offence against subsection (1) the circumstances of which were—
  - (i) that the person caused the entry into the environment of a measure of a pollutant in excess of the measure authorised by the environmental authorisation; and
  - (ii) that, as a result, environmental harm was caused; and
- (b) the court, in determining the penalty (if any) to be imposed on the person, considers it relevant to have regard to the environmental harm caused in the commission of the offence;

the court shall have regard to all the circumstances of the offence including—

- (c) the conditions of the environmental authorisation; and
- (d) the environmental harm caused by the excess pollutant.

***Division 2—Grant, variation, cancellation and suspension***

**46. Kinds of authorisation**

The Authority may, on application, grant—

- (a) a standard environmental authorisation in respect of any prescribed activity;
- (b) an accredited environmental authorisation in respect of a prescribed activity in relation to which effect has been given or is being given to an environmental improvement initiative; or
- (c) a special environmental authorisation in respect of a prescribed activity that is being conducted for the purposes of research and development, including for the purpose of trialing experimental equipment.

**47. Application**

(1) A person who is conducting or proposing to conduct a prescribed activity may apply to the Authority for an environmental authorisation in respect of that activity.

(2) An application—

- (a) shall specify the kind of environmental authorisation applied for;
- (b) where that kind is an accredited or special environmental authorisation—may specify that in the alternative a standard environmental authorisation is applied for; and
- (c) shall be accompanied by the determined fee.

(3) If the applicant is not the lessee of the parcel of land on which the activity is being conducted, or is proposed to be conducted, the application shall be accompanied by the written consent to the making of the application of—

- (a) if the land is leased—the lessee;
- (b) if the land is unleased Territory Land—the Territory; or
- (c) if the land is unleased National Land—the Commonwealth.

**48. Public consultation**

(1) Subject to subsection (2), the Authority shall, within 10 working days after receiving an application under section 47, publish in the *Gazette* and in a daily newspaper a notice—

- (a) containing a brief description of the prescribed activity to which the application relates and its location;
- (b) indicating where copies of the application may be obtained; and

*Environment Protection Act 1997*

- (c) inviting any person who wishes to do so to make written submissions to the Authority not later than the date specified in the notice, being a day not less than 15 working days after the date of the notice.
- (2) The Minister may, by instrument, specify a prescribed activity as one to which subsection (1) shall not apply.
- (3) An instrument under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**49. Grant**

(1) Subject to section 61, the Authority shall, within 20 working days of the receipt of an application under section 47, or within 20 working days of the date specified in a notice under paragraph 48 (1) (c) and after taking into account any submissions received in response to that notice, as the case requires—

- (a) grant an environmental authorisation in respect of a specified activity, for the period and subject to the conditions (if any) specified in the authorisation;
- (b) refuse to grant an environmental authorisation in respect of a specified activity;
- (c) require the applicant to provide further specified information by a specified date, being a date not less than 10 working days after the date of the notice; or
- (d) request the Minister under section 94—
  - (i) to direct that an Assessment be made of the possible environmental impact of the specified activity; or
  - (ii) to establish a panel to conduct an Inquiry into the specified activity.

(2) Where under paragraph (1) (c) the Authority requires the applicant to provide further information, the Authority shall within 10 working days after receiving the further information—

- (a) grant the environmental authorisation pursuant to paragraph (1) (a);
- (b) refuse to grant the environmental authorisation pursuant to paragraph (1) (b); or
- (c) make a request of the Minister pursuant to paragraph (1) (d).

*Environment Protection Act 1997*

**(3)** If within 20 working days after the Authority makes a request under paragraph (1) (d) or (2) (c) the Minister has not acceded to the request, the Authority shall—

- (a) grant the environmental authorisation pursuant to paragraph (1) (a);
- (b) refuse to grant the environmental authorisation pursuant to paragraph (1) (b); or
- (c) require further information pursuant to paragraph (1) (c).

**(4)** Where under paragraph (3) (c) the Authority requires the applicant to provide further information, the Authority shall within 10 working days after receiving the further information—

- (a) grant the environmental authorisation pursuant to paragraph (1) (a); or
- (b) refuse to grant the environmental authorisation pursuant to paragraph (1) (b).

**(5)** Where—

- (a) before the Authority makes a decision granting or refusing to grant an environmental authorisation under subsection (1), (2), (3) or (4), the Minister on his or her own initiative under section 94—
  - (i) directs that an Assessment be made of the possible environmental impact of the specified activity; or
  - (ii) establishes a panel to conduct an Inquiry into the specified activity; or
- (b) before the Authority makes a decision granting or refusing to grant an environmental authorisation under subsection (3), the Minister accedes to a request under paragraph (1) (d) or (2) (c);

the Authority shall within 20 working days after receiving a copy of the Assessment or report of the Inquiry panel—

- (c) grant the environmental authorisation pursuant to paragraph (1) (a); or
- (d) refuse to grant the environmental authorisation pursuant to paragraph (1) (b).

**(6)** The Authority shall not grant an environmental authorisation in respect of a development unless an application to conduct that development has been approved under Part VI of the Land Act.

**50. Notification of grant**

(1) The Authority shall notify the applicant of its decision under section 49 granting an environmental authorisation.

(2) A notice under subsection (1) shall—

(a) if the authorisation fee is payable by instalments—

(i) specify the amount of each instalment or the rate at which, or the formula or other method by which, each instalment is to be calculated; and

(ii) specify the due date for each instalment; or

(b) specify the amount of the authorisation fee and state that the fee is payable as a lump sum.

(3) The Authority shall, within 10 working days after the date on which a decision is notified under subsection (1), publish notice of the decision to grant an environmental authorisation in the *Gazette* and a daily newspaper.

(4) A notice under subsection (1) shall contain a statement to the effect that a copy of the environmental authorisation is available for public inspection in accordance with section 19.

**51. Kinds of conditions**

Subject to section 61, the conditions that the Authority may impose under paragraph 49 (1) (a) or section 60 are—

(a) conditions for the purposes of ensuring compliance with this Act, for example—

(i) that the applicant commission an environmental audit in relation to a specified matter and submit for consideration by the Authority under section 77 a report of the audit;

(ii) that the applicant prepare and submit to the Authority for approval under section 71 a draft environmental improvement plan;

(iii) that the applicant prepare and submit to the Authority for approval under section 84 a draft emergency plan;

(iv) that the applicant provide to the Authority under section 85 a financial assurance of a specified kind and amount;

- (v) that the applicant give to the Authority specified information regarding the environmental impact of the activity at any specified time or times during the period of the environmental authorisation;
  - (vi) that the applicant conduct specified environmental monitoring or testing;
  - (vii) that the applicant comply with a specified provision of an industry standard or code of practice, being a provision that relates to minimising environmental harm;
  - (viii) that the applicant comply with specified prescribed standards; or
  - (ix) that the applicant not commence the specified activity until the Authority is satisfied of specified matters; and
- (b) such other conditions as the Authority thinks necessary.

**52. Period of authorisation**

- (1) Environmental authorisations may be granted for the following periods:
- (a) in the case of a standard environmental authorisation or an accredited environmental authorisation—
    - (i) an unlimited period; or
    - (ii) a specified period not exceeding 3 years;
  - (b) in the case of a special environmental authorisation—a specified period not exceeding 3 years.
- (2) A standard environmental authorisation or accredited environmental authorisation granted for an unlimited period—
- (a) takes effect on the day after the day on which—
    - (i) if the annual fee under section 53 for the first year of the authorisation is payable by instalments—the first instalment of the fee is paid; or
    - (ii) if the annual fee under section 53 for the first year of the authorisation is payable as a lump sum—the total amount of the fee is paid; and
  - (b) has effect until—
    - (i) the authorisation is cancelled under section 55 or 63; or
    - (ii) the authorisation is surrendered under section 66.

- (3) An environmental authorisation granted for a specified period—
- (a) takes effect on the day after the day on which—
    - (i) if the whole of period fee under section 53 is payable by instalments—the first instalment of the fee is paid; or
    - (ii) if the whole of period fee under section 53 is payable as a lump sum—the total amount of the fee is paid; and
  - (b) has effect until—
    - (i) the expiry of the period specified in the authorisation;
    - (ii) the authorisation is cancelled under section 55 or 63; or
    - (iii) the authorisation is surrendered under section 66.

**53. Authorisation fees**

- (1) The holder of a standard environmental authorisation granted for an unlimited period is liable to pay a fee in respect of each year or part of a year that the authorisation is in effect (in this section called an “annual fee”).
- (2) The holder of an environmental authorisation granted for a specified period is liable to pay a fee in respect of the whole of the period for which the authorisation is granted (in this section called a “whole of period fee”).
- (3) The annual fee or whole of period fee in respect of an environmental authorisation is the sum of—
- (a) the determined fee; and
  - (b) the amount calculated at the rate, or by the formula or other method, determined under section 165 for the purposes of calculating the authorisation fee.
- (4) The holder of an accredited or special environmental authorisation is entitled to a reduction in the whole of period fee that would have been payable if, instead of that kind of environmental authorisation, the holder had been granted a standard environmental authorisation.
- (5) An annual fee or whole of period fee is payable—
- (a) if there is a determination under subsection 54 (1) in force in respect of the payment of the fee by instalments—in accordance with the determination; or
  - (b) as a lump sum.
- (6) Where the annual fee for the second or any subsequent year (or part thereof) of a standard environmental authorisation is payable as a lump sum, the fee is due on or before the day on which that year commences.

**54. Determination of fee instalments**

- (1) The Minister may, by notice in the *Gazette*, determine that an authorisation fee is payable by specified instalments due on or before specified dates.
- (2) For the purposes of subsection (1), the Minister may determine—
  - (a) the amount of a specified instalment; or
  - (b) the rate at which, or the formula or other method by which, the amount of a specified instalment is to be calculated.
- (3) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**55. Non-payment of fees**

- (1) Where the holder of an environmental authorisation does not pay an amount under section 53 by the due date, the Authority shall by notice in writing to the holder—
  - (a) require that the amount be paid by the day specified in the notice; and
  - (b) advise the holder that, if the amount is not paid on or before that day, the authorisation will be cancelled.
- (2) The Authority shall cancel an environmental authorisation if—
  - (a) a notice under subsection (1) has been sent to the holder of the authorisation; and
  - (b) the amount due has not been paid by the day specified in the notice.

**56. Refund and remission of fees**

The Authority may, of its own motion, or on application by a person, remit any fee or portion of any fee payable by a person under section 53, or refund to any person any fee or portion of any fee paid under that section if, having regard to the circumstances, it would be fair and reasonable to remit or refund all or part of the fee.

**57. Annual review of certain authorisations**

- (1) Subject to section 61, the Authority shall review annually—
  - (a) any standard environmental authorisation granted for an unlimited period; or
  - (b) any standard or special environmental authorisation granted for a specified period exceeding 1 year.

(2) After conducting a review under subsection (1), the Authority may take action under this Act or decide not to do so.

**58. Review of accredited environmental authorisations**

(1) The Authority shall, at least once in every 3 years after the grant of an accredited environmental authorisation, review the accreditation.

(2) After conducting a review, the Authority may take action under this section or decide not to do so.

(3) Where as a result of the review and after taking into account the matters referred to in section 61, the Authority is of the opinion that the activity conducted under the authorisation should not continue to be an accredited environmental authorisation, the Authority shall cancel the accredited environmental authorisation.

(4) Where the Authority takes action under subsection (3), the authorisation shall be taken (in respect of activities conducted after the date of cancellation) to be a standard environmental authorisation and to have been granted under section 49 for the unexpired period of the former accredited environmental authorisation.

**59. Notification of review of environmental authorisations**

(1) The Authority shall, within 10 working days after the date on which a review under subsection 57 (1) or 58 (1) is completed, publish notice of the outcome of that review in the *Gazette* and a daily newspaper.

(2) A notice under subsection (1) shall contain a statement to the effect that a copy of the review is available for public inspection in accordance with section 19.

**60. Variation**

(1) Subject to sections 61 and 62, the Authority may vary an environmental authorisation by notice in writing to the holder of the authorisation—

- (a) on application by the holder;
- (b) where this Act has been amended since the authorisation was granted;  
or

- (c) where the Authority has reasonable grounds for believing—
  - (i) that—
    - (A) in conducting the authorised activity, the holder has contravened, is contravening or is likely to contravene the environmental authorisation, an environmental protection order or a provision of this Act; and
    - (B) as a result, serious or material environmental harm has occurred, is occurring or is likely to occur;
  - (ii) that the potential for the authorised activity to cause serious or material environmental harm has changed;
  - (iii) that the circumstances in which the environmental authorisation was granted or previously varied have changed in a material respect; or
  - (iv) that the environmental authorisation was granted or previously varied on the basis of false or misleading information.

(2) The Authority may not vary the term of an environmental authorisation under this section.

**61. Matters required to be taken into account for certain decisions under this Division**

In making a decision under subsection 49 (1) or sections 51 or 57 or subsection 60 (1), the Authority shall take into account—

- (a) the potential for the activity to cause environmental harm, including the likelihood over time of that potential changing or that harm being serious or material environmental harm;
- (b) the environmental record of the applicant;
- (c) any relevant environment protection policy;
- (d) the actual or potential economic and social benefits that are being or would be derived from the activity;
- (e) in the case of a decision under section 60—
  - (i) the environmental record of the applicant since the environmental authorisation was granted or last varied, as the case may be; and
  - (ii) any submissions made in response to an invitation under paragraph 62 (1) (c); and
- (f) any other matters, that the Authority considers relevant.

**62. Notice of intention to vary an authorisation**

(1) Subject to subsection (2), before acting under section 60, the Authority shall give the holder of the environmental authorisation a notice—

- (a) stating that the Authority is proposing to vary the authorisation;
- (b) stating the nature of, and the reasons for, the proposed variation; and
- (c) inviting a written submission on the proposed variation on or before a specified date, being a date 10 working days after the date of the notice.

(2) This section does not apply where—

- (a) the variation is for the sole purpose of correcting an error or omission of a formal nature and the holder of the authorisation has given his or her written consent to the variation;
- (b) the Authority—
  - (i) has reasonable grounds for believing that the authorised activity is causing, or in the immediate future will cause, serious or material environmental harm; and
  - (ii) is satisfied that the variation will assist in reducing or preventing that harm; or
- (c) the variation is in accordance with an application under paragraph 60 (1) (a).

**63. Suspension and cancellation**

(1) Subject to section 64, the Authority may suspend or cancel an environmental authorisation by notice in writing to the holder of the authorisation where the Authority has reasonable grounds for believing—

- (a) that—
  - (i) in conducting the authorised activity, the holder has contravened or is contravening the environmental authorisation, an environmental protection order or a provision of this Act; and
  - (ii) as a result, serious or material environmental harm has occurred or is occurring;
- (b) that the holder has ceased to conduct the authorised activity; or
- (c) that the environmental authorisation was granted or varied on the basis of false or misleading information.

(2) An environmental authorisation may be suspended under subsection (1) until the Authority is satisfied that specified conditions are fulfilled.

**(3)** In making a decision under subsection (1), the Authority shall take into account—

- (a) the environmental record of the applicant since the environmental authorisation was granted or last varied, as the case requires; and
- (b) any submissions made in response to an invitation under paragraph 64 (c).

**64. Notice of intention to suspend or cancel an authorisation**

Before acting under section 58 or 63, the Authority shall give the holder of the environmental authorisation a notice—

- (a) stating that the Authority is—
  - (i) under section 58—proposing to cancel the authorisation; or
  - (ii) under section 63—proposing to suspend or cancel the authorisation, as the case may be;
- (b) stating the reasons for the proposed suspension or cancellation; and
- (c) inviting a written submission on the proposed suspension or cancellation on or before a specified date, being a date 10 working days after the date of the notice.

**65. Effect of suspension**

For the purposes of this Act, where an environmental authorisation to conduct an activity is suspended, the conduct of the activity shall be deemed not to be authorised during the period of the suspension.

**66. Surrender of environmental authorisation**

The holder of an environmental authorisation may surrender the authorisation by notice in writing to the Authority.

**67A.**<sup>5</sup> \* \* \* \* \*

**67. Notification of ceasing activity**

Where the holder of an environmental authorisation ceases permanently to conduct the authorised activity, the holder shall not fail, without reasonable excuse, to notify the Authority in writing within 10 working days of that cessation.

Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.

**PART IX—ENVIRONMENTAL PROTECTION**

***Division 1—Environmental improvement plans***

**68. Contents of an environmental improvement plan**

(1) For the purposes of section 69, an environmental improvement plan in relation to an activity shall specify—

- (a) the matters addressed by the plan;
- (b) the ways in which the conduct of the activity will be altered—
  - (i) to minimise or reduce the adverse environmental impact of the activity; and
  - (ii) to ensure that the activity is conducted in accordance with this Act; and
- (c) a timetable for the implementation of each part of the plan.

(2) An environmental improvement plan may include a requirement that specified monitoring or testing be conducted to assess the environmental impact of the activity.

**69. Authority may require an environmental improvement plan**

(1) The Authority may by written notice require a person conducting, or proposing to conduct, an activity to prepare or cause to be prepared and to submit for approval to the Authority a draft environmental improvement plan in relation to the activity if the Authority—

- (a) has reasonable grounds for believing—
  - (i) that, in conducting the activity, the person has contravened, is contravening or is likely to contravene an environmental authorisation, an environmental protection order or a provision of this Act; and
  - (ii) that, as a result, serious or material environmental harm has occurred, is occurring or is likely to occur; and
- (b) is satisfied that changes in the method of conducting the activity would reduce the likelihood of that contravention or resultant harm.

(2) A notice under subsection (1) shall—

- (a) specify the grounds on which the draft environmental improvement plan is required;
- (b) outline the facts and circumstances forming the basis for the grounds;
- (c) specify any particular matters that must be addressed in the draft plan;

- (d) specify a date, being a date not less than 20 working days after the date of the notice, on or before which the person must submit the draft plan to the Authority; and
- (e) specify—
  - (i) the determined fee that must be paid when the draft plan is submitted; or
  - (ii) the rate at which, or the formula or other method by which, that fee is to be calculated.

**(3)** A person shall not fail to comply with a notice under subsection (1).

Penalty for contravention of subsection (3):

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

**70. Submission of environmental improvement plan**

A draft environmental improvement plan submitted in compliance with—

- (a) a notice under subsection 69 (1); or
- (b) a condition of an environmental authorisation;

shall be submitted together with the determined fee.

**71. Approval of environmental improvement plan**

**(1)** Where the Authority receives a draft environmental improvement plan submitted in compliance with—

- (a) a notice under subsection 69 (1); or
- (b) a condition of an environmental authorisation;

the Authority shall, within 20 working days of that receipt, by notice in writing—

- (c) approve the draft plan and require the person who submitted the plan to implement the plan as approved; or
- (d) reject the draft plan and require the person to—
  - (i) amend the draft plan in accordance with any requirements specified in the notice; and
  - (ii) resubmit the draft plan to the Authority.

- (2) Where the Authority requires a person to resubmit a draft plan under paragraph (1) (d), the Authority shall, by notice in writing to the person within 10 working days of receipt of the resubmitted draft plan—
- (a) approve the draft plan and require the person to implement the plan as approved; or
  - (b) reject the draft plan.
- (3) A person shall not fail to comply with—
- (a) a notice under paragraph (1) (c) or (2) (a) requiring the person to implement the plan approved under that paragraph; or
  - (b) a notice under paragraph (1) (d) requiring the person to amend the draft plan and resubmit it to the Authority.

Penalty for contravention of subsection (3):

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

## **72. Accreditation of voluntary improvement plans**

- (1) A person who is conducting, or proposing to conduct, an activity may apply to the Authority for accreditation of an environmental improvement plan in relation to the activity that the person has, on his or her own initiative, prepared or caused to be prepared.
- (2) An application shall include—
- (a) a request that the plan be accredited under this section; and
  - (b) a copy of the plan, specifying the period during which the plan is proposed to be implemented and the measures proposed to be taken under the plan to achieve the best environmental practice.
- (3) The Authority may accredit an environmental improvement plan under this section if satisfied that, as a result of implementing the plan, over the specified period environmental harm would be reduced to the maximum extent reasonably possible.
- (4) In making a decision under subsection (3), the Authority shall take into account—
- (a) the extent to which the objects of this Act would be furthered by accrediting the plan;
  - (b) the nature of the activity, particularly the potential of the activity to cause serious or material environmental harm; and
  - (c) the state of available technology.

***Division 2—Environmental audits***

**73. Interpretation**

In this Division—

“auditor”, in relation to an environmental audit, means the person who conducts the audit.

**74. Conduct of audits**

For the purposes of section 76 or 78, an environmental audit is an assessment of an activity to determine—

- (a) the source, cause or extent of environmental harm being caused, or likely to be caused, by the activity;
- (b) the need for any alteration of management practices to reduce the environmental impact of the activity; and
- (c) the extent and nature of any contravention, or likely contravention, of an environmental authorisation, an environment protection order or a provision of this Act.

**75.<sup>5</sup> Certain auditors to be approved**

(1) An environmental audit for the purposes of section 76 or 78 shall be conducted by a person approved by the Authority to conduct the environmental audit.

(2) The Authority shall not approve a person under subsection (1) unless satisfied that the person—

- (a) has appropriate qualifications and experience to enable him or her to conduct the audit; and
- (b) meets the prescribed criteria.

(3) For the purposes of this section, the Authority shall prepare and maintain a list of auditors who meet the prescribed criteria.

(4) The Authority shall remove the name of an auditor from the list maintained under subsection (3) if satisfied that the auditor no longer meets the prescribed criteria.

(5) An auditor shall be taken to be on a list maintained for the purposes of subsection (3) for so long as the name of the auditor appears on a list of auditors maintained under a corresponding law of a State or another Territory.

**76.<sup>5</sup> Authority may require an environmental audit**

**(1)** The Authority may by written notice require a person conducting, or proposing to conduct, an activity to commission an environmental audit of the activity and submit a report on the audit to the Authority, if the Authority has reasonable grounds for believing that—

- (a) in conducting the activity, the person—
  - (i) has contravened, is contravening or is likely to contravene an environmental authorisation, an environmental protection order or a provision of this Act; or
  - (ii) has breached, is breaching or is likely to breach an environmental protection agreement;
- (b) if the person were to conduct the proposed activity, he or she may contravene an environmental authorisation, an environmental protection order or a provision of this Act, or may breach an environmental protection agreement; and
- (c) as a result, serious or material environmental harm has occurred, is occurring or may occur.

**(2)** A notice under subsection (1) shall—

- (a) specify the grounds on which the audit is required;
- (b) outline the facts and circumstances forming the basis for the grounds;
- (c) specify any particular matters that must be addressed in the audit;
- (d) specify a date, being a date not less than 20 working days after the date of the notice, on or before which the person must submit the auditor's report to the Authority; and
- (e) specify—
  - (i) the determined fee that must be paid when the auditor's report is submitted; or
  - (ii) the rate at which, or the formula or other method by which, that fee is to be calculated.

**(3)** An auditor's report submitted in compliance with a notice under subsection (1) shall be submitted together with the determined fee.

**(4)** A person shall not fail to comply with a notice under subsection (1).

Penalty for contravention of subsection (4):

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(5) A reference in subsection (1) to conducting an activity includes a reference to a variation or proposed variation of the manner in which the activity is conducted.

**76A, 76B.**<sup>5</sup> \* \* \* \* \*

**77. Authority's response to environmental audit report**

(1) Where the Authority receives an environmental audit report submitted in compliance with—

- (a) a notice under subsection 76 (1); or
- (b) a condition of an environmental authorisation;

the Authority shall, within 20 working days of that receipt, consider the report and by notice in writing—

- (c) require the person who submitted the report to provide further specified information by the specified date, being a date not less than 10 working days after the date of the notice;
- (d) advise the person that the Authority intends to take specified action under this Act in relation to the activity assessed by the audit; or
- (e) advise the person that no further action will be taken by the Authority in relation to the audit report.

(2) Where the Authority requires a person to provide further information under paragraph (1) (c), the Authority shall take action under paragraph (1) (d) or (e) by notice in writing to the person within 10 working days of—

- (a) receipt of the further information; or
- (b) the expiry of the date specified in the notice under paragraph (1) (c);

whichever occurs first.

(3) A person shall not fail to comply with a notice under paragraph (1) (c) requiring the person to provide further specified information by a specified date.

Penalty for contravention of subsection (3):

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

**78. Protection for reports of voluntary audits**

(1) A person who is conducting, or proposing to conduct, an activity may apply to the Authority to obtain the protection of this section in respect of an environmental audit of the activity that the person, on his or her own initiative, proposes to commission.

- (2) An application shall include—
- (a) a request that the applicant be granted protection under this section; and
  - (b) a detailed outline of the matters to be addressed by the audit and the manner in which those matters will be addressed.
- (3) The Authority may grant an applicant protection under this section in respect of a specified environmental audit if satisfied that the objects of this Act would be better furthered by granting protection than by not doing so.
- (4) A grant under subsection (3) may be made subject to conditions, including—
- (a) that the report of the audit must address, and may only address, specified matters; and
  - (b) that the report be prepared in a specified manner.
- (5) A person who has been granted protection under this section in respect of an environmental audit shall submit to the Authority a copy of the auditor's report within 20 working days after receiving the report.
- Penalty:
- (a) if the offender is a natural person—50 penalty units;
  - (b) if the offender is a body corporate—250 penalty units.
- (6) An environmental audit report submitted in compliance with subsection (5) shall be submitted together with the determined fee.
- (7) Subject to compliance with the conditions (if any) of a grant of protection made under subsection (3), the environmental audit report specified in the grant is not admissible in evidence against the applicant in any proceedings for the enforcement of this Act.
- (8) This section does not affect—
- (a) the obligation of the holder of an environmental authorisation to comply with the conditions of the authorisation; or
  - (b) the obligation of a person to notify the Authority under section 23.

**79. Protection does not extend to environment protection orders**

A grant of protection under section 78 does not prevent the Authority from serving an environment protection order in relation to a matter addressed in the audit report.

***Division 3—Emergency plans***

**80. Interpretation**

In this Division—

“environmental emergency” means a foreseeable occurrence that, if it occurred, would be likely to cause—

- (a) the entry into the environment of a measure of a pollutant that exceeds the measure authorised by or under this Act; and
- (b) as a result of the entry of that excess pollutant, serious or material environmental harm;

“preparation requirements” means a course of action referred to in paragraph 81 (1) (b).

**81. Contents of an emergency plan**

(1) An emergency plan—

- (a) shall specify a course of action to be undertaken by a person conducting an activity in the event of a specified kind of environmental emergency occurring in the conduct of that activity;
- (b) may specify a course of action to be undertaken to prepare for the possible future occurrence of such an emergency; and
- (c) may specify a timetable for the implementation of any preparation requirements.

(2) An emergency plan may address 1 or more environmental emergencies.

**82. Authority may require an emergency plan**

(1) The Authority may, by written notice require a person conducting, or proposing to conduct, an activity to prepare and submit for approval to the Authority a draft emergency plan in relation to the activity, if the Authority has reasonable grounds for believing that 1 or more specified environmental emergencies may occur during the conduct of that activity.

(2) A notice under subsection (1)—

- (a) shall specify the grounds on which the draft emergency plan is required;
- (b) shall outline the facts and circumstances forming the basis for the grounds;
- (c) shall specify the environmental emergencies that must be addressed in the draft plan;

- (d) may specify that certain preparation requirements be included in the draft plan;
- (e) may require that the draft plan be prepared on the person's behalf by a person who holds specified qualifications;
- (f) may require that specified inquiries be undertaken by that person before preparing the draft plan;
- (g) shall specify a date, being a date not less than 20 working days after the date of the notice, on or before which the person must submit the draft plan to the Authority; and
- (h) shall specify—
  - (i) the determined fee that must be paid when the draft plan is submitted; or
  - (ii) the rate at which, or the formula or other method by which, that fee is to be calculated.

**(3)** A person shall not fail to comply with a notice under subsection (1).

Penalty for contravention of subsection (3):

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

**83. Submission of emergency plan**

A draft emergency plan submitted in compliance with—

- (a) a notice under subsection 82 (1); or
- (b) a condition of an environmental authorisation;

shall be submitted together with the determined fee.

**84. Approval of emergency plan**

**(1)** Where the Authority receives a draft emergency plan submitted in compliance with—

- (a) a notice under subsection 82 (1); or
- (b) a condition of an environmental authorisation;

the Authority shall, within 20 working days of that receipt, by notice in writing—

- (c) approve the draft plan and require the person who submitted the plan to implement any preparation requirements included in the plan as approved; or

*Environment Protection Act 1997*

- (d) reject the draft plan and require the person to—
  - (i) amend the draft plan in accordance with any requirements specified in the notice; and
  - (ii) resubmit the draft plan to the Authority.
- (2) Where the Authority requires a person to resubmit a draft plan under paragraph (1) (d), the Authority shall, by notice in writing to the person within 10 working days of receipt of the resubmitted draft plan—
  - (a) approve the draft plan and require the person to implement any preparation requirements included in the plan as approved; or
  - (b) reject the draft plan.
- (3) A person shall not fail to comply with—
  - (a) a notice under paragraph (1) (c) or (2) (a) requiring the person to implement the preparation requirements included in the plan approved under that paragraph; or
  - (b) a notice under paragraph (1) (d) requiring the person to amend the draft plan and resubmit it to the Authority.

Penalty for contravention of subsection (3):

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

***Division 4—Financial assurances***

**85. Authority may require a financial assurance**

- (1) The Authority may, as a condition of an environmental authorisation, require the holder of the authorisation to provide a financial assurance to the Authority if satisfied that the condition is justified having regard to—
  - (a) the likelihood that the authorised activity will cause serious or material environmental harm other than harm permitted by or under this Act;
  - (b) the likelihood that action will need to be taken in the future to remedy the environmental harm described in paragraph (a);
  - (c) the environmental record of the holder of the authorisation; and
  - (d) any other matter the Authority considers relevant.
- (2) A financial assurance shall be in the form of—
  - (a) a bank guarantee;
  - (b) a bond;
  - (c) an insurance policy; or

(d) another form of security that the Authority considers appropriate.

(3) The Authority shall not require financial assurance of an amount greater than the total amount that the Authority has reasonable grounds for believing is likely to be needed to remedy the foreseeable environmental harm that could result from the conduct of the authorised activity.

(4) A financial assurance shall be provided—

(a) for the period specified in the authorisation; or

(b) if no period is so specified, until—

(i) the authorisation is varied to remove the condition requiring the financial assurance; or

(ii) the authorisation is cancelled under section 55 or 63 or is surrendered under section 66.

**86. Show cause why financial assurance should not be provided**

(1) Where the Authority proposes to grant an environmental authorisation subject to a condition requiring the provision of a financial assurance, the Authority shall give the applicant notice in writing of its intention to impose the condition.

(2) A notice under subsection (1) shall—

(a) specify the grounds on which the condition is proposed to be imposed;

(b) specify the amount and form of the financial assurance proposed to be required;

(c) invite the applicant to show cause why the condition should not be imposed; and

(d) specify the date on or before which any representations under paragraph (c) are to be made, being a date not less than 20 working days after the date of the notice.

(3) Within 20 working days after the end of the period allowed under paragraph (2) (d) for representations, the Authority shall—

(a) notify the applicant that the condition is or is not being imposed; and

(b) if it is being imposed—specify in the notice the date on or before which the financial assurance must be provided, being a date not less than 10 working days after the date of the notice.

**87. Non-provision of financial assurance**

If a financial assurance required as a condition of an environmental authorisation is not provided on or before the due date, the Authority shall cancel the authorisation.

**88. Claim on or realisation of a financial assurance**

(1) This section applies if the Authority incurs, or will incur, costs and expenses in taking action to remedy serious or material environmental harm—

- (a) that was caused by an authorised activity in relation to which a financial assurance has been provided;
- (b) that is within the class of harm in respect of which the financial assurance may be claimed or realised; and
- (c) that was not permitted by or under this Act.

(2) The Authority may recover the reasonable costs and expenses of taking the action by making a claim on or realising the financial assurance or part of it.

**89. Notice before claim on or realisation of a financial assurance**

(1) Before acting under section 88, the Authority shall give to the holder of the environmental authorisation in relation to which the financial assurance was provided, a notice in writing—

- (a) specifying the environmental harm caused by the authorised activity;
- (b) giving details of the action taken, or to be taken, to remedy the environmental harm;
- (c) specifying the amount of the financial assurance to be claimed or realised; and
- (d) inviting the holder of the authorisation to make a written representation to the Authority to show why the financial assurance should not be claimed or realised as proposed on or before a specified date, being a date not less than 20 working days after the date of the notice.

(2) The Authority shall, within 20 working days after the date specified in the invitation under paragraph (1) (d) and taking into account any representations made in response to the invitation—

- (a) decide whether or not to make a claim on or realise the financial assurance or part of it; and
- (b) give the holder of the authorisation written notice of that decision.

**90. Recovery of extra costs**

(1) Where the amount recovered by the Authority by a claim on or by realising a financial assurance (in this subsection called “the realised assurance”) is less than the reasonable costs and expenses that the Authority incurred or will incur in taking action to remedy the environmental harm caused by the authorised activity (in this subsection called “the reasonable costs and expenses”), the Authority may give the holder of the environmental authorisation notice in writing requiring the holder to pay the specified amount, being the difference between the reasonable costs and expenses and the realised assurance.

(2) The notice shall specify the date on or before which the specified amount is required to be paid, being a date not less than 20 working days after the date of the notice.

(3) Where—

- (a) the Authority has given a person a notice under subsection (1); and
- (b) the holder of the environmental authorisation has failed to pay the specified amount on or before the specified date;

so much of the specified amount as remains unpaid, together with interest calculated at the rate per centum per annum determined under section 165 on the unpaid amount, is a debt due to the Territory by the holder.

**91. Moneys held by Territory as financial assurance**

Where an amount of money is held by the Territory as a financial assurance or part of a financial assurance, the following provisions apply:

- (a) interest accrues, at the rate per centum per annum determined under section 165, on so much of that original amount as from time to time remains unclaimed by the Authority under section 89;
- (b) for the purposes of any claim the Authority may make under section 89, the financial assurance shall be taken to include any accrued interest other than interest to which the holder of the authorisation is entitled to be paid under paragraph (c);
- (c) during the period the financial assurance is required, on each anniversary of the payment of the original amount, the holder of the authorisation is entitled to be paid by the Territory so much of the interest that accrued during the year that ended on the day before that anniversary as remains unclaimed by the Authority under section 89;

*Environment Protection Act 1997*

- (d) when—
- (i) the financial assurance is no longer required by the Authority; or
  - (ii) the environmental authorisation is cancelled under section 55 or 63 or is surrendered under section 66;
- so much of the original amount and accrued interest as remains unclaimed by the Authority under section 89 shall be paid by the Territory to the holder of the authorisation.

*Environment Protection Act 1997*

***Division 5—Assessment and remediation***<sup>5</sup>

**91A-91I.**<sup>5</sup> \* \* \* \* \*

***Division 6—Costs of assessment and remediation***<sup>5</sup>

**91J-91R.**<sup>5</sup> \* \* \* \* \*

## **PART X—FUNCTIONS OF THE MINISTER**

### **92. Decisions by Minister**

- (1) The Minister may, by instrument, notify the Authority that a decision under the Act that, but for this provision, would be made by the Authority is to be made by the Minister.
- (2) Where the Minister notifies the Authority under subsection (1) about a decision—
  - (a) the Authority shall not make the decision; and
  - (b) the Minister shall make the decision.
- (3) A decision made by the Minister under paragraph (2) (b) shall be notified in the *Gazette*.
- (4) An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **93. Directions of Minister**

- (1) The Authority shall perform his or her functions and exercise his or her powers in accordance with any directions of the Minister under this section.
- (2) The Minister shall not give a direction to the Authority in relation to a matter under Parts XI to XV (inclusive).
- (3) A direction shall be in writing.
- (4) The Minister shall publish notice of the making of a direction under this section in the *Gazette*.
- (5) A direction is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **94. Environmental Assessments and Inquiries**

- (1) This section applies in relation to an application for an environmental authorisation.
- (2) At the Authority's request, or on his or her own initiative, the Minister may—
  - (a) direct that an Assessment be made of the possible environmental impact of the activity; or
  - (b) establish a panel to conduct an Inquiry into the activity.

*Environment Protection Act 1997*

- (3)** For the purposes of subsection (2)—
- (a) the Minister shall not direct an Assessment to be made or establish a panel unless satisfied that the activity is not the subject of a development application under the Land Act; and
  - (b) the Authority shall not make a request unless the Authority—
    - (i) is satisfied that the activity is not the subject of a development application under the Land Act; and
    - (ii) has reasonable grounds for believing the activity has the potential to cause serious or material environmental harm.
- (4)** The Minister shall give the Authority—
- (a) a copy of any Assessment directed to be made under paragraph (2) (a), together with copies of any other material referred to in subsection 132 (2) of the Land Act; or
  - (b) a copy of the report of any Inquiry panel established under paragraph (2) (b).

**PART XI—AUTHORISED OFFICERS’ POWERS**

***Division 1—Preliminary***

**95. Interpretation**

(1) In this Part—

“enter” includes board;

“premises” includes vacant land, vehicles, vessels and aircraft;

“residential premises” means premises used exclusively or primarily for residential purposes, and includes a private room in but not any other part of a motel, hotel, hostel or guesthouse.

(2) For the purposes of this Part, a thing is connected with a particular offence if—

(a) the offence has been committed with respect to it;

(b) it will afford evidence of the commission of the offence; or

(c) it was used, is being used, or is intended to be used, for the purpose of committing the offence.

(3) A reference in this Part to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, is being, or will be committed.

***Division 2—Entry and inspection generally***

**96. Entry of premises—routine inspections**

(1) For the purposes of ascertaining whether this Act is being complied with, an authorised officer may enter—

(a) premises (other than residential premises) at any reasonable time; or

(b) any premises with the consent (obtained pursuant to section 103) of the occupier or a person apparently in charge of the premises.

(2) An authorised officer may enter premises under subsection (1) with such assistance as is necessary and reasonable.

**97. Entry of premises—search warrants**

(1) Where an authorised officer has reasonable grounds for suspecting that there may be on any premises a thing of a particular kind connected with a particular offence against this Act, the authorised officer may enter premises pursuant to a search warrant under section 104.

(2) An authorised officer may enter premises under subsection (1) with such assistance and by such force as is necessary and reasonable.

(3) A police officer may, if called on by an authorised officer to do so, assist the authorised officer in the execution of a search warrant.

**98. Identity cards must be produced**

An authorised officer who enters premises under subsection 96 (1) or 97 (1) is not authorised to remain on the premises if, on request by the occupier or a person apparently in charge of the premises, the officer does not produce his or her identity card.

**99. Inspection of premises—routine inspections**

An authorised officer who enters premises under subsection 96 (1) may do any of the following in respect of the premises or anything on the premises:

- (a) inspect or examine;
- (b) take measurements or conduct tests;
- (c) take samples for analysis;
- (d) examine records or documents relating to the operation of equipment and the operational processes carried out on those premises.

**100. Inspection of premises—search warrant**

(1) Subject to section 101, an authorised officer who enters premises under subsection 97 (1) may do any of the following in respect of the premises or anything on the premises:

- (a) inspect or examine;
- (b) take measurements or conduct tests;
- (c) take samples for analysis;
- (d) take photographs, films, or audio, video or other recordings;
- (e) in the case of a thing—subject to section 108, seize the thing;
- (f) if the thing is a document—take copies of, or extracts from, the document.

- (2) An authorised officer who enters premises under subsection 97 (1) may require the occupier or a person on the premises to do any of the following:
- (a) answer questions or furnish information;
  - (b) make available any record or other document kept on the premises;
  - (c) provide reasonable assistance to the officer in relation to the exercise of his or her powers under subsection (1).

**101. Inspection of premises—seriousness and urgency**

An authorised officer who enters premises under subsection 96 (1) may, if the officer has reasonable grounds for believing that the circumstances are of such seriousness and urgency as to require the exercise of the power without a warrant, in addition to the powers he or she may exercise under section 99, do any of the following:

- (a) take photographs, films, or audio, video or other recordings;
- (b) require the occupier or a person on the premises to do any of the following:
  - (i) answer questions or furnish information;
  - (ii) make available any record or other document kept on the premises;
  - (iii) provide reasonable assistance to the officer in relation to the exercise of his or her powers under this section.

**102. Procedure where samples taken**

Where an authorised officer takes a sample under section 99 or 100, the officer shall—

- (a) divide the sample into 3 parts;
- (b) place each of those parts in a separate container and seal each container;
- (c) attach to each container a label bearing the signature of the authorised officer and particulars of the date and time when, and the place at which, the sample was taken; and
- (d) deliver 1 of the 3 containers to each of the following persons:
  - (i) the occupier or the person apparently in charge of the premises;
  - (ii) an analyst;
  - (iii) the Authority.

**103. Consent to entry**

(1) Before obtaining the consent of a person for the purposes of paragraph 96 (1) (b), an authorised officer shall—

- (a) produce his or her identity card; and
- (b) inform the person that he or she may refuse to give consent.

(2) Where an authorised officer obtains the consent of a person for the purposes of paragraph 96 (1) (b), the officer shall ask the person to sign a written acknowledgment of—

- (a) the fact that the person has been informed that he or she may refuse to give consent;
- (b) the fact that the person has voluntarily given consent; and
- (c) the day on which, and the time at which, the consent was given.

(3) An entry by an authorised officer by virtue of a person's consent is not lawful unless the consent was voluntary.

(4) Where—

- (a) it is material, in any proceedings, for a court to be satisfied that the consent of a person for the purposes of paragraph 96 (1) (b) was voluntary; and
- (b) an acknowledgment, in accordance with subsection (2), signed by the person is not produced in evidence;

the court shall assume, unless the contrary intention is proved, that the consent was not voluntary.

**104. Search warrants**

(1) Where—

- (a) an information is laid before a magistrate alleging that an authorised officer has reasonable grounds for suspecting that there may be on any premises a thing of a particular kind connected with a particular offence against this Act; and
- (b) the information sets out those grounds;

the magistrate may issue a search warrant authorising the authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (c) to enter the premises described in the warrant;

*Environment Protection Act 1997*

- (d) to search the premises for things of the kind mentioned in paragraph (a); and
  - (e) to exercise any of the powers listed in section 100 in relation to those things.
- (2) A magistrate shall not issue a warrant unless—
- (a) the informant or another person has given the magistrate, either orally on oath or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
  - (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (3) A warrant shall—
- (a) state the purpose for which it is issued, including a reference to the nature of the offence in connection with which the entry and search is authorised;
  - (b) state that the entry is authorised at any time of the day or night, or specify particular hours during which the entry is authorised;
  - (c) include a description of the kind of things in relation to which the powers listed in section 100 may be exercised; and
  - (d) specify a date, not later than 1 month after the date on which the warrant is issued, on which the warrant ceases to have effect.
- (4) If in the course of searching pursuant to a warrant for things of a particular kind connected with a particular offence, an authorised officer—
- (a) finds a thing that the officer has reasonable grounds for believing to be—
    - (i) connected with the offence, although not a thing of the kind specified in the warrant; or
    - (ii) connected with another offence against this Act; and
  - (b) is satisfied that it is necessary to exercise any of the powers listed in section 100 in relation to the thing to prevent the committing, continuing or repeating of the offence or the other offence;

the warrant shall be taken to authorise the officer to exercise those powers in relation to that thing.

***Division 3—Emergency powers***

**105. Emergency situations**

This Division applies if an authorised officer—

- (a) has reasonable grounds for believing that serious or material environmental harm has been or is likely to be caused, other than harm permitted by or under this Act; and
- (b) is satisfied that it is necessary to take immediate action to prevent, minimise or remedy the harm (in this Division called “emergency action”).

**106. Taking or directing action**

(1) The authorised officer shall, orally or in writing, direct another person who is present on the relevant premises to take emergency action if the authorised officer has reasonable grounds for believing that the person has the appropriate practical or technical knowledge and authority to take the action.

(2) If the authorised officer does not have belief of the kind referred to in subsection (1), the authorised officer may take emergency action.

(3) The authorised officer shall confirm an oral direction in writing as soon as practicable.

**107. Entry and exercise of powers**

(1) The authorised officer may—

- (a) for the purposes of taking emergency action, enter any premises (other than residential premises) at any time of the day or night—
  - (i) without a warrant; and
  - (ii) with such assistance, and by such force, as is necessary and reasonable; and
- (b) in the course of taking emergency action, exercise any of the powers listed in section 100.

(2) An authorised officer who enters premises under paragraph (1) (a) is not authorised to remain on the premises if, on request by the occupier or a person apparently in charge of the premises, the officer does not produce his or her identity card.

***Division 4—Seizure, retention and disposal of things***

**108. Seizure**

(1) An authorised officer may seize anything pursuant to a power of seizure under this Part if he or she has reasonable grounds for believing that it is connected with an offence against this Act and—

- (a) the seizure is necessary to prevent the thing being—
  - (i) concealed, lost, damaged or destroyed; or
  - (ii) used to commit the offence; or
- (b) the seizure is necessary to conduct tests for the purpose of adducing evidence in a prosecution for the offence.

(2) A person shall not, without the consent in writing of the Authority—

- (a) interfere with or dispose of a thing seized under this Part; or
- (b) remove the thing from the premises on which it was seized or to which it was taken by the authorised officer who seized it.

Penalty for contravention of subsection (2):

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(3) Where an authorised officer has seized a thing under this Part, he or she shall give a receipt for the thing to—

- (a) the occupier of the premises on which it was seized; or
- (b) the person who had possession, custody or control of the thing immediately before it was seized.

**109. Retention to adduce evidence**

(1) The following provisions apply in relation to anything seized under this Part:

- (a) the thing shall be held by the Authority for the purpose of adducing evidence in a prosecution for an offence against this Act, unless the Authority authorises the release of the thing to its owner or the person who had possession, custody or control of the thing immediately before it was seized;

*Environment Protection Act 1997*

- (b) if a prosecution for an offence against this Act is instituted within the prescribed period and the defendant is found guilty, the court may order that—
  - (i) the thing be forfeited to the Authority; or
  - (ii) the defendant pay to the Authority an amount equal to the market value of the thing at the time of the seizure, being the value determined by the court;
- (c) if—
  - (i) a prosecution for an offence against this Act is not instituted within the prescribed period; or
  - (ii) on such a prosecution being instituted within that period, the defendant is found not guilty or the court does not make an order under paragraph (b);

the Authority shall, subject to section 110, release the thing to its owner or the person who had possession, custody or control of the thing immediately before it was seized.

- (2) In subsection (1)—

“prescribed period” means the period of 6 months commencing on the day after the seizure.

**110. Disposal**

(1) Instead of releasing a thing pursuant to paragraph 109 (1) (c), the Authority may give written notice to—

- (a) the owner of the thing; or
- (b) the person who had possession, custody or control of the thing immediately before it was seized;

inviting the person to show why the thing should not be disposed of.

(2) Despite subsection (1), the Authority shall, at the same time as giving notice under that subsection, by notice in a daily newspaper, invite persons who have a legal or equitable interest in the thing to be disposed of to show why it should not be disposed of.

(3) A notice under subsection (1) or (2) shall specify—

- (a) the grounds on which the Authority bases his or her belief that the disposal of the thing is necessary; and

*Environment Protection Act 1997*

- (b) the period, not being less than 20 working days after the day on which the notice was given, after which the Authority may cause the thing to be disposed of under subsection (4).
- (4) The Authority shall—
  - (a) after the period specified in a notice under subsection (1) or (2) has expired; and
  - (b) after taking into account any representations made in response to the notice;

cause the thing to be disposed of if satisfied that the disposal is necessary to prevent or minimise any environmental harm caused, or likely to be caused, by the thing.

(5) If the Authority is not satisfied that it is necessary to dispose of a thing, the Authority shall cause the thing to be released to its owner or the person who had possession, custody or control of the thing immediately before it was seized.

(6) Where a thing is disposed of pursuant to subsection (4), the Territory shall compensate the owner.

***Division 5—Other powers***

**111. Power to require name and address**

- (1) Where an authorised officer—
  - (a) finds a person committing an offence against this Act; or
  - (b) has reasonable grounds for believing that a person has committed an offence against this Act;

the officer—

- (c) may require the person to state the person's name and address; and
- (d) in doing so, shall—
  - (i) inform the person of the reasons for the requirement; and
  - (ii) as soon as practicable thereafter, record those reasons.
- (2) A person is not required to comply with a requirement under subsection (1) if, on request by the person, the authorised officer does not produce his or her identity card.
- (3) Subject to subsection (2), a person shall not, without reasonable excuse, fail to comply with a requirement under subsection (1).

Penalty for contravention of subsection (3): 5 penalty units.

## **PART XII—ANALYSTS' POWERS**

### **112. Entry of premises**

(1) An analyst may accompany an authorised officer who has entered premises pursuant to a power of entry under Part XI in order to conduct such tests as are necessary to determine whether this Act is being complied with.

(2) A person shall not, without reasonable excuse, obstruct or hinder an analyst in the exercise of his or her powers under subsection (1).

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(3) An analyst who enters premises under subsection (1) is not authorised to remain on the premises if, on request by the occupier or a person apparently in charge of the premises, the analyst does not produce his or her identity card.

### **113. Evidence of analysis**

A certificate purporting to be signed by an analyst—

- (a) stating that he or she has analysed, or caused to be analysed, a sample from a sealed container to which was affixed a label purporting to be signed by the authorised officer named in the certificate and bearing particulars of the date and time when, and the place at which, the sample was taken by the authorised officer;
- (b) describing the analysis to which the sample was subjected; and
- (c) setting out the results of the analysis;

is evidence of the matters so stated.

**PART XIII—ENFORCEMENT**

***Division 1—On-the-spot fines***

**114. Interpretation**

In this Division—

“administrative charge” means the administrative charge determined under section 165 for the purposes of this Division;

“minor environmental offence” means an offence against this Act prescribed for the purposes of this Division;

“on-the-spot fine”, in relation to a minor environmental offence, means—

- (a) if the offender is a natural person—the fine prescribed by the regulations as the penalty for the offence for the purposes of this Division; or
- (b) if the offender is a body corporate—5 times the amount of that fine.

**115.<sup>5</sup> Infringement notices**

For the purposes of this Division, an infringement notice, in relation to a minor environmental offence, is a notice in a form approved by the Authority that—

- (a) identifies the authorised officer who served the notice;
- (b) states the full name, or surname and initials, of the person on whom the notice is served;
- (c) specifies the nature of the alleged offence;
- (d) specifies the day on which, and the time and place at which, the offence is alleged to have been committed;
- (e) specifies the on-the-spot fine and, in the case of a final notice, the administrative charge;
- (f) in the case of a first notice—includes a statement to the effect that if the person on whom the notice is served does not wish the offence to be prosecuted in court, the person may pay to the Authority—
  - (i) the on-the-spot fine within 28 days after the date of the notice or within such extended period as is allowed under paragraph 120(3)(b); or

- (ii) if a final notice is served on the person—the on-the-spot fine and the administrative charge within 14 days after the date of the final notice or within such extended period as is allowed under paragraph 120 (3) (b);
- (g) in the case of a final notice—
  - (i) specifies the date of the first notice and includes a statement to the effect that the person has not paid the on-the-spot fine for the alleged offence to which that first notice relates; and
  - (ii) includes a statement to the effect that if the person on whom the notice is served does not wish the offence to be prosecuted in court, the person may pay to the Authority the on-the-spot fine and the administrative charge within 14 days after the date of the final notice or within such extended period as is allowed under paragraph 120 (3) (b);
- (h) specifies the place at which, and the manner in which, the amount payable under the notice may be paid;
- (j) includes a statement of the possible consequences if the offence were to be prosecuted in court, including the maximum penalty applicable;
- (k) includes a statement about the procedures for the withdrawal of the notice under this Division;
- (m) includes a statement to the effect that, if on an application for withdrawal the notice is not withdrawn, the Authority is required to extend the time for payment; and
- (n) is dated and signed by the authorised officer who serves the notice.

#### **116. First notice**

An authorised officer may serve an infringement notice (in this Division called a “first notice”) on a person if the officer has reasonable grounds for believing that the person has committed a minor environmental offence.

#### **117. Final notice**

An authorised officer may, after serving a person with a first notice, serve the person with another infringement notice (in this Division called a “final notice”)—

- (a) if after 28 days from the date of the first notice—
  - (i) the person has not paid the on-the-spot fine; and
  - (ii) the person has not applied for the withdrawal of the notice under section 119; or

- (b) if the person applied for the withdrawal of the first notice under section 119—
  - (i) the application has been rejected; and
  - (ii) the person has not paid the on-the-spot fine within the extended period allowed under paragraph 120 (3) (b).

**118. Discharge of liability**

- (1) This section applies where—
  - (a) the amount payable under a first notice is paid within 28 days after the date of the notice or within such extended period as is allowed under paragraph 120 (3) (b); or
  - (b) the amount payable under a final notice is paid within 14 days after the date of the notice or within such extended period as is allowed under paragraph 120 (3) (b).
- (2) Where this section applies—
  - (a) any liability of the person on whom the notice was served in respect of the minor environmental offence is discharged;
  - (b) no further proceedings shall be taken in respect of the offence; and
  - (c) the person shall not be regarded as having been convicted of the offence.
- (3) For the purposes of this section, where a cheque is tendered in payment of an amount, the payment shall not be taken to have been made unless and until the cheque is honoured.

**119. Application for withdrawal of infringement notices**

- (1) A person on whom an infringement notice has been served may apply to the Authority for withdrawal of the notice.
- (2) An application shall be in writing and shall be made—
  - (a) if for the withdrawal of a first notice—within 28 days after the date of the notice; or
  - (b) if for the withdrawal of a final notice—within 14 days after the date of the notice.
- (3) A person shall not make more than 1 application under this section in relation to an alleged offence.

**120. Withdrawal of infringement notices**

**(1)** On receipt of an application under section 119, the Authority may withdraw the infringement notice if satisfied that—

- (a) the applicant did not commit the offence;
- (b) the applicant had a reasonable excuse for committing the act constituting the offence; or
- (c) it would be unreasonable in the circumstances to prosecute the applicant for the offence.

**(2)** If the Authority withdraws an infringement notice, the Authority shall give to the applicant written notice of the decision—

- (a) specifying the infringement notice that has been withdrawn; and
- (b) including a statement to the effect of paragraphs (5) (a), (b) and (c).

**(3)** If the Authority does not withdraw an infringement notice, the Authority shall—

- (a) give the applicant written notice of the decision; and
- (b) extend the period within which the amount payable under the infringement notice is to be paid by a period of—
  - (i) if the decision is not to withdraw a first notice—28 days commencing on the date of the notice under paragraph (a); or
  - (ii) if the decision is not to withdraw a final notice—14 days commencing on the date of the notice under paragraph (a).

**(4)** If the Authority does not give the applicant notice under subsection (2) or (3) within 60 days after the receipt of an application to withdraw an infringement notice, the infringement notice is to be taken to have been withdrawn.

**(5)** Where an infringement notice is withdrawn, or is taken to have been withdrawn, under this section—

- (a) any liability of the person on whom the notice was served in respect of the minor environmental offence is discharged;
- (b) no further proceedings shall be taken in respect of the offence;
- (c) the person shall not be regarded as having been convicted of the offence; and
- (d) the Authority shall refund any amount paid in response to the notice.

**121. Prosecution of minor environmental offences**

- (1) A person on whom an infringement notice has been served may not be prosecuted for the offence to which the notice relates unless that notice is a final notice and—
- (a) the period of 14 days after the date of the notice has expired; or
  - (b) the Authority has not withdrawn the notice under subsection 120 (1) and the extended period allowed under paragraph 120 (3) (b) has expired.
- (2) Nothing in section 116 or 117 shall be construed as—
- (a) affecting the liability of a person to be prosecuted for a minor environmental offence in respect of which an infringement notice has not been served;
  - (b) subject to subsection (1), affecting the institution or prosecution of proceedings for a minor environmental offence; or
  - (c) limiting the amount of the fine that may be imposed by a court in respect of a minor environmental offence.

**122. Non-antecedent value of infringement notice offences**

- (1) For the purposes of section 429A of the *Crimes Act 1900*, in sentencing an accused for any offence, a court shall not have regard to—
- (a) any infringement notice offence;
  - (b) the circumstances surrounding any infringement notice offence; or
  - (c) the investigation of any infringement notice offence or the taking of any related action under this Division.
- (2) In subsection (1)—
- “infringement notice offence”, in relation to an accused, means an alleged offence—
- (a) in respect of which an infringement notice has been served on the accused; and
  - (b) that has not been found proved by a court.

**123. Service of notices**

- (1) For the purposes of this Division, a notice may be served on a person—
- (a) by delivering the notice personally;
  - (b) by sending the notice by post addressed to the person at the person’s last-known place of residence or business; or

*Environment Protection Act 1997*

- (c) by leaving the notice at the person's last-known place of residence or business with some other person who is apparently—
  - (i) over the age of 16 years; and
  - (ii) an occupant of, or employed at, the place.

(2) Nothing in this section prevents the service on a person of more than 1 infringement notice in respect of the same alleged offence, but it is sufficient for the application of section 118 to such a person if the amount payable under any of the notices so served has been paid.

(3) Where an infringement notice is served on a child and the person serving the notice has reasonable grounds for believing that the child is residing with a person who stands *in loco parentis* to that child, the person serving the notice shall serve a copy of the notice on that person.

**124. Evidence**

In a prosecution for a minor environmental offence, a certificate signed by the Authority stating—

- (a) that a notice was served under this Division on a specified person on a specified date; or
- (b) where an infringement notice has been served on a person under this Division, that—
  - (i) an extended period for payment was, or was not, allowed under paragraph 120 (3) (b);
  - (ii) the notice was not withdrawn; and
  - (iii) the amount payable under the notice was not paid in accordance with the notice within the period for payment specified in the notice or within such extended period as was allowed;

is evidence of the matters so stated.

***Division 2—Environment protection orders***

**125.<sup>5</sup> Environment protection orders**

(1) Where the Authority has reasonable grounds for believing that a person has contravened or is contravening an environmental authorisation or a provision of this Act, the Authority may serve an environment protection order on the person.

- (2) An order shall be in writing and shall—
  - (a) identify the person on whom the order is served;

*Environment Protection Act 1997*

- (b) if the order is grounded on a contravention of this Act, specify—
    - (i) the provision of this Act alleged to have been contravened; and
    - (ii) the nature of, and the day, time and place of, the alleged contravention;
  - (c) if the order is grounded on a contravention of an environmental authorisation, specify—
    - (i) the condition of the authorisation alleged to have been contravened; and
    - (ii) the nature of, and the day, time and place of, the alleged contravention;
  - (d) require that specified action be taken, stopped or not commenced by the person; and
  - (e) set out the maximum penalty, on conviction, for a failure to comply with the order.
- (3)** An order may impose any requirement reasonably required for the purposes for which the order is served, including 1 or more of the following:
- (a) that the person stop or not commence a specified activity indefinitely or for a specified period;
  - (b) that the person undertake, within a specified period—
    - (i) specified action to remedy specified environmental harm; and
    - (ii) if appropriate, specified action to prevent or mitigate further environmental harm;
  - (c) that the person undertake, within a specified period, specified action for the restoration of the environment in a public place or for the public benefit;
  - (d) that the person undertake, within a specified period, any other specified action;
  - (e) that the person not conduct a specified activity except during specified times or subject to specified conditions;
  - (f) that the person provide specified information to the Authority in relation to the environmental impact of an activity being conducted by the person.
- (4)** In this section, a reference to a contravention of this Act shall be read as including a reference to a failure to comply with the general environmental duty.

**126. Contravention of an environment protection order**

A person shall not contravene an environment protection order.

Penalty:

- (a) if the order was grounded on a contravention of this Act and this Act specifies a penalty for the contravention—that penalty;
- (b) if the order was grounded on a contravention of an environmental authorisation and this Act specifies a penalty for the contravention—that penalty;
- (c) in any other case—
  - (i) if the offender is a natural person—200 penalty units;
  - (ii) if the offender is a body corporate—1,000 penalty units.

***Division 3—Injunctive orders***

**127. Application for order**

(1) An application for an order under section 128 may be made to the Supreme Court by—

- (a) the Authority; or
- (b) any other person with leave of the Court.

(2) The Court shall not grant leave under paragraph (1) (b) unless satisfied that—

- (a) the person has requested the Authority to take action under the Act and the Authority has failed, within a time that is reasonable in the circumstances, to notify the person in writing that it has taken any action that is appropriate in the circumstances; and
- (b) it is in the public interest that the proceedings should be brought.

**128. Making of order**

(1) If the Supreme Court is satisfied—

- (a) that—
  - (i) the respondent has contravened or is contravening; or
  - (ii) there is a significant likelihood that the respondent will contravene;

an environmental authorisation, an environment protection order or a provision of this Act; and

*Environment Protection Act 1997*

- (b) that, as a result, serious or material environmental harm has occurred, is occurring or is likely to occur;

the Court may make—

- (c) an order requiring the respondent to remedy the contravention;
- (d) an order restraining the respondent from continuing to commit the contravention; or
- (e) an order restraining the respondent from committing the threatened or anticipated contravention;

and such other orders as the Court considers appropriate for the purpose of giving effect to that order.

(2) An order under subsection (1) shall specify the date on or before which the order is to be complied with.

(3) The Court may make an order under subsection (1) directing the respondent to stop doing a particular thing, whether or not—

- (a) it appears to the Court that the respondent intends to do the thing or continue to do the thing;
- (b) the respondent has previously done a thing of that kind; or
- (c) there is a potential for serious or material environmental harm to result if the respondent does the thing or continues to do the thing.

(4) The Court may make an order under subsection (1) directing the respondent to do a particular thing, whether or not—

- (a) it appears to the Court that the respondent does not intend to do the thing or continue to do the thing;
- (b) the respondent has previously not done a thing of that kind; or
- (c) there is a potential for serious or material environmental harm to result if the respondent does not do the thing.

**129. Interim order**

(1) Where—

- (a) an application for an order under section 128 is pending; and
- (b) the Supreme Court is satisfied that there is a real or significant likelihood of serious or material environmental harm occurring before the application is determined;

the Court may make an interim order of the kind described in paragraph 128 (1) (c), (d) or (e) and such other orders as the Court considers appropriate.

- (2) An interim order under subsection (1) remains in force—
- (a) if a copy of the application has not been served on the respondent—
    - (i) until the Court otherwise orders; or
    - (ii) for the period (not exceeding 14 days) specified in the order; whichever occurs first; or
  - (b) if a copy of the application has been served on the respondent—
    - (i) until the Court otherwise orders; or
    - (ii) until the Court determines the application; whichever occurs first.

**130. Costs—public interest**

In determining the amount of costs to be awarded against a party to a proceeding under section 128 or 129, the Supreme Court shall take into account the nature of the public interest.

**131. Security for costs etc.**

The Supreme Court may order an applicant for an order under section 128—

- (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed; or
- (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under section 132.

**132. Compensation**

If, on an application for an order under section 128 alleging that there has been a contravention of an environmental authorisation, an environment protection order or a provision of this Act, the Supreme Court is satisfied that—

- (a) there has been no such contravention by the respondent;
- (b) the respondent has suffered loss or damage as a result of the actions of the applicant in bringing the proceedings; and
- (c) in the circumstances it is appropriate to make an order under this subsection;

the Court may, on the application of the respondent (and in addition to any order as to costs), order the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage suffered by the respondent.

***Division 4—Power to require information***

**133. Information discovery orders**

(1) Where the Authority has reasonable grounds for suspecting that a person—

- (a) has knowledge of information reasonably required by the Authority for the administration or enforcement of this Act; or
- (b) has possession or control of a document containing such information;

the Authority may serve on the person an information discovery order requiring the person to furnish the information or produce the document.

(2) An order shall be in writing and shall—

- (a) identify the person on whom the order is served;
- (b) specify why the information is required;
- (c) specify the date on or before which the order must be complied with; and
- (d) set out the maximum penalty, on conviction, for a failure to comply with the order.

**134. Contravention of information discovery order**

A person shall not contravene an information discovery order.

Penalty:

- (a) if the offender is a natural person—100 penalty units;
- (b) if the offender is a body corporate—500 penalty units.

**PART XIV—ADMINISTRATIVE REVIEW**

**135.<sup>5</sup> Review of decisions**

- (1) An eligible person may make application to the Administrative Appeals Tribunal for review of a decision of the Authority—
- (a) under subsection 21 (1) excluding or refusing to exclude a document or part of a document from public inspection;
  - (b) under subsection 43 (1) notifying a person that the person is not to conduct, or continue to conduct, a specified activity unless the person holds an environmental authorisation;
  - (c) under subsection 43 (4) refusing to revoke a notice under subsection 43 (1);
  - (d) under paragraph 49 (1) (a), (2) (a), (3) (a) or (4) (a) granting an environmental authorisation;
  - (e) under paragraph 49 (1) (a), (2) (a), (3) (a) or (4) (a) granting an environmental authorisation for a specified period;
  - (f) under paragraph 49 (1) (a), (2) (a), (3) (a) or (4) (a) granting an environmental authorisation subject to a specified condition;
  - (g) under paragraph 49 (1) (b), (2) (b), (3) (b) or (4) (b) refusing to grant an environmental authorisation;
  - (h) under subsection 57 (2) deciding not to take any action under this Act;
  - (j) under section 58 to cancel an accredited environmental authorisation;
  - (k) under subsection 60 (1) varying an environmental authorisation;
  - (l) under subsection 60 (1) refusing to vary an environmental authorisation on the application of a person under paragraph 60 (1) (a);
  - (m) under subsection 63 (1) suspending an environmental authorisation;
  - (n) under subsection 63 (1) cancelling an environmental authorisation;
  - (p) under subsection 63 (1) suspending an environmental authorisation until a specified condition referred to in subsection 63 (2) has been fulfilled;
  - (q) under subsection 63 (2) refusing to lift a suspension of an environmental authorisation on the ground that a specified condition has not been fulfilled;
  - (r) under subsection 69 (1) requiring a person to prepare and submit for approval a draft environmental improvement plan;
  - (s) under paragraph 71 (1) (d) rejecting a draft environmental improvement plan and requiring the plan to be amended and resubmitted;

*Environment Protection Act 1997*

- (t) under paragraph 71 (2) (b) rejecting a draft environmental improvement plan;
  - (u) under subsection 72 (3) accrediting or refusing to accredit an environmental improvement plan;
  - (v) under subsection 75 (1) refusing to approve a person to conduct a particular environmental audit;
  - (w) under subsection 75 (4) removing the name of an auditor from the list of auditors maintained by the Authority;
  - (x) under subsection 76 (1) requiring a person to commission an environmental audit and submit a report on the audit;
  - (y) under subsection 78 (3) refusing to grant protection in respect of an environmental audit report;
  - (z) under subsection 78 (3) granting protection in respect of an environmental audit report subject to a specified condition referred to in subsection 78 (4);
  - (za) under subsection 82 (1) requiring a person to prepare and submit for approval a draft emergency plan;
  - (zb) under paragraph 84 (1) (d) rejecting a draft emergency plan and requiring the plan to be amended and resubmitted;
  - (zc) under paragraph 84 (2) (b) rejecting a draft emergency plan;
  - (zd) under subsection 110 (4) that disposal of a thing seized is necessary;
  - (ze) under subsection 125 (1) serving an environment protection order; and
  - (zf) under subsection 125 (1) serving an environment protection order imposing a specified requirement referred to in subsection 125 (3).
- (2)** Where a decision of a kind referred to in subsection (1) is made, the Authority shall give notice in writing of the decision to—
- (a) in the case of a decision referred to in paragraph (1) (a), (d), (e), (f), (g), (y) or (z)—the applicant;
  - (b) in the case of a decision referred to in paragraph (1) (b), (c), (r), (s), (t), (u), (x), (za), (zb) or (zc)—the person conducting, or proposing to conduct, the relevant activity;
  - (c) in the case of a decision referred to in paragraph (1) (h), (j), (k), (l), (m), (n), (p) or (q)—the holder of the environmental authorisation;
  - (d) in the case of a decision referred to in paragraph (1) (u)—the person who is refused approval under subsection 75 (2) and the person commissioning the environmental audit; or

*Environment Protection Act 1997*

- (e) in the case of a decision referred to in paragraph (1) (ze) or (zf)—the person on whom the order is served.
- (3) A notice under subsection (2) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.
- (4) For the purposes of this section, a decision of the Authority under paragraph (1) (d), (e) or (f) does not include a decision granting an environmental authorisation in respect of an activity of a kind listed in paragraph 2 (t) of Schedule 1.
- (5) In subsection (1)—
  - “eligible person”, in relation to a decision, means—
    - (a) a person to whom a notice is required to be given under subsection (2); or
    - (b) any other person whose interests are affected by the decision.

**136. Review of Minister’s decisions**

- (1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister under paragraph 92 (2) (b).
- (2) Where a decision of the kind referred to in subsection (1) is made, the Minister shall give notice in writing of the decision to the person to whom notice would have been given under subsection 135 (2) had the decision been made by the Authority.
- (3) A notice under subsection (2) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

**PART XV—OFFENCES**

***Division 1—Environmental offences***

***Subdivision A—General environmental offences***

**137. Causing serious environmental harm**

**(1)** A person shall not knowingly or recklessly pollute the environment causing serious environmental harm.

Penalty:

- (a) if the offender is a natural person—2,000 penalty units or imprisonment for 5 years, or both;
- (b) if the offender is a body corporate—10,000 penalty units.

**(2)** A person shall not negligently pollute the environment causing serious environmental harm.

Penalty:

- (a) if the offender is a natural person—1,500 penalty units or imprisonment for 3 years, or both;
- (b) if the offender is a body corporate—7,500 penalty units.

**(3)** A person shall not pollute the environment causing serious environmental harm.

Penalty:

- (a) if the offender is a natural person—1,000 penalty units;
- (b) if the offender is a body corporate—5,000 penalty units.

**(4)** If in proceedings for an offence against subsection (1), the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the latter offence.

**(5)** If in proceedings for an offence against subsection (1) or (2), the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (3), the court may find the defendant guilty of the latter offence.

**138. Causing material environmental harm**

(1) A person shall not knowingly or recklessly pollute the environment causing material environmental harm.

Penalty:

- (a) if the offender is a natural person—1,000 penalty units or imprisonment for 2 years, or both;
- (b) if the offender is a body corporate—5,000 penalty units.

(2) A person shall not negligently pollute the environment causing material environmental harm.

Penalty:

- (a) if the offender is a natural person—750 penalty units or imprisonment for 1 year, or both;
- (b) if the offender is a body corporate—3,750 penalty units.

(3) A person shall not pollute the environment causing material environmental harm.

Penalty:

- (a) if the offender is a natural person—500 penalty units;
- (b) if the offender is a body corporate—2,500 penalty units.

(4) If in proceedings for an offence against subsection (1), the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the latter offence.

(5) If in proceedings for an offence against subsection (1) or (2), the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (3), the court may find the defendant guilty of the latter offence.

**139. Causing environmental harm**

(1) A person shall not knowingly or recklessly pollute the environment causing environmental harm.

Penalty:

- (a) if the offender is a natural person—100 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—500 penalty units.

(2) A person shall not negligently pollute the environment causing environmental harm.

Penalty:

- (a) if the offender is a natural person—75 penalty units;
- (b) if the offender is a body corporate—375 penalty units.

(3) A person shall not pollute the environment causing environmental harm.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(4) If in proceedings for an offence against subsection (1), the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the latter offence.

(5) If in proceedings for an offence against subsection (1) or (2), the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (3), the court may find the defendant guilty of the latter offence.

#### **140. Person may be found guilty of lesser charge**

(1) If in proceedings for an offence against section 137, the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection 138 (1), (2) or (3), the court may find the defendant guilty of the latter offence.

(2) If in proceedings for an offence against section 137 or 138, the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection 139 (1), (2) or (3), the court may find the defendant guilty of the latter offence.

#### **141. Causing an environmental nuisance**

A person shall not cause an environmental nuisance.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

**142. Placing a pollutant where it could cause harm**

A person shall not cause or allow a pollutant or the source of a pollutant to be placed in a position as a result of which the pollutant could reasonably be expected to cause environmental harm.

Penalty:

- (a) if the offender is a natural person—100 penalty units;
- (b) if the offender is a body corporate—500 penalty units.

**143. No offence committed**

A person does not commit an offence against section 137, 138, 139, 141 or 142 if—

- (a) the act or omission that would but for this provision have constituted the offence or an element of the offence was authorised by or under this Act; or
- (b) in any other case—
  - (i) the act or omission that would but for this provision have constituted the offence or an element of the offence occurred during the conduct of an activity that was, apart from this Act, lawful; and
  - (ii) in conducting the activity, the person was complying with the general environmental duty.

**144. Liability limited to harm caused by excess pollutants**

For the purposes of sections 137, 138 and 139, where a person causes environmental harm by causing the entry into the environment of a measure of a pollutant that exceeds the measure authorised by or under this Act, the person is liable to be prosecuted only in respect of the environmental harm caused by the excess pollutant.

***Subdivision B—Specific offences***

**145. Offences in Schedule 2**

Certain offences against this Act are specified in Schedule 2.

***Division 2—Liability etc. of corporate officers***

**146. Conduct of directors, servants and agents**

(1) Where, for the purposes of a prosecution for an offence against this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person shall be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body or person.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

**147. Criminal liability of officers of body corporate**

**(1)** Where a body corporate commits an offence against this Act, a prescribed officer of the body corporate—

- (a) is guilty of the offence; and
- (b) is liable, on conviction, to a penalty not exceeding the maximum penalty that may be imposed for a contravention of the offence when committed by a natural person.

**(2)** It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant exercised due diligence to prevent the body corporate from doing the act or making the omission alleged to constitute the offence or an element of the offence committed by the body corporate;
- (b) an officer or employee of the body corporate occupying the defendant's position could not reasonably have been expected to be aware of the contravention; or
- (c) the body corporate would not have been found guilty of the offence by reason of its being able to establish a defence available to it under this Act.

**(3)** A prescribed officer may be prosecuted and convicted of an offence under subsection (1) whether or not the body corporate has been prosecuted for or convicted of the offence.

**(4)** In this section—

“prescribed officer”, in relation to an offence committed by a body corporate, means—

- (a) a director of the body corporate or other person (however described), responsible for the direction, management and control of the body corporate; or
- (b) any other person who is concerned in, or takes part in, the management of the body corporate and whose responsibilities include duties with respect to the matters giving rise to the offence.

***Division 3—Other offences***

**148. Notice to transferee on transfer of activity or place**

(1) Before transferring ownership of an activity or place in respect of which an instrument is in effect, the transferor shall not, without reasonable excuse, fail to notify the transferee of the existence and content of the instrument.

Penalty:

- (a) if the offender is a natural person—20 penalty units;
- (b) if the offender is a body corporate—100 penalty units.

(2) In subsection (1)—

“instrument” means—

- (a) an environmental authorisation;
- (b) an environmental protection agreement;
- (c) a notice under section 69 requiring a person to prepare and submit to the Authority a draft environmental improvement plan;
- (d) a notice under section 76 requiring a person to commission an environmental audit;
- (e) a notice under section 82 requiring a person to prepare and submit to the Authority a draft emergency plan; or
- (f) an environment protection order.

**149. Notice to Authority of alteration to equipment and works**

(1) The holder of an environmental authorisation shall notify the Authority in writing of any proposed installation, construction or modification to prescribed equipment and works in or on the premises on which the authorised activity is being, or is proposed to be, conducted.

Penalty for contravention of subsection (1):

- (a) if the offender is a natural person—20 penalty units;
- (b) if the offender is a body corporate—100 penalty units.

(2) For the purposes of subsection (1), it is sufficient notification if the holder of the authorisation gives to the Authority a copy of—

- (a) the application under Division 2 of Part VI of the Land Act for approval to conduct the relevant controlled activity; or
- (b) the application under Part III of the *Building Act 1972* for a building approval to carry out the relevant building work.

(3) The Authority may, within 10 days after receiving notification of a proposal under subsection (1), require the holder of the environmental authorisation to provide further specified information (including plans and drawings) about the proposal by the specified date.

(4) A person shall not fail to comply with a notice under subsection (3).

Penalty for contravention of subsection (4):

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(5) In subsection (1)—

“prescribed equipment and works”, in relation to premises, means equipment or works for—

- (a) the discharge or emission of a pollutant from the premises; or
- (b) the treatment or storage of a pollutant prior to such discharge or emission.

#### **150. Self-incrimination**

(1) A person (whether a natural person or body corporate) is not excused from answering a question, furnishing information or producing a document if required under this Act on the ground that to do so would tend to incriminate the person.

(2) Where a natural person answers a question, furnishes information or produces a document in compliance with a requirement under subsection 100 (2) or section 101 or 133—

- (a) the answer to the question;
- (b) the information furnished; or
- (c) the document produced;

is not admissible in evidence against the person in any proceedings (whether civil or criminal), other than proceedings for an offence against section 151 or 152.

#### **151. Obstructing etc. authorised officers**

(1) A person shall not, without reasonable excuse, obstruct or hinder an authorised officer in the exercise of his or her powers under this Act.

Penalty for contravention of subsection (1):

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

*Environment Protection Act 1997*

(b) if the offender is a body corporate—250 penalty units.

(2) A person shall not, without reasonable excuse, fail to comply with a requirement made, or direction given, by an authorised officer under this Act.

Penalty for contravention of subsection (2):

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

**152. False or misleading statements**

A person shall not, in purported compliance with a requirement under this Act or for any other reason, provide to an authorised officer—

(a) information that is, to the person's knowledge, false or misleading in a material particular; or

(b) any document containing information that is, to the person's knowledge, false or misleading in a material particular.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.

***Division 4—Defences***

**153. Due diligence**

(1) It is a defence to a prosecution for an offence against section 137, 138, 139, 141, 142 or 147 or a minor environmental offence within the meaning of Division 1 of Part XIII that the defendant exercised due diligence to prevent the act or omission alleged to constitute the offence or an element of the offence.

(2) Without limiting the generality of subsection (1), in determining whether the defendant exercised due diligence, the court may have regard to—

(a) where the defendant is a body corporate, the steps taken by it—

(i) to ensure that persons employed or engaged by it were aware of the requirements of this Act and any relevant environmental laws and standards relating to the prevention or minimisation of environmental harm;

(ii) to ensure compliance with those laws and standards by those persons; or

*Environment Protection Act 1997*

- (iii) to establish an environmental management system and to ensure implementation and compliance with it;
- (b) where the defendant was the director of a body corporate or other person responsible for the management of the activity in connection with which the environmental harm occurred—
  - (i) whether the defendant was personally familiar with the requirements of this Act and any relevant environmental laws and standards relating to the prevention or minimisation of environmental harm;
  - (ii) whether the defendant had taken all reasonable steps to comply with those laws and standards;
  - (iii) the steps taken by the defendant to ensure other persons for whom it was relevant were familiar with this Act and any relevant laws and standards, and compliance with those laws and standards by those persons;
  - (iv) the steps taken by the defendant to establish an environmental management system and to ensure familiarity and compliance with it by other persons for whom it was relevant; or
  - (v) whether the defendant reacted immediately and personally when he or she became aware of any non-compliance with the environmental management system or other incident connected with the environmental harm that occurred; or
- (c) where the defendant was an employee or other person whose responsibilities did not extend to the management of the activity in connection with which the environmental harm occurred—
  - (i) whether the defendant had taken all reasonable steps to become familiar with this Act and any relevant environmental laws and standards relating to the prevention or minimisation of environmental harm;
  - (ii) whether the defendant had taken all reasonable steps to comply with those laws and standards;
  - (iii) whether the defendant had taken all reasonable steps to become familiar, and comply, with any environmental management system established by the body corporate to the extent that the system is relevant to his or her position; or

- (iv) the steps taken by the defendant to prevent or minimise environmental harm when the defendant became aware of any incident connected with the environmental harm that occurred or the likelihood of any such incident.

**154. Defence of emergency**

(1) Subject to subsection (2), it is a defence to a prosecution for an offence against section 45, 137, 138, 139, 141 or 142 or a minor environmental offence within the meaning of Division 1 of Part XIII, that—

- (a) the act or omission alleged to constitute the offence or an element of the offence was necessary to protect life, the environment or property in an emergency situation; and
- (b) the defendant took all reasonable and practicable measures to prevent or deal with the emergency.

(2) Subsection (1) does not apply in relation to a prosecution for an offence against subsection 137 (1), 138 (1) or 139 (1) for recklessly polluting the environment causing environmental harm.

(3) A reference in subsection (1) to an act or omission alleged to constitute an offence or an element of an offence shall, in relation to an offence against subsection 147 (1), be read as a reference to the act or omission alleged to constitute the offence or an element of the offence committed by the body corporate.

***Division 5—General***

**155.<sup>5</sup> Strict liability offences**

Subject to sections 153 and 154, an offence against section 45, subsection 137 (3), 138 (3) or 139 (3) or section 141 or 142 or a minor environmental offence within the meaning of Division 1 of Part XIII are offences of strict liability.

**156. Continuing offences**

Where an offence against this Act is alleged to have been committed by a person, in addition to the penalty otherwise applicable to the offence, the person is liable to a penalty for each day during which the act or omission continues of not more than an amount equal to 20% of the maximum penalty prescribed for that offence.

**157. Additional court orders**

(1) Where a court finds a person guilty of an offence against this Act that resulted in environmental harm (whether or not the causing of environmental harm was an element of the offence), in addition to any penalty it may impose, the court may—

- (a) order the person to take specified action to remedy or mitigate the environmental harm and, if appropriate, specified action to prevent further environmental harm;
- (b) order the person to carry out specified action for the restoration or enhancement of the environment in a public place or for the public benefit;
- (c) order the person to take specified action to publicise—
  - (i) the contravention and its environmental and other consequences; and
  - (ii) any other orders made against the person; or
- (d) order the person to pay such an amount as is determined by the court—
  - (i) to the Territory for any reasonable costs and expenses incurred by the Territory in taking action to remedy or mitigate the environmental harm or prevent further harm; or
  - (ii) to any other person as compensation for any injury, loss or damage to property as a result of the contravention or for costs reasonably incurred by the person in taking action to prevent or mitigate such injury, loss or damage;

and may make any other orders that the court considers necessary or convenient for the enforcement of an order under this section.

(2) Where the court finds a person guilty of an offence against this Act, the court may, on the application of the Authority, make 1 or more of the following orders:

- (a) that the person pay the reasonable costs and expenses of the Authority incurred in relation to taking samples, conducting tests or collecting other evidence for the purposes of the proceedings;
- (b) that the person pay the legal costs of the Authority incurred in relation to conducting the proceedings;
- (c) that the person pay any other specified costs or expenses incurred by the Authority in relation to conducting the proceedings.

**158. Matters to be considered in imposing penalty**

In imposing a penalty for an offence against this Act, a court shall take into consideration (in addition to any other matter the court considers relevant)—

- (a) the extent of the harm caused or likely to be caused to the environment by the commission of the offence;
- (b) the practical measures that may be taken to prevent, control, abate or mitigate that harm;
- (c) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence;
- (d) the extent to which the person who committed the offence had control over the causes that gave rise to the offence; and
- (e) whether, in committing the offence, the person was complying with orders from an employer or a supervising employee.

**PART XVI—MISCELLANEOUS**

**159. Authorised acts and omissions**

A person does not—

- (a) contravene an environmental authorisation, an environment protection order or a provision of this Act; or
- (b) breach an environmental protection agreement;

if the act or omission that would, but for this provision, have constituted (whether in whole or in part) the contravention or breach was authorised by or under this Act.

**159A.**<sup>5</sup> \* \* \* \* \*

**160.**<sup>5</sup> **Recovery of clean-up costs**

(1) This section applies—

- (a) where—
  - (i) an environment protection order requires a person to take specified action to remedy specified environmental harm;
  - (ii) the person has failed to take the specified action; and
  - (iii) the Authority has taken the specified action instead; or
- (b) where—
  - (i) a person has breached the general environmental duty;
  - (ii) environmental harm has been caused by the breach;
  - (iii) it is impracticable to issue an environment protection order requiring the person to take action to remedy the harm; and
  - (iv) the Authority has taken action to remedy the harm.

(2) The Authority may give the person who failed to take the specified action or who breached the duty, a notice requiring the person to pay the specified amount, being the reasonable costs and expenses incurred by the Authority in taking the action referred to in subparagraph (1) (a) (iii) or (1) (b) (iv).

(3) The notice shall specify the date on or before which the amount is required to be paid, being a date not less than 20 working days after the date of the notice.

- (4) Where—
- (a) the Authority has given a person a notice under subsection (2); and
  - (b) the person has failed to pay the specified amount on or before the specified date;

so much of the amount as remains unpaid, together with interest calculated at the rate per centum per annum determined under section 164 on the unpaid amount, is a debt due to the Territory by that person.

**161. Assessment of reasonable costs and expenses**

For the purposes of this Act, the reasonable costs and expenses that have been or would be incurred by the Authority or another person in taking any action are to be assessed by reference to—

- (a) the reasonable costs and expenses that would have been or would be incurred if an independent contractor had been or were to be engaged for the purpose of taking that action; and
- (b) the reasonable administrative costs and expenses associated with the taking of that action.

**162. Statutory declarations**

(1) Where a person is required under this Act to provide information to the Authority, the Authority may require that the truth of the information be verified by statutory declaration.

(2) Where the Authority requires a person to verify information by statutory declaration, the person shall not be taken to have provided the information as required unless it has been verified by statutory declaration.

**163. Environmental record of directors, servants and agents**

Where, for the purposes of this Act, it is necessary for the Authority to consider the environmental record of a body corporate or a natural person, the environmental record of a director, servant or agent of the body, or a servant or agent of the person, may be taken to be part of the environmental record of the body or person.

**164. Evidentiary matters**

- (1) A certificate purporting to be signed by the Authority stating that—
- (a) on a specified date or during a specified period an environment protection policy was or was not in effect under section 24;

*Environment Protection Act 1997*

- (b) on a specified date or during a specified period, an environmental authorisation—
  - (i) was or was not held by a specified person;
  - (ii) was or was not in effect; or
  - (iii) was or was not subject to a specified condition;
- (c) on a specified date, protection under section 78—
  - (i) was or was not granted in respect of a specified environmental audit report; or
  - (ii) was or was not subject to a specified condition;
- (d) on a specified date, a specified environmental improvement plan was or was not approved under section 71; or
- (e) on a specified date, a specified emergency plan was or was not approved under section 84;

is evidence of the matters so stated.

- (2) A certificate purporting to be signed by the Australian Capital Territory Planning Authority stating that—
  - (a) an area is an area in the Territory Plan for the purposes of paragraphs (a) and (c) of the definition of an “area of high conservation value”; or
  - (b) a place included in the Heritage Places Register for those purposes;

is evidence of the matters so stated.

**165.<sup>5</sup> Determination of fees**

- (1) The Minister may, by notice in the *Gazette*, determine—
  - (a) the amount of a fee payable under this Act;
  - (b) a rate at which, or a formula or other method by which, the amount of a fee payable under this Act is to be calculated;
  - (c) rates at which, or formulae or other methods by which, amounts are to be calculated under paragraph 53 (1) (b);
  - (d) the rate per centum per annum at which interest payable under subsection 90 (3) or 160 (4) is to be calculated;
  - (e) the rate per centum per annum at which interest accruing under paragraph 91 (a) is to be calculated; or
  - (f) the administrative charge for the purposes of Division 1 of Part XIII.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**166. Regulations**

- (1) The Executive may make regulations for the purposes of this Act, and, in particular, may make regulations—
- (a) applying, adopting or incorporating, with or without modification, any matter contained in an instrument as in effect at a particular time or as in effect for the time being;
  - (b) prescribing penalties for offences against the regulations—
    - (i) if the offender is a natural person—not exceeding 10 penalty units; or
    - (ii) if the offender is a body corporate—not exceeding 50 penalty units; or
  - (c) in relation to the sampling and analysis of pollutants.
- (2) The regulations may make provision in relation to the distribution, purchase, sale, dispensation or use of petroleum products, including regulating or prohibiting certain conduct.
- (3) The regulations may make provision in relation to the lighting, use or maintenance of a fire in the open air (other than a fire to which paragraph 2 (t) of Schedule 1 relates), including regulating or prohibiting certain conduct.
- (4) The regulations may make provision in relation to—
- (a) the manufacture, purchase, sale, storage, supply, transport, use, disposal, discharge or emission of, or other dealing with, a specified pollutant, article or other thing;
  - (b) the servicing of equipment containing a specified pollutant, article or other thing; or
  - (c) the servicing of equipment used in relation to the manufacture, purchase, sale, storage, supply, transport, use, disposal, discharge or emission of, or other dealing with, a specified pollutant, article or other thing;
- including regulating or prohibiting certain conduct.
- (5) The regulations may make provision in relation to ambient environmental standards.
- (6) The regulations may amend Schedule 1—
- (a) by adding activities to, or deleting activities from, that Schedule; and
  - (b) by making any other amendments of that Schedule arising from, connected with or consequential on an amendment under paragraph (a).

*Environment Protection Act 1997*

**167. Review of Act**

- (1)** The Minister shall review the operation of this Act as soon as possible after the period of 2 years after the date of commencement of section 3.
  - (2)** A report on the outcome of the review shall be tabled in the Legislative Assembly within 6 months after the end of the period of 2 years.
-

**SCHEDULE 1<sup>5</sup>**

Section 42

**ACTIVITIES REQUIRING AN ENVIRONMENTAL AUTHORISATION**

**1. Interpretation**

In this Schedule, unless the contrary intention appears—

- “aquifer” means a geological formation or structure, or an artificial landfill, permeated or capable of being permeated (whether permanently or intermittently) with water;
- “authorised concert venue” means a concert venue at which the holder of an environmental authorisation for the conduct of outdoor concert activities is authorised to conduct such an activity;
- “authorised motor racing venue” means a motor racing venue at which the holder of an environmental authorisation for the conduct of motor racing events is authorised to conduct such an activity;
- “bore” means a bore, hole, well, excavation or other opening in the ground or an underground cavity (whether occurring naturally or having been artificially constructed or modified)—
- (a) that is used, or is capable of being used, to intercept or collect groundwater;
  - (b) from which groundwater is, or is capable of being, obtained or used;
  - (c) that is used, or is capable of being used, for the disposal of water or waste below the surface of the ground; or
  - (d) that extends into an aquifer;
- “concert” means a public performance of music the primary purpose of which is to entertain;
- “concert venue” means a place or location where a concert is being, or is proposed to be, conducted;
- “groundwater” means water occurring or obtained from below the surface of the ground, including water occurring in or obtained from a bore or an aquifer, but not including water occurring in or obtained from any other system for the distribution, reticulation, transportation, storage or treatment of water or waste;

**SCHEDULE 1**—continued

“motor racing event” means—

- (a) a motor vehicle race or practice for such a race; or
- (b) a motor vehicle reliability trial or speed test, including a trial or test for which the vehicles have been exempted under the road transport legislation from the provisions of that legislation about attaching silencers to the exhaust pipes of motor vehicles, rules of the road and speed limits during the trial or test.

“ozone depleting substance” means a substance listed in Schedule 1 to the *Ozone Protection Act 1989* of the Commonwealth, whether existing alone or in a mixture;

“primary production” has the same meaning as in the *Income Tax Assessment Act 1936* of the Commonwealth;

“receiving waters” means groundwater or water in a waterway;

**road transport legislation**—see *Road Transport (General) Act 1999*, section 6.

“stock” has the same meaning as in the *Stock Act 1991*;

“stormwater” means water run-off from an urban area that is normally collected by the stormwater system;

“stormwater system” means a system of pipes, gutters, drains, floodways and channels, being public works constructed to collect or transport stormwater in or through an urban area;

“waste” means any solid, liquid or gas, or any combination thereof, that is a surplus product or unwanted by-product of an activity, whether the product or by-product is of value or not;

“wastewater” means water that is the by-product of an activity, being water that—

- (a) contains other matter (whether in a solid, liquid or gaseous state); or
- (b) if added to receiving waters—has the potential to pollute those waters;

“water” includes water that contains impurities;

**SCHEDULE 1**—continued

“waterway” means—

- (a) a river, creek, stream or other natural channel in which water flows (whether permanently or intermittently);
- (b) a channel formed (whether in whole or in part) by altering or relocating a waterway described in paragraph (a), and includes the stormwater system; or
- (c) a lake, pond, lagoon or marsh (whether formed by geomorphic processes or by works) in which water collects (whether continuously or intermittently);

and includes the bed that the water in the waterway normally flows over or is covered by and the banks that the water in the waterway normally flows between or is contained by, but does not include land normally not part of the waterway that may be covered from time to time by floodwaters from the waterway.

**2. Class A activities**

For the purposes of section 42, the following activities are Class A activities:

- (a) the manufacture, sale, storage, supply, transport, use, servicing or disposal of, or other dealing with—
  - (i) an ozone depleting or other substance; or
  - (ii) a thing containing an ozone depleting or other substance;where that activity is a prescribed activity in relation to that substance or thing;
- (b) in-stream extraction, being the extraction of materials (other than water) from below the 1 in 100 year flood level of a waterway, including sand mining;
- (c) commercial incineration activities primarily conducted for the destruction, by means of thermal oxidation, of wastes (including biological, veterinary, medical, dental, cytotoxic, quarantine, chemical and municipal wastes);
- (d) the conduct of a crematorium for the reduction by means of thermal oxidation of human bodies to cremated remains;
- (e) commercial landfill activities, being the disposal of household or commercial waste under layers of earth;

**SCHEDULE 1**—continued

- (f) transport activities to which a national environment protection measure made under subsection 13 (1) of the *National Environment Protection Council Act 1994* relating to the transport of waste between the Territory and a State or another Territory relates;
- (g) sewage treatment, being an activity involving the discharge of treated or untreated sewage or septic tank effluent to land or water and having a peak loading capacity designed for more than 100 persons per day, other than an activity involving the recycling of wastewater where there is no discharge to receiving waters;
- (h) commercial aquaculture, being the propagation or rearing of fish or other freshwater organisms in the course of which supplementary feeding is used;
- (j) the conduct of a stock feedlot, being the holding of 50 or more animals in a yard where the stock are fed by machine or by hand for commercial purposes, but not including the holding of stock for feeding during a drought or other emergency or the holding of stock at an abattoir or saleyard;
- (k) the conduct of stock saleyards with a total holding capacity of greater than 500 animals, being the commercial conduct of yards at which stock are sold or exchanged and including the conduct of associated transport loading facilities;
- (m) woolscouring or wool carbonising activities, being the commercial cleaning or carbonising of wool;
- (n) outdoor concert activities using amplifying equipment where the venue has the capacity to hold more than 2,000 persons and is not an authorised concert venue;
- (p) the management of a concert venue that has the capacity to hold more than 2,000 persons at which outdoor concert activities using amplifying equipment are held;
- (q) the generation of electricity by a generator classified as a scheduled generating unit under clause 2.2.2 of the National Electricity Code;
- (r) motor racing events, other than such events held at an authorised racing venue;
- (s) the management of a motor racing venue at which motor racing events are held;

**SCHEDULE 1**—continued

- (t) lighting, using or maintaining a fire in the open air, or causing or permitting a fire to be lit, used or maintained in the open air, for the purpose of burning plant matter—
  - (i) to reduce a fire hazard;
  - (ii) to clear the land; or
  - (iii) to conserve biological diversity or ecological integrity;
- (u) the commercial use of chemical products registered under the *Agricultural and Veterinary Chemicals Code* as in force for the time being under the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth for pest control or turf management;
- (v) activities involving the storage or production of a petroleum product, including waste oil recovery activities, where the amount stored is greater than 500 cubic metres or the amount produced is greater than 100 tonnes per year.

**3. Class B activities**

For the purposes of section 42, the following activities are Class B activities:

- (a) the commercial production of alcoholic or non-alcoholic beverages where the amount produced, or to be produced, is greater than 50,000 litres per year;
- (b) the manufacture of things in furnaces or kilns, including bricks, glass, pipes, pottery goods and tiles, where the total amount produced, or to be produced, is greater than 100 tonnes per year;
- (c) the preservation of wood materials for commercial purposes using chemicals, including copper, chromium, arsenic and creosote;
- (d) the production of concrete or concrete products by the mixing of cement, sand, rock, aggregate or other similar materials, where the total amount produced, or to be produced, is greater than 1.0 cubic metre per batch;
- (e) forestry activities, being the growing, harvesting and management of forestry products;
- (f) major land development or construction activities, being—

**SCHEDULE 1**—continued

- (i) land development, or the construction of a commercial building, on a site of 0.3 hectares or more and including the construction of associated public infrastructure; or
  - (ii) the construction of public infrastructure on a site of 0.3 hectares or more;  
but not including the installation of pipes or lines for linear utilities such as gas, water, electricity and telephone;
  - (g) management of municipal services maintenance on unleased land, being the maintenance of—
    - (i) urban parkland or other municipal landscapes;
    - (ii) public places, public roads or public footpaths; or
    - (iii) the stormwater system;
  - (h) wastewater recycling activities, being—
    - (i) the treatment for the purpose of reuse of wastewater (including effluent) in a treatment plant that has a capacity of greater than 3 megalitres per year; or
    - (ii) the reuse of more than 3 megalitres per year;
  - (j) the commercial collection of waste from commercial premises.
-

**SCHEDULE 2<sup>5</sup>**

Section 145

**SPECIFIC OFFENCES**

**Part I—Preliminary**

**1. Interpretation**

In this Schedule, unless the contrary intention appears—

- “AS 4013” means Australian Standard 4013, “Domestic solid fuel burning appliances—Method for determination of flue gas emission”;
- “fuel-burning equipment” means a furnace, boiler, fireplace, oven, retort, incinerator, internal combustion engine, chimney or any other apparatus, device, mechanism or structure, in the operation of which combustible material is, or is intended to be, used or which is, or is intended to be, used in connection with the burning of combustible material;
- “high octane unleaded petrol” means unleaded petrol that has a research octane number of more than 93.0;
- “leaded petrol” means petrol other than unleaded petrol;
- “low octane unleaded petrol” means unleaded petrol that has a research octane number of not less than 91.0 and not more than 93.0;
- “maximum lead concentration” means the lead concentration specified in subregulation 30F (5) of the Clean Air Regulations 1964 of New South Wales;
- “residential premises” means premises that are used exclusively or primarily for residential purposes;
- “sell” includes exhibit or offer for sale (whether by wholesale or retail) and supply by way of exchange, lease, hire or credit sale;
- “solid fuel-burning equipment” means fuel-burning equipment that is designed to burn hard wood, soft wood or briquettes and to which AS 4013 applies;
- “unleaded petrol” means petrol that—
  - (a) contains not more than 0.013 grams of lead per litre;
  - (b) contains not more than 0.0013 grams of phosphorus per litre;

**SCHEDULE 2—continued**

- (c) contains not more than 0.10 per cent of sulfur by weight or, while a determination under clause 5 specifying a higher percentage is in force, not more than that percentage;
- (d) has a research octane number of not less than 91.0; and
- (e) has a motor octane number of not less than 82.0.

**Part II—Offences relating to articles that emit noise**

**2. Sale of articles that emit excessive noise**

A person shall not sell a prescribed article that, when in operation, emits noise that exceeds the prescribed level.

Penalty:

- (a) if the offender is a natural person—100 penalty units;
- (b) if the offender is a body corporate—500 penalty units.

**Part III—Offences relating to fuel-burning equipment**

**3. Emission of pollutants in excess of prescribed concentrations**

(1) A person shall not use, or cause or permit to be used, on any premises, a fuel that contains more than the prescribed proportion of a prescribed constituent unless the activity is authorised by an environmental authorisation.

(2) A person who contravenes subsection (1) or (2) is guilty of an indictable offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a natural person—100 penalty units;
- (b) if the offender is a body corporate—500 penalty units.

**4. Sale of solid fuel-burning equipment**

(1) A person shall not sell solid fuel-burning equipment, other than prescribed equipment, for use on residential premises unless—

- (a) it complies with AS 4013; and
- (b) a certificate of compliance under subclause (3) has been issued in relation to equipment of the same type by a person or body authorised by the Authority by instrument for the purposes of this paragraph.

**SCHEDULE 2**—continued

- (2) A person who, without reasonable excuse, contravenes subclause (1) is guilty of an indictable offence punishable, on conviction, by a fine not exceeding—
- (a) if the offender is a natural person—30 penalty units; or
  - (b) if the offender is a body corporate—150 penalty units.
- (3) For the purposes of paragraph (1) (b), an authorised person or body may certify, in relation to solid fuel-burning equipment of a particular type, that—
- (a) equipment of that type has been tested (whether by that person or body, or by another person or body) in accordance with the test procedure specified in AS 4013; and
  - (b) the authorised person or body is satisfied that the equipment tested had an appliance particulate emission factor not greater than the maximum allowable particulate emission factor specified in section 7 of AS 4013.
- (4) An instrument under paragraph (1) (b) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.
- (5) Paragraph 6 (1) (c) and subsections 6 (7), (7A) and (7B) of the *Subordinate Laws Act 1989* apply to an instrument under paragraph (1) (b) as if a reference in each of those provisions to 15 sitting days were a reference to 5 sitting days.

**5. Interference with solid fuel-burning equipment or attached plates**

- (1) A person shall not alter the information on, or remove, a plate attached to solid fuel-burning equipment that contains information required to be marked on a plate in accordance with section 10 of AS 4013.
- (2) A person who sells solid fuel-burning equipment for use on residential premises, or installs solid fuel-burning equipment on residential premises, shall not alter in a material way—
- (a) the structure, exhaust system or inlet air system of the equipment; or
  - (b) a part of the equipment that is involved in the combustion process.
- (3) Subclause (2) does not apply to the sale or installation of prescribed equipment.

**SCHEDULE 2—continued**

(4) A person who, without reasonable excuse, contravenes subclause (1) or (2) is guilty of an indictable offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a natural person—30 penalty units; or
- (b) if the offender is a body corporate—150 penalty units.

**Part IV—Offences relating to petrol**

**6. Determination of higher sulfur content of unleaded petrol**

(1) Where the Authority is satisfied that, by reason of the high sulfur levels present in petrol available in the Territory, there are insufficient supplies of unleaded petrol available in the Territory, the Authority may, by notice published in the *Gazette*, determine the percentage of sulfur for the purposes of paragraph (c) of the definition of “unleaded petrol” in clause 1.

(2) A determination under subclause (1) remains in force for such period, not exceeding 30 days, as is specified in the notice.

(3) A determination may be expressed to come into force immediately on the expiration of a previous determination.

**7. Sale of leaded petrol as unleaded petrol**

(1) A person shall not, in the course of the distribution or wholesaling of petrol—

- (a) sell or distribute for sale as unleaded petrol;
- (b) offer or exhibit for sale as unleaded petrol; or
- (c) have in his or her possession for sale as, or for distribution for sale as, unleaded petrol;

petrol that, at the time it is sold, distributed, offered, exhibited or had in possession, as the case may be, is leaded petrol.

Penalty:

- (a) if the offender is a natural person—100 penalty units;
- (b) if the offender is a body corporate—500 penalty units.

(2) A person shall not, otherwise than in the course of the distribution or wholesaling of petrol—

- (a) sell or distribute for sale as unleaded petrol;

**SCHEDULE 2**—continued

- (b) offer or exhibit for sale as unleaded petrol; or
- (c) have in his or her possession for sale as, or for distribution for sale as, unleaded petrol;

petrol that, at the time it is sold, distributed, offered, exhibited or had in possession, as the case may be, is leaded petrol.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

**(3)** A person (in this subclause referred to as “the defendant”) is not guilty of an offence against this clause if the defendant adduces evidence that—

- (a) the petrol to which the charge relates was supplied to the defendant by another named person as unleaded petrol;
- (b) the defendant reasonably believed that the petrol to which the charge relates was unleaded petrol; and
- (c) the petrol to which the charge relates had not ceased to be unleaded petrol by reason of having been contaminated while in the defendant’s possession;

and that evidence is not rebutted by the prosecution.

**(4)** An offence against this clause is punishable on indictment.

**8. Prohibition of sale of leaded petrol unless low lead**

**(1)** The Minister may, by notice published in the *Gazette*, declare that subclauses (4) and (5) do not apply and, while the notice is in effect, those subclauses do not apply.

**(2)** A notice under subclause (1)—

- (a) comes into effect on such date as is specified in the notice, being a date not earlier than the date when the notice is published in the *Gazette*; and
- (b) unless sooner revoked, remains in effect for such period, not exceeding 1 month, as is specified in the notice.

**(3)** A notice may be expressed to come into effect immediately on the expiration of a previous notice.

**(4)** Unless exempted by the Authority under clause 9, a person shall not, in the course of the distribution or wholesaling of petrol—

**SCHEDULE 2**—continued

- (a) sell or distribute for sale leaded petrol;
- (b) offer or exhibit for sale leaded petrol; or
- (c) have in his or her possession for sale, or for distribution for sale, leaded petrol;

if the petrol contains more than the maximum lead concentration per litre.

Penalty:

- (a) if the offender is a natural person—100 penalty units;
- (b) if the offender is a body corporate—500 penalty units.

**(5)** Unless exempted by the Authority under clause 9, a person shall not, otherwise than in the course of the distribution or wholesaling of petrol—

- (a) sell or distribute for sale leaded petrol;
- (b) offer or exhibit for sale leaded petrol; or
- (c) have in his or her possession for sale, or for distribution for sale, leaded petrol;

if the petrol contains more than the maximum lead concentration per litre.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

**(6)** A person who purchases leaded petrol for resale may demand from the vendor a written warranty that the petrol contains not more than the maximum lead concentration per litre.

**(7)** A vendor of petrol who refuses to furnish a warranty demanded under subclause (6) is guilty of an offence.

Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.

**(8)** It is a defence to a prosecution for an offence against this clause that the petrol to which the charge relates—

- (a) was supplied to the defendant with a warranty under subclause (6); and
- (b) was sold in the state in which it had been purchased.

**SCHEDULE 2**—continued

**9. Exemption**

- (1) Where the Authority is satisfied—
- (a) that the supply of leaded petrol is, or is likely to be, inadequate for the needs of the Territory; or
  - (b) that a supplier or distributor of petrol is unable, for reasons beyond his or her control, to supply or distribute leaded petrol to the persons in the Territory to whom he or she usually supplies or distributes it;

the Authority may, by notice published in the *Gazette* and in a daily newspaper printed and published in the Territory, exempt a person from the application of subclause 8 (4) or (5).

- (2) An exemption—
- (a) comes into operation on such date as is specified in the notice, being a date not earlier than the date when the notice is published in the *Gazette*; and
  - (b) unless sooner revoked, remains in effect for such period, not exceeding 1 month, as is specified in the notice.
- (3) An exemption may be expressed to come into effect immediately on the expiration of a previous exemption.

**10. Petrol pumps to be constructed and marked as prescribed**

A person who sells petrol by retail shall ensure that the equipment used for or in connection with the sale of petrol is constructed and marked as prescribed.

Penalty:

- (a) if the offender is a natural person—20 penalty units;
- (b) if the offender is a body corporate—100 penalty units.

**SCHEDULE 2**—continued

**11. Petrol additives**

- (1) A person shall not—
- (a) sell or distribute for sale; or
  - (b) advertise for sale;

a substance as a substance that is suitable for adding to petrol that is to be used in a motor vehicle if that substance contains lead, phosphorus or sulfur.

Penalty:

- (a) if the offender is a natural person—20 penalty units;
- (b) if the offender is a body corporate—100 penalty units.

(2) Nothing in subclause (1) applies in relation to a substance that is sold, distributed for sale or advertised for sale as a substance that is suitable for adding to petrol to make a fuel suitable for use in engines having a two-stroke combustion cycle.

**12. Type of petrol to be used**

- (1) A person shall not—
- (a) fuel with leaded petrol a motor vehicle that is designed to operate on unleaded petrol; or
  - (b) except when a notice under subclause 8 (1) or 9 (1) is in effect, without reasonable excuse, fuel with petrol that contains more than the maximum lead concentration per litre any other motor vehicle that is designed to operate on petrol.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

(2) A reference in this clause to a motor vehicle that is designed to operate on unleaded petrol is a reference to an ***unleaded petrol motor vehicle*** within the meaning of the regulations under the *Road Transport (Vehicle Registration) Act 1999*.

**SCHEDULE 2—continued**

**13. Sale of high octane unleaded petrol**

(1) A person shall not offer high octane unleaded petrol for sale unless the person also offers low octane unleaded petrol for sale.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(2) A person is not guilty of an offence under subclause (1) if the person adduces evidence that he or she failed to offer low octane unleaded petrol for sale for reasons beyond his or her control, and that evidence is not rebutted by the prosecution.

(3) An offence against this clause is punishable on indictment.

**Part V—Summary proceedings for indictable offences**

**14. Certain offences may be dealt with summarily**

(1) Proceedings for an offence under this Schedule shall be heard and determined by the Magistrates Court.

(2) Where, in accordance with subclause (1), the Magistrates Court hears and determines proceedings for an offence, the Court may not impose a fine exceeding—

- (a) if the offender is a natural person—20 penalty units; or
- (b) if the offender is a body corporate—100 penalty units.

## ENDNOTES

### 1 About this republication

This is a republication of the *Environment Protection Act 1997* as in force on 1 March 2000. It includes all amendments made to the Act up to Act 1999 No 79.

Amending laws are annotated in the table of legislation and table of amendments.

The Parliamentary Counsel's Office currently prepares 2 kinds of republications of ACT laws: authorised printed republications to which the *Legislation (Republication) Act 1996* applies and unauthorised electronic republications. The status of this republication appears on the cover.

Section 13 of the *Legislation (Republication) Act 1996* authorises the Parliamentary Counsel, in preparing a law for republication, to make textual amendments of a formal nature which the Parliamentary Counsel considers desirable in accordance with current legislative drafting practice. The amendments do not effect a substantive change in the law.

In preparing this republication, amendments have been made under section 13.

Not all amendments made under section 13 are annotated in the table of amendments. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

### 2 Abbreviation key

#### Key to abbreviations in tables

am = amended	pres = present
amdt = amendment	prev = previous
ch = chapter	(prev...) = previously
cl = clause	prov = provision
def = definition	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
ins = inserted/added	R[X] = Republication No
LR = Legislation (Republication) Act 1996	s = section/subsection
mod = modified	sch = schedule
No = number	sdiv = subdivision
notfd = notified	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	sp = spent
orig = original	* = SL unless otherwise stated
p = page	† = Act or Ordinance unless otherwise stated
par = paragraph	

*Environment Protection Act 1997*

**3 Table of legislation**

Act†	Year and number†	Gazette notification	Commencement	Transitional provisions
<i>Environment Protection Act 1997</i>	1997 No 92	1 Dec 1997	ss 1 and 2: 1 Dec 1997 remainder: 1 June 1998	
<i>Building (Amendment) Act (No. 2) 1998</i>	1998 No 52	16 Nov 1998	ss 1-3: 16 Nov 1998 remainder: 4 Jan 1999 (see Gaz 1999 No S1)	—
<i>Environment Protection (Amendment) Act 1999</i>	1999 No 54	17 Sept 1999	ss 1-3: 17 Sept 1999 remainder (ss 4-26): (see Note 5)	—
<i>Road Transport Legislation Amendment Act 1999</i>	1999 No 79	23 Dec 1999	1 Mar 2000 (see s 2 and Gaz 2000 No S5)	—

**4 Table of amendments**

Provision	How affected†
s 4.....	am 1999 No 79 s 5 sch 3
s 8.....	am 1999 No 79 s 5 sch 3
s 149.....	am 1998 No 52
sch 1, sch 2.....	am 1999 No 79 s 5 sch 3

**5 Uncommenced amendments**

The following amendments have not been included in this republication because they were uncommenced at the republication date—

**Environment Protection (Amendment) Act 1999 No 54 (ss 4 to 25)**

**4. Objects**

Section 3 of the Principal Act is amended—

- (a) by inserting in subsection (1) “particular” before “objects”;
- (b) by omitting from paragraph (1) (p) “and” (last occurring);
- (c) by inserting after paragraph (1) (p) the following paragraph:
  - “(pa) to ensure that contaminated land is managed having regard to human health and the environment;”;
- (d) by adding at the end of paragraph (1) (q) “and”; and

- (e) by inserting after paragraph (1) (q) the following paragraph:
- (qa) to establish a process for investigating and, where appropriate, remediating land areas where contamination is causing or is likely to cause—
    - (i) a significant risk of harm to human health; or
    - (ii) a significant risk of material environmental harm or serious environmental harm;”.

## **5. Interpretation**

Section 4 of the Principal Act is amended—

- (a) by inserting the following definitions:

“ ‘appropriate person’ means the appropriate person ascertained in accordance with subsection 91I (2);

‘contaminated’ or ‘contamination’, in relation to land, means, subject to subsections (2) and (3), the presence in, on or under land, or a building or structure on land, of a substance at a concentration above the concentration at which the substance is normally present in, on or under land, or a building or structure on land, in the same locality, being a presence that causes, or is likely to cause either or both of the following:

- (a) a risk of harm to human health;
- (b) a risk of environmental harm;

‘financial controller’ means a receiver, manager or other person who has possession or control of land for the purpose of realising part or all of the value of the land in order to discharge an obligation secured over the land;

‘land’ includes water on or below the surface of land and the bed of such water;

‘National Capital Plan’ means the National Capital Plan under Part III of the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

‘notional lessee’, in relation to land, means a person who has vested rights with respect to the land that—

- (a) carry an entitlement to have the lease transferred to that person; or

- (b) enable the person to dispose of or otherwise deal with the land;

so that the person is able to benefit from the value of the lease, or a substantial part of it, by the transfer, disposal or dealing, and includes a mortgagee in possession of the land the subject of the lease, but does not include—

- (c) a person having security over the lease;
- (d) a person who is a legal personal representative of a person who was the lessee of the land immediately before the appointment of the representative took effect or who was a lessee of the land immediately before his or her death;
- (e) the Public Trustee by virtue of the operation of section 19 of the *Public Trustee Act 1985*; or
- (f) a person who would otherwise be a notional lessee if—
  - (i) the person has some security of the lease; and
  - (ii) the person, or a financial controller appointed by the person, has entered into a contract to sell the land for the purpose of realising all or part of the value of the land in order to discharge an obligation so secured;

‘register’ means the register kept under section 21A;

‘remediation’, in relation to contaminated land, includes—

- (a) preparing a long-term management plan (if any) for the land;
- (b) removing, dispersing, destroying, reducing, mitigating or containing the contamination of the land; and
- (c) eliminating or reducing any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on the land);

‘site audit statement’ means a written statement of the findings of an environmental audit conducted by an auditor for the purposes of Division 5 of Part IX for assessment for, or remediation of, contaminated land;” and

- (b) by adding at the end the following subsections:

“(2) For the purposes of this Act, land is not contaminated land merely because in any surface water standing or running on the land a substance is present in a concentration above the concentration at which the substance is normally present in, on or under land, or a building or structure on land, in the same locality.

“(3) For the purposes of this Act, land may be contaminated land even if it became contaminated partly or entirely by the migration of contaminants into, onto or under the land from other land.”.

## **6. Limitation of application in respect of certain people and things**

Section 8 of the Principal Act is amended by omitting from paragraph (1) (b) “*Aircraft*” and substituting “*Air*”.

## **7. Inspection of documents**

Section 19 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (h) the following paragraph:  
“(ha) the list of auditors approved under section 75;”; and
- (b) by inserting after paragraph (1) (k) the following paragraphs:  
“(ka) an order for assessment under section 91C;  
(kb) an assessment under paragraph 91C (4) (a);  
(kc) an environmental audit under paragraph 91C (4) (b);  
(kd) a remediation order under section 91D;  
(ke) an environmental audit under paragraph 91D (4) (b);  
(kf) the register;”.

## **8. Exclusion of material**

Section 21 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (d) the following paragraph:  
“(da) the making of an order under section 91C or 91D;”;  
(b) by omitting from paragraph (1) (f) “or” (last occurring);  
(c) by adding at the end of paragraph (1) (g) “or”;  
(d) by inserting after paragraph (1) (g) the following paragraph:  
“(ga) the conduct of an activity to which section 159A applies;”;

- (e) by inserting in subsection (1) “who provided the document, or a person whose interests are affected by the provision of the document,” after “person” (second occurring); and
- (f) by omitting from paragraph (1) (j) “a person” and substituting “the person”.

## **9. Insertion**

After section 21 of the Principal Act the following Division is inserted in Part II:

### ***“Division 3—Register of contaminated sites***

#### **“21A. Register of contaminated sites**

- “(1) The Authority shall keep a register of contaminated sites.
- “(2) The register—
  - (a) may be in electronic form; and
  - (b) shall comprise particulars of land in relation to an order under subsection 91C (1), 91D (1) or 125 (1A).
- “(3) As soon as practicable after making an order under subsection 91C (1), 91D (1) or 125 (1A), the Authority shall give written notice of the making of the order and the entry in the register of particulars of contaminated sites to—
  - (a) the Australian Capital Territory Planning Authority; and
  - (b) if the land is in a Designated Area—the National Capital Authority.
- “(4) The Authority shall make an entry in the register—
  - (a) for an order under subsection 91D (1)—if satisfied that the remediation of the land has been conducted as mentioned in paragraph 91D (4) (a); and
  - (b) for an order under subsection 125 (1A)—if the Authority is no longer satisfied as referred to in that subsection, or the order is revoked, whichever occurs first.
- “(5) The Authority shall remove an entry from the register for an order under subsection 91C (1) within 60 days after receipt of an audit of assessment under section 91C in relation to that entry unless the Authority has, within that period, made an order under subsection 91D (1) or 125 (1A).

“(6) In this section—

‘Designated Area’ see *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth, section 4, definition of ‘Designated Area’.

**“21B. Notification of making of certain entries in register**

“(1) If the Authority makes an entry in the register under paragraph 21A (2) (b) or subsection 21A (4) or removes an entry under subsection 21A (5), the Authority shall—

- (a) notify the making of the entry or removal in the *Gazette* within 10 working days beginning after the day the entry was made; and
- (b) publish a copy of the notice in a daily newspaper.

“(2) A notice under subsection (1) shall state the places at which a copy of any of the following documents may be inspected or obtained:

- (a) an order under subsection 91C (1);
- (b) an assessment under paragraph 91C (4) (a);
- (c) an environmental audit under paragraph 91C (4) (b);
- (d) an order under subsection 91D (1);
- (e) an environmental audit under paragraph 91D (4) (b).”.

**10. Insertion**

After section 23 of the Principal Act the following section is inserted in Part III:

**“23A. Duty to notify existence of contaminated land**

“(1) A lessee or occupier of land shall notify the Authority in writing as soon as practicable after becoming aware that land of which he or she is the lessee or occupier is contaminated in such a way as to present, or to be likely to present—

- (a) a significant risk of harm to human health; or
- (b) a risk of material environmental harm or serious environmental harm.

“(2) A person shall not, without reasonable excuse, contravene subsection (1).

Penalty:

- (a) for a natural person—50 penalty units;
- (b) for a body corporate—250 penalty units.”.

## **11. Insertion**

Before Division 1 of Part VIII of the Principal Act the following Division is inserted:

### ***“Division 1A—Interpretation***

#### **“41A. Interpretation**

In this Part—

‘environmental authorisation’ includes an authorisation that is declared under section 67A to be a recognised environmental authorisation to which Division 2 applies;”.

## **12. Insertion**

Before section 67 of the Principal Act the following section is inserted in Division 1 of Part VIII:

#### **“67A. Recognised environmental authorisations**

“(1) The Minister may, by instrument, declare a licence, authorisation, permit, notice or approval issued, granted or given under a law of a State or another Territory to conduct an activity of the kind specified in clause 2 of Schedule 1 to be a recognised environmental authorisation to which this Division applies.

“(2) A declaration under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

## **13. Certain auditors to be approved**

Section 75 of the Principal Act is amended—

(a) by omitting from subsection (3) all the words after “list” and substituting “of approved auditors whom it is satisfied meet the requirements of subsection (2)”; and

(b) by adding at the end the following subsection:

“(6) A condition applying to a person whose name appears on a list of auditors maintained under a corresponding law of a State or another Territory applies to that person when conducting an audit under this Act.”.

#### **14. Authority may require an environmental audit**

Section 76 of the Principal Act is amended by inserting after subsection (1) the following subsections:

“(1A) The Authority may, by written notice, require a person to commission an environmental audit of contaminated land.

“(1B) An auditor shall not carry out an audit for the purposes of subsection (1A) if he or she carried out an assessment or remediation of the land to which the audit relates.”.

#### **15. Insertion**

After section 76 of the Principal Act the following sections are inserted:

##### **“76A. Requests for auditor’s statements**

“(1) An auditor shall, within 7 working days of receiving a request under this or another Act to carry out an audit of contaminated land, give to the Authority a statement specifying—

- (a) the name of the person making the request;
- (b) the location of the land to which the audit relates; and
- (c) an estimation of the time within which the audit will be completed.

“(2) An auditor shall, within 15 working days after completing an audit, give to the Authority a copy of the site audit statement.

##### **“76B. Annual returns—auditors**

“(1) An auditor shall, within 20 working days after the end of each financial year, give to the Authority a report about each audit of contaminated land carried out under this Act or another Act during that year.

“(2) A report under this section shall be in a form approved by the Authority.”.

## **16. Insertion**

After section 91 of the Principal Act the following Divisions are inserted in Part IX:

### ***“Division 5—Assessment and remediation***

#### **“91A. Interpretation**

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

‘approved use’, in relation to land, means use—

- (a) that is consistent with the National Capital Plan or the Territory Plan, as the case requires; and
- (b) in the case of leased land—that is permitted by the lease;

‘national environment protection measure’ means a national environment protection measure made under subsection 13 (1) of the *National Environment Protection Council Act 1994*, as in force from time to time;

‘substance’ includes matter or thing.

“(2) For the purposes of sections 91C, 91D and 91G, an environmental audit for assessment or remediation of contaminated land is an audit by an auditor—

- (a) that relates to an assessment or remediation carried out (whether under this Act or otherwise) in respect of actual or possible contamination of land; and
- (b) that is conducted for the purposes of determining any 1 or more of the following:
  - (i) the nature and extent of the assessment or remediation undertaken, as the case requires;
  - (ii) the nature and extent of any contamination or remaining contamination of the land;
  - (iii) what further assessment or remediation, as the case requires, is necessary before the land is suitable for any specified use or range of uses.

**“91B. Assessment of risk of harm**

“(1) For the purposes of this Division, to assess whether land is contaminated with 1 or more substances in such a way as to present, or to be likely to present a significant risk of harm to human health, or a risk of material environmental harm or serious environmental harm, the Authority shall include a consideration of all of the following matters in the assessment:

- (a) whether the contamination of the land has already caused harm;
- (b) whether the substances are toxic, persistent or bioaccumulative or are present in large quantities or high concentrations or occur in combinations;
- (c) whether there are routes by which the substances may proceed from the source of the contamination to human beings or other aspects of the environment;
- (d) whether the uses to which the land and land adjoining it are currently being put are such as to increase the risk of harm;
- (e) whether the use of the land and land adjoining it, being a use permitted by the lease to which the land is subject, is such as to increase the risk of harm;
- (f) whether the substances have migrated or are likely to migrate from the land (whether because of the nature of the substances or the nature of the land);
- (g) any environment protection policy made by the Authority on contamination and remediation;
- (h) any relevant national environment protection measure.

“(2) Subject to subsection (3), land may be regarded at any particular time as being contaminated in such a way as to present a significant risk of harm even if the harm could come into existence only in certain circumstances of occupation or use of the land and those circumstances do not exist at that time.

“(3) Land shall be regarded in the manner referred to in subsection (2), if the circumstances are reasonably foreseeable, and consistent with the approved use of the land, at that time.

**“91C. Order to assess whether land contaminated**

“(1) If the Authority has reasonable grounds for believing that land is contaminated in such a way as to cause, or be likely to cause, either a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm, or both, the Authority may—

- (a) by notice in writing served on the appropriate person, order the appropriate person to conduct an assessment of the land; or
- (b) itself conduct the assessment.

“(2) An order under subsection (1) shall—

- (a) be in writing; and
- (b) specify—
  - (i) the person to whom the order relates;
  - (ii) the land to which the order relates;
  - (iii) the period within which the assessment is to be conducted;
  - (iv) the nature of the contamination that the Authority has reasonable grounds for believing is causing, or is likely to cause, a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm;
  - (v) the action that the person subject to the order shall take in assessing and reporting; and
  - (vi) such other requirements as the Authority considers appropriate having regard to the nature and extent of the contamination and the physical attributes of the land.

“(3) The action that may be required to be taken under subparagraph (2) (b) (v) includes, but is not limited to, the following:

- (a) that the person serve notice of the order on the occupiers of land access to which is necessary for the person to carry out the assessment and, if an occupier is not the lessee of that land—serve notice on the lessee;
- (b) that the person make progress reports to the Authority on the assessment;
- (c) that the person advertise and conduct meetings to give progress reports to the public, and to receive public comment, on the assessment.

“(4) A person to whom an order is given under subsection (1) shall—

- (a) conduct the assessment—
  - (i) within the period specified in an order under subsection (1);

- (ii) in accordance with the prescribed standards and procedures for carrying out an assessment, including standards and procedures specified in a relevant national environment protection measure; and
  - (iii) otherwise in accordance with the terms of the order; and
- (b) commission an environmental audit of the assessment by an auditor approved under section 75.

“(5) In preparing a report of an audit for the purposes of this section, the auditor commissioned to conduct the assessment shall have regard to—

- (a) the provisions of this Act and the regulations;
- (b) the permitted and approved uses of the land to which the assessment relates;
- (c) the degree or extent of contamination;
- (d) any relevant environmental protection policies; and
- (e) any relevant national environment protection measures.

“(6) For the purposes of paragraph (4) (b), the person to whom the order is given shall submit the name of an auditor to the Authority for approval within 10 working days of the date of the order.

“(7) Notwithstanding section 75, the Authority shall not approve an auditor for the purposes of this section unless the auditor meets the prescribed criteria.

“(8) A person who, without reasonable excuse, contravenes subsection (4) is guilty of an offence.

Penalty:

- (a) for a natural person—50 penalty units;
- (b) for a body corporate—250 penalty units.

“91D. **Order to remediate land**

“(1) If the Authority has reasonable grounds for believing that the land to which the audit relates is contaminated in such a way as to cause, or be likely to cause, either a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm, or both, the Authority may—

- (a) by notice in writing served on an appropriate person, order the appropriate person to remediate the land; or
- (b) itself conduct the remediation.

- “(2) An order under subsection (1) shall—
- (a) be in writing; and
  - (b) specify—
    - (i) the person or persons to whom the order relates;
    - (ii) the land to which the order relates;
    - (iii) the period within which the remediation is to be conducted;
    - (iv) the nature of the contamination that the Authority has reasonable grounds for believing is causing, or is likely to cause, a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm;
    - (v) the action that the person subject to the order shall take in remediating and reporting; and
    - (vi) such other requirements as the Authority considers appropriate having regard to the nature and extent of the contamination and the physical attributes of the land.
- “(3) The action that may be required to be taken under subparagraph (2) (b) (v) includes, but is not limited to, the following actions:
- (a) that the person serve notice of the order on the occupiers of land access to which is necessary for the person to carry out the remediation and, if an occupier is not the lessee of that land—serve notice on the lessee;
  - (b) that the person make progress reports to the Authority on the remediation;
  - (c) that the person advertise and conduct meetings to give progress reports to the public, and to receive public comment, on the remediation.
- “(4) A person to whom an order is given under subsection (1) shall—
- (a) conduct the remediation—
    - (i) within the period specified in an order under subsection (1);
    - (ii) in accordance with the prescribed standards and procedures for carrying out remediation, including standards and procedures specified in a relevant national environment protection measure; and
    - (iii) otherwise in accordance with the terms of the order; and
  - (b) commission an environmental audit of the remediation by an auditor approved under section 75.

“(5) In preparing a report of an audit for the purposes of this section, the auditor commissioned to conduct the remediation shall have regard to—

- (a) the provisions of this Act and the regulations;
- (b) the permitted and approved uses of the land to which the assessment relates;
- (c) the degree or extent of contamination;
- (d) any relevant environmental protection policies; and
- (e) any relevant national environment protection measures.

“(6) For the purposes of paragraph (4) (b), the person to whom the order is given shall submit the name of an auditor to the Authority for approval within 10 working days of the date of the order.

“(7) Notwithstanding section 75, the Authority shall not approve an auditor for the purposes of this section unless the auditor meets the prescribed criteria.

“(8) The lessee of land to whom an order is given under subsection (1) shall not, without the consent of the Authority, transfer or sublet the land while the order is in force.

“(9) A person who, without reasonable excuse, contravenes subsection (4) is guilty of an offence.

Penalty:

- (a) for a natural person—200 penalty units;
- (b) for a body corporate—1,000 penalty units.

**“91E. Notification of certain persons about orders for assessment or remediation**

“(1) The Authority shall, by written notice, notify the occupier and, if the occupier is not the lessee, the lessee, of land adjacent to land to which subsection 91C (1) or 91D (1) relates—

- (a) that notice of an assessment or remediation of the land has been given to the appropriate person; or
- (b) that the Authority is carrying out the requirements of an assessment order or remediation order in relation to the land.

“(2) A notice under subsection (1) shall—

- (a) invite the person to whom notice is given to make written submissions to the Authority within 21 days beginning the day after the day the person received the notice; and

- (b) state the places at which a copy of any of the following documents may be inspected:
  - (i) a report of the outcome of an assessment under subsection 91C (1);
  - (ii) a progress report on the assessment under subsection 91C (3);
  - (iii) an assessment under paragraph 91C (4) (a);
  - (iv) an audit under paragraph 91C (4) (b);
  - (v) a report of the outcome of an assessment under subsection 91D (1);
  - (vi) a progress report on the assessment under subsection 91D (3);
  - (vii) an audit under paragraph 91C (4) (b).

**“91F. Certain documents to be available free of charge**

The Authority shall—

- (a) make available for inspection by any person free of charge a document mentioned in paragraph 91E (2) (b); and
- (b) on the request of a person, give a copy of a document mentioned in that paragraph to the person free of charge.

**“91G. Extension of time**

“(1) The Authority may, on application in writing by a person on whom an order is served under subsection 91C (1) or 91D (1) for an extension of the period within which the person shall conduct an assessment or remediation—

- (a) extend or refuse to extend the period; or
- (b) extend the period for a period less than that applied for.

“(2) In determining whether or not to extend the period, the Authority shall have regard to—

- (a) the period of extension for which application is made; and
- (b) whether the contamination is causing, or is likely to cause, a significant risk of harm to human health or a risk of material environmental harm or serious environmental harm.

**“91H. Further information**

For the purposes of sections 91C and 91D, the Authority may, by notice in writing, require an auditor to furnish to the Authority, either orally or in writing, such further information relating to an assessment or remediation, as the case requires, as is specified in the notice.

**“91I. Choice of appropriate person**

“(1) For the purposes of subsections 91C (1) and 91D (1), an appropriate person shall be chosen from among the following persons in the following order:

- (a) a person who had principal responsibility for such contamination of the land with the substance (whether or not there were other persons who had responsibility for such contamination of the land with the substance) or, if that is not practicable, the person referred to in paragraph (b);
- (b) a lessee of the land (whether or not the person had any responsibility for such contamination of the land with the substance) or, if that is not practicable, the person referred to in paragraph (c);
- (c) a notional lessee of the land (whether or not the person had any responsibility for such contamination of the land with the substance).

“(2) If there is more than 1 person in the category of appropriate person specified in subsection (1), the Authority may, but is not required to, make more than 1 person in the category the subject of the order.

“(3) For the purposes of this section, the choice of a person is to be regarded as not practicable if—

- (a) the Authority cannot, after reasonable inquiry, ascertain the identity or location of the person; or
- (b) in the opinion of the Authority, the person does not have the resources to comply with the order.

***“Division 6—Costs of assessment and remediation***

**“91J. Interpretation**

In this Part—

‘assessment order’ means an order under subsection 91C (1);

‘remediation order’ means an order under subsection 91D (1).

**“91K. Recovery of costs associated with assessment or remediation**

“(1) If the Authority takes action under paragraph 91C (1) (b) or 91D (1) (b), the Authority may, by written notice, require an appropriate person against whom an order under that section may be made, to pay to the Authority the reasonable costs and expenses incurred by it in taking that action.

“(2) The notice shall specify the date on or before which the amount is to be paid, being a date not less than 20 working days after the date of the notice.

“(3) Where—

- (a) the Authority has given a person a notice under subsection (2); and
- (b) the person has failed to pay the specified amount on or before the specified date;

so much of the amount as remains unpaid, together with interest calculated at the rate per centum per annum determined under section 165 on the unpaid amount, is a debt due to the Territory by that person.

**“91L. Priority for costs where owner insolvent**

If the Authority carries out the requirements of an assessment order or remediation order in respect of land disclaimed (by a liquidator or trustee in bankruptcy) as onerous property in the course of proceedings for winding up or bankruptcy, the Authority may recover the cost of carrying out the order together with a rate of interest, at the rate per centum per annum determined under section 165, and reasonable costs and expenses so incurred, in priority to any holder of security over the land.

**“91M. Recovery of costs—assessment and remediation**

“(1) A person who carries out the requirements of an assessment or remediation under Division 5 in relation to the contamination of land with a substance who was not responsible for the contamination, may recover in a court of competent jurisdiction a portion of the person’s costs in carrying out those requirements from each person who did have such responsibility.

“(2) A person who carries out the requirements of an assessment or remediation under Division 5 in relation to the contamination of land with a substance who was responsible for the contamination, may recover in a court of competent jurisdiction from each other person who had responsibility for the contamination a portion of the first person’s costs in carrying out those requirements.

“(3) A reference in subsections (1) and (2) to the recovery of a portion of a person’s costs shall be read as a reference to the recovery of a portion of the costs that is just and reasonable in the circumstances including the following circumstances:

- (a) the proportion of responsibility of each person for the contamination;
- (b) the reasonable cost of the remediation (if any) carried out by each person in respect of the contamination.

**“91N. Costs—person responsible for contamination**

In any proceedings under section 91M to recover from a person the cost of carrying out an assessment order or remediation order in relation to any land, the person is taken to have responsibility for contamination on that land, unless it is established that the contamination was not caused by the person, if—

- (a) the person carried on activities on the land; and
- (b) activities of the kind carried on generate or consume the same substances as those that caused the contamination or generate or consume substances that may be converted by reacting with each other or by the action of natural processes on the land into substances that are the same as those that caused the contamination.

**“91O. Liability for losses**

“(1) A person who, with the permission of the occupier of land, enters any land, or does anything else on land, as required by an assessment order or remediation order, is liable to the occupier of the land for any loss suffered by the occupier as a result of the entry or other actions (including any loss suffered by the occupier because of the interruption to the occupier’s business on that land by that entry or those actions).

“(2) A person (other than the lessee of land) who, with the permission of the occupier, enters the land or does anything else on the land, as required by an assessment order or remediation order, is liable to the lessee of the land for any loss suffered by the lessee as a result of the entry or those actions or for any injury to the land caused by that person.

“(3) In addition to any liability that a person may have by virtue of subsection (1) or (2), the person has a duty to meet the reasonable costs and expenses of the lessee and the occupier of land, as the case requires, in providing access to that land as referred to in this section.

“(4) A person has a duty—

- (a) to take reasonable steps—
  - (i) to minimise the loss, and injury, referred to in this section caused by the person’s actions; and
  - (ii) toward restitution in respect of that loss or injury; and
- (c) to compensate the party that suffered the loss, or injury, for which the person is liable to the extent that restitution is not practicable.

**“91P. Director of body corporate that is wound-up**

“(1) The Supreme Court may make an order under this section only if satisfied, on an application by the Authority, that—

- (a) the person was a director of, or a person concerned in the management of, the body corporate at the time when the assessment order or remediation order was made; and
- (b) there is reason to believe that the body corporate was wound-up as part of a scheme to avoid compliance with the assessment order or remediation order.

“(2) The Supreme Court may order a person to comply with an assessment order or remediation order at the person’s own expense if the person was a director of, or a person concerned in the management of, a body corporate that—

- (a) has been wound-up within 2 years before the Court’s order is made; and
- (b) has failed to comply with the assessment order or remediation order.

“(3) There is reason for belief of the kind referred to in paragraph (1) (b) if—

- (a) the body corporate carried out 1 or more transactions—
  - (i) that were voidable because of section 588FE of the Corporations Law;
  - (ii) that were such that the liquidator of the body corporate had a right to recovery of cash under section 567 of the Corporations Law; or
  - (iii) by which the body corporate incurred a debt in relation to which a person contravened section 588G of the Corporations Law;
- (b) there was (at the time or times when the body corporate entered those transactions or a substantial portion of them) reason to believe that the land was contaminated; and
- (c) in a case to which regulations made for the purposes of this section apply—the prescribed conditions are satisfied.

“(4) The Supreme Court shall not make an order under this section if the person against whom the order would be made satisfies the Court that—

- (a) the person exercised due diligence to prevent the body corporate from avoiding compliance with the assessment order or remediation order;
- (b) the person could not reasonably have been expected to be aware of a scheme to avoid compliance with the assessment order or remediation order; or

- (c) the person was not in a position to influence the conduct of the body corporate in relation to that scheme.

“(5) The fact that the relevant assessment order or remediation order was partially complied with by the body corporate does not exclude the possibility that there is reason to form the belief referred to in subsection (3).

“(6) For the purposes of this section, the fact that steps are taken to wind-up a body corporate before the Authority makes an assessment order or remediation order in respect of the body corporate does not preclude the Supreme Court from finding that there is reason to believe that the body corporate was wound-up as part of a scheme to avoid compliance with the order.

**“91Q. Director of body corporate that disposed of land**

“(1) The Supreme Court may order a person to comply with an assessment order or remediation order at the person’s own expense if—

- (a) the person was a director of, or a person concerned in the management of, a body corporate that transferred land within 2 years before the Court’s order is made; and
- (b) the transferee has failed to comply with the assessment order or remediation order in respect of the land.

“(2) The person shall comply with the assessment order or remediation order, subject to any modification by the Supreme Court.

“(3) The Supreme Court may make an order under this section only if satisfied, on an application by the Authority that—

- (a) the person was a director of, or a person concerned in the management of, the body corporate at the time of the transfer of the land or at the time when the assessment order or remediation order was made in respect of the transferee; and
- (b) there is reason to believe that the body corporate transferred the land as part of a scheme to avoid having itself to carry out assessment or remediation of the land (whether or not an assessment order or remediation order had been made in respect of the body corporate).

“(4) There is reason for belief of the kind referred to in paragraph (3) (b) if, at the time or times when the body corporate entered into 1 or more transactions, or a substantial portion of the transactions, for the transfer of the land—

- (a) there was reason to believe that the land was contaminated;
- (b) the transferee was another body corporate that was related to the first body corporate (within the meaning of the Corporations Law); and

- (c) the first body corporate had reason to believe that the transferee was unable to pay its debts or would, if it took steps to remediate the land (to the extent that a reasonable person would have expected, at the time or times, would be necessary), become unable to pay its debts.

“(5) The Supreme Court shall not make an order under this section if the person against whom the order would be made satisfies the Court that—

- (a) the person exercised due diligence to prevent the body corporate from avoiding compliance with the assessment order or remediation order;
- (b) the person could not reasonably have been expected to be aware of a scheme to avoid compliance with the assessment order or remediation order; or
- (c) the person was not in a position to influence the conduct of the body corporate in relation to that scheme.

“(6) The fact that the relevant order was partially complied with by the transferee does not exclude the possibility that there is reason to form the belief referred to in subsection (3).

**“91R. Holding company of body corporate that is wound-up**

“(1) The Supreme Court may order a corporation to comply with an assessment order or remediation order at the corporation’s own expense if the corporation was the holding company of a company that—

- (a) has been wound-up within 2 years before the Court’s order is made; and
- (b) has failed to comply with the assessment order or remediation order.

“(2) The corporation shall comply with the assessment order or remediation order, subject to any modification by the Supreme Court.

“(3) The Supreme Court may make an order under this section only if satisfied, on an application by the Authority, that—

- (a) the corporation was the holding company of the other company at the time when the assessment order or remediation order was made; and
- (b) there is reason to believe that the other company was wound-up as part of a scheme to avoid compliance with the assessment order or remediation order.

“(4) There is reason for belief of the kind referred to in paragraph (3) (b) if—

- (a) the corporation contravened section 588V of the Corporations Law in relation to the other company;

- (b) there was (at the time or times when the contravention occurred) reason to believe that the land was contaminated; and
- (c) in a case to which regulations made for the purposes of this section apply—the prescribed conditions are satisfied.

“(5) Notwithstanding subsection (4), there is reason for belief of the kind referred to in paragraph (3) (b) also if—

- (a) the other company carried out 1 or more transactions—
  - (i) that were voidable because of section 588FE of the Corporations Law;
  - (ii) that were such that the liquidator of the other company had a right to recovery of cash under section 567 of the Corporations Law; or
  - (iii) by which the other company incurred a debt in relation to which a person contravened section 588G of the Corporations Law; and
- (b) there was (at the time or times when the other company entered those transactions or a substantial portion of them) reason to believe that the land was contaminated.

“(6) The fact that the relevant assessment order or remediation order was partially complied with by the other company does not exclude the possibility that there is reason to form the belief referred to in subsection (3).

“(7) For the purposes of this section, the fact that steps are taken to wind-up a company before the Authority makes an assessment order or remediation order in respect of the company does not preclude the Supreme Court from finding that there is reason to believe that the company was wound-up as part of a scheme to avoid compliance with the order.”.

## **17. Infringement notices**

Section 115 of the Principal Act is amended by inserting in paragraph (b) “and (if known) the address” after “initials,”.

## **18. Environment protection orders**

Section 125 of the Principal Act is amended—

- (a) by inserting after subsection (1) the following subsections:

“(1A) If the Authority is satisfied that land is contaminated, but has reasonable grounds for believing that if the land were—

- (a) to continue to be used for its present use; or

- (b) to be used for a specified use, or a use in a specified class of uses, other than its present use;

it would not cause, or would not be likely to cause, a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm, the Authority may serve an environment protection order on the occupier of the land and, if the occupier is not the lessee, on the lessee.

“(1B) If the Authority is satisfied that land is contaminated but has reasonable grounds for believing that the contamination is not, or is not likely to, cause a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm while measures for its containment continue, the Authority may serve an environment protection order on the occupier of the land and, if the occupier is not the lessee, on the lessee.”; and

- (b) by inserting after paragraph (2) (c) the following paragraph:
  - “(ca) if the order is served pursuant to subsection (1A) or (1B)—
    - (i) the nature of the substances in, on or under the land the subject of the order;
    - (ii) the grounds on which the Authority holds its belief;”.

## **19. Review of decisions**

Section 135 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (a) the following paragraph:
  - “(aa) under paragraph 21A (4) (b) or (c) refusing to remove an entry from the register;”;
- (b) by inserting after paragraph (1) (x) the following paragraph:
  - “(xa) under subsection 76 (1A) requiring a person to commission an environmental audit;”;
- (c) by inserting after paragraph (1) (zc) the following paragraphs:
  - “(zca) under subsection 91C (1) making an order to conduct an assessment;
  - (zcb) under subsection 91D (1) making an order to remediate;
  - (zcc) under subsection 91D (8) refusing to consent;
  - (zcd) under subsection 91G (1) refusing to extend a period for compliance;
  - (zce) under subsection 91G (1) specifying a period of compliance for a period less than that applied for;

- (zcf) under section 91K requiring a stated person to pay reasonable costs and expenses;”;
- (d) by omitting from paragraph (1) (ze) “and”;
- (e) by adding at the end of paragraph (1) (zf) “and”;
- (f) by adding at the end of subsection (1) the following paragraph:
  - “(zg) under subsection 125 (1A) or (1B) to serve an environment protection order.”;
- (g) by omitting paragraph (2) (a) and substituting the following paragraphs:
  - “(a) in the case of a decision referred to in paragraph (1) (a)—the applicant;
  - (aa) in the case of a decision referred to in paragraph (1) (aa)—the person to whom the entry relates;
  - (ab) in the case of a decision referred to in paragraph (1) (d), (e), (f), (g), (y), (z), (zcc), (zcd) or (zce)—the applicant;”;
- (h) by omitting from paragraph (2) (d) “or”;
- (i) by omitting from paragraph (2) (e) “or (zf)” and substituting “, (zf) or (zg)”.

## **20. Strict liability offences**

Section 155 of the Principal Act is amended by omitting “45” and substituting “45 or 126”.

## **21. Insertion**

After section 159 of the Principal Act the following section is inserted:

### **“159A. National Pollutant Inventory—provision of information**

“(1) The occupier of a facility to which the National Environment Protection (National Pollutant Inventory) Measure applies, shall give to the Authority, in a form approved by the Authority, information required to be provided by the occupier of the facility under that measure in accordance with the measure.

Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.

“(2) In subsection (1)—

‘National Environment Protection (National Pollutant Inventory) Measure’ means the National Environment Protection (National Pollutant

Inventory) Measure dated 27 February 1998, as in force from time to time, made under the *National Environment Protection Council Act 1994*.”.

## **22. Recovery of clean-up costs**

Section 160 of the Principal Act is amended by omitting from subsection (4) “164” and substituting “165”.

## **23. Determination of fees**

Section 165 of the Principal Act is amended by inserting in paragraph (1) (d) “, 91K, 91L” after “90 (3)”.

## **24. Schedule 1**

Schedule 1 to the Principal Act is amended—

(a) by inserting after paragraph 2 (e) the following paragraph:

“(ea) the acceptance by a lessee or occupier of land that is in an area identified in—

(i) the Territory Plan as 1 of the following,:

Broadacre; Rural; Hills, Ridges and Buffer Areas; River Corridors; Mountains and Bushlands; Plantation Forestry; or

(ii) the National Capital Plan as 1 of the following:

Broadacre Areas; Rural Areas; Hills, Ridges and Buffer Spaces; River Corridors; Mountains and Bushland;

of more than 100 cubic metres of soil for placement on that land”;

(b) by omitting paragraph 2 (f) and substituting the following paragraph:

“(f) transport activities to which the National Environment Protection (Movement of Controlled Waste between States and Territories) Measure dated 26 June 1998, as in force from time to time, made under the *National Environment Protection Council Act 1994*, applies;”;

(c) by omitting from paragraph 2 (h) “freshwater” and substituting “aquatic”.

## **25. Schedule 2**

Schedule 2 to the Principal Act is amended—

*Environment Protection Act 1997*

- (a) by omitting from the definition of “maximum lead concentration” in clause 1 “subregulation 30F (5) of the Clean Air Regulations 1964” and substituting “subregulation 14 (1) of the *Clean Air (Motor Vehicles and Motor Vehicles Fuels) Regulation 1997*”;
- (b) by omitting from subclauses 8 (4) and (5) “Unless” and substituting “Subject to subclause (5A) and unless”; and
- (c) by inserting after subclause 8 (5) the following subclause:

“(5A) Subclauses (4) and (5) do not apply to the sale, distribution for sale, offer or exhibition for sale or the having in possession for sale or distribution for sale, of petrol containing more than the maximum lead concentration per litre if the petrol is for use in aircraft.”.

© Australian Capital Territory 2020