

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN  
CAPITAL TERRITORY**

**ENVIRONMENT PROTECTION  
(CONSEQUENTIAL PROVISIONS) BILL 1997**

**EXPLANATORY MEMORANDUM**

Circulated by authority of

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# ENVIRONMENT PROTECTION (CONSEQUENTIAL PROVISIONS) BILL

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## **Part I            Preliminary**

### **1.1            Formal requirements (clauses 1 & 2)**

Clauses 1 & 2 of the Bill are formal requirements of all Acts, specifying the title and commencement arrangements. These clauses take effect from the day on which the Act is notified in the Gazette. The rest of the Bill's provisions take effect from the date, or dates, the Minister notifies in the Gazette. There is also provision for any remaining parts of the Bill to take effect 6 months after it is first notified in the Gazette. This is a 'catch-all' provision which will ensure any overlooked provisions commence no later than six months after first notification.

### **1.2            Interpretation (clause 3)**

This clause provides definitions of important terms used in the Bill. Some of the defined terms are described below.

#### **1.2.1          Definition of 'action' (clause 3)**

**'action'** - this term links to the savings and transitional provisions of this Bill (Part VI). This Part preserves certain matters in force under legislation to be repealed by this Bill. Depending on the type of thing carried forward, it may remain in force until it expires, until it is revoked, or until the Environment Management Authority takes action on the matter. The actions specified in the interpretation clause relate to actions provided for under the Environment Protection Bill.

#### **1.2.2          Definition of 'repealed Act' (clause 3)**

**'repealed Act'** - this term is used in Part V of the Bill. This Part preserves certain notices in force at the time the Environment Protection Bill is implemented. The term 'repealed Act' denotes different Acts in different Divisions of Part V of the Bill as follows:

- in Division 1 of Part V, 'repealed Act' means the *Air Pollution Act 1984*;
- in Division 2 of Part V, 'repealed Act' means the *Noise Control Act 1988*;
- in Division 3 of Part V, 'repealed Act' means the *Ozone Protection Act 1991*; and
- in Division 4 of Part V, 'repealed Act' means the *Water Pollution Act 1984*.

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Although the *Pesticides Act 1989* is also to be repealed by this Bill, it does not appear in the definition of repealed Acts. This is because there are no instruments or notices in force under the *Pesticides Act 1989* which should be preserved in Part V.

**1.2.3 References to be carried forward (subclauses 3(2), (3) & (4))**

In order to achieve a smooth change-over to the new arrangements, where a provision of a repealed Act continues to have application during the transition period, previously used terminology is read as terminology introduced under the Environment Protection Bill. For example, references to the Pollution Control Authority will be read as references to the Environment Management Authority.

## **Part II Repeals**

**2.1 Acts to be repealed (clause 4)**

This clause provides that Acts listed in Schedule 1 are repealed. (Please see 8.1 - *Repealed Acts* below for more information on this matter.)

## **Part III Land (Planning and Environment) Act 1991**

**3.1 Relationship with the Land Act (clauses 5 & 6)**

These clauses amend the *Land (Planning and Environment) Act 1991*, (the Land Act) to require that the approval process under that Act must include giving notice to the Environment Management Authority (the EMA) where activities either:

- are listed in Schedule 1 to the Environment Protection Bill (which lists activities which must not be conducted without an environment authorisation); or
- have the potential to cause serious or material environmental harm.

This amendment complements subclause 46(6) of the Environment Protection Bill, which provides that the EMA will not grant an environmental authorisation in respect of a controlled activity unless an application has been approved under Part IV of the Land Act.

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## **Part IV                      Other Acts**

### **4.1            Amendments in the Schedule (clause 7)**

Schedule 2 sets out amendments to various Acts affected by the Environment Protection Bill. These amendments are explained below (see 9.1 - *Amendments*).

## **Part V                      Savings and transitional provisions**

### **Division 1 - Air Pollution Act**

#### **5.1            Air Pollution Act**

This Division preserves certain matters in force under the *Air Pollution Act 1984*, (the Air Pollution Act), when that Act is repealed by this Bill. These matters are explained below.

##### **5.1.1        Certificates of compliance (clause 8)**

Under the Air Pollution Act, authorised people or bodies can issue certificates of compliance for solid fuel burning equipment. Any such certificates in force when the provisions of this Bill take effect are taken to be equivalent certificates of compliance under the Environment Protection Bill. There is no end date applied to certificates preserved in this way, as the Environment Protection Bill does not alter the compliance standards for this equipment.

##### **5.1.2        Permits for burning plant material (clause 9)**

Under the Air Pollution Act, the Pollution Control Authority can issue permits for burning plant material. The provisions of the Air Pollution Act continue to apply to any such permits in force when the provisions of this Bill take effect. The Air Pollution Act provisions continue to apply to the permit until:

- the permit expires or is revoked; or
- the Environment Management Authority takes a form of action specified in clause 3 of this Bill (see 1.2 - *Interpretation* above);

whichever occurs first.

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**5.1.3 Pollution abatement notices (clause 10)**

Under the Air Pollution Act, the Pollution Control Authority or inspector can issue pollution abatement notices. The provisions of the Air Pollution Act continue to apply to any such notices in force when the provisions of this Bill take effect. The Air Pollution Act provisions continue to apply to the notice until:

- the notice is revoked; or
- the Environment Management Authority takes a form of action specified in clause 3 of this Bill (see *1.2 - Interpretation* above);

whichever occurs first.

**5.1.4 Determinations of higher sulfur content of unleaded petrol (clause 11)**

Under the Air Pollution Act, the Pollution Control Authority can make determinations raising the allowable sulfur content of unleaded petrol. Any such determinations in force when the provisions of this Bill take effect are taken to be determinations under the corresponding clause in the Environment Protection Bill.

There is no end date applied to certificates preserved in this way, as the Environment Protection Bill does not alter the grounds for making such a determination.

**5.1.5 Notices in relation to leaded petrol (clause 12)**

Under the Air Pollution Act, the Minister can make a short term notice which allows the maximum levels of lead in leaded petrol to be exceeded. Any such notices in force when the provisions of this Bill take effect are taken to be notices under the corresponding clause in the Environment Protection Bill.

There is no end date applied to notices preserved in this way, as the Environment Protection Bill will not alter this process.

**5.1.6 Exemptions in relation to leaded petrol (clause 13)**

Under the Air Pollution Act, in specific circumstances the Pollution Control Authority can issue a notice exempting certain petrol suppliers from complying with the maximum levels of lead in leaded petrol. Any such notices in effect when the provisions of this Bill take effect are taken to be exemptions under the corresponding clause in the Environment Protection Bill.

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There is no end date applied to notices preserved in this way, as the Environment Protection Bill will not alter this process.

## **Division 2 - Noise Control Act 1988**

### **5.2 Noise Control Act**

This Division preserves certain matters in force under the *Noise Control Act 1988*, (the Noise Control Act), when that Act is repealed by this Bill. These matters are explained below.

#### **5.2.1 Noise direction notices (clause 14)**

Under the Noise Control Act, inspectors can issue noise direction notices requiring the occupier of certain premises to ensure that excessive noise is not emitted during specified periods. The provisions of the Noise Control Act continue to apply to any such notices in force when the provisions of this Bill take effect. The Noise Control Act provisions continue to apply in relation to the notice until:

- the notice expires or is revoked; or
- the Environment Management Authority takes a form of action specified in clause 3 of this Bill (see 1.2 - *Interpretation* above);

whichever occurs first.

#### **5.2.2 Exemptions of non-domestic premises (clause 15)**

Under the Noise Control Act, the Pollution Control Authority can exempt non-domestic premises from the requirements of noise direction notices referred to above (see 6.2.1 - *Noise direction notices*). The provisions of the Noise Control Act continue to apply to exemptions in force when the provisions of this Bill take effect. The Noise Control Act provisions continue to apply in relation to the exemptions until:

- the exemptions expire or are revoked; or
- the Environment Management Authority takes a form of action specified in clause 3 of this Bill (see 1.2 - *Interpretation* above);

whichever occurs first.

#### **5.2.3 Noise reduction notices (clause 16)**

Under the Noise Control Act, the Pollution Control Authority can issue notices to employers to take

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specified action to reduce the impact of noise on their employees. Any notices in force when the provisions of this Bill take effect continue in force. There is no end date applied to notices preserved in this way.

**5.2.4 Audiometric test notices (clause 17)**

Under the Noise Control Act, the Pollution Control Authority can issue notices to employers requiring them to arrange audiometric tests for their employees. Any such notices in force when the provisions of this Bill take effect continue in force. There is no end date applied to notices preserved in this way.

**5.2.5 Exemption in relation to information to employees (clause 18)**

Under the Noise Control Act, the Pollution Control Authority can exempt employers from requirements to provide prescribed information to employees. Any such exemptions in force when the provisions of this Bill take effect continue in force. There is no end date applied to notices preserved in this way.

**Division 3 - Ozone Protection Act**

**5.3 Ozone Protection Act**

This Division preserves certain matters in force under the *Ozone Protection Act 1991*, (the *Ozone Protection Act*), when that Act is repealed by this Bill. These matters are explained below.

**5.3.1 Instruments relating to the disposal of halons (clause 19)**

Under the *Ozone Protection Act*, the Pollution Control Authority can make instruments relating to the disposal of halons. Any such instruments in force when the provisions of this Bill take effect are taken to be instruments under the equivalent regulations made under the *Environment Protection Bill*.

**5.3.2 Licences and temporary licences (clause 20)**

Under the *Ozone Protection Act*, the Pollution Control Authority can grant licences and temporary licences relating to the use and servicing of articles containing ozone depleting substances. The provisions of the *Ozone Protection Act* continue to apply to any such licences in force when the provisions of this Bill take effect. The *Ozone Protection Act* provisions continue to apply in relation to the licences and temporary licences until:

- the licences expire or are cancelled; or

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- the Environment Management Authority takes a form of action specified in clause 3 of this Bill (see 1.2 - *Interpretation* above);

whichever occurs first.

**5.3.3 Exemptions in relation to installation using halons (clause 21)**

Under the Ozone Protection Act, the Pollution Control Authority can issue exemptions in relation to installations using halons. The provisions of the Ozone Protection Act continue to apply to any such exemptions in force when the provisions of this Bill take effect. The Ozone Protection Act provisions continue to apply in relation to the exemptions until:

- the exemptions expire, are revoked or cease to be in force; or
- the Environment Management Authority takes a form of action specified in clause 3 of this Bill (see 1.2 - *Interpretation* above);

whichever occurs first.

**5.3.4 Essential use classification (clause 22)**

Under the Ozone Protection Act, the Pollution Control Authority can grant essential use classifications for installations using halons. The provisions of the Ozone Protection Act continue to apply to any such classifications in force when the provisions of this Bill take effect. The Ozone Protection Act provisions continue to apply in relation to the classifications until:

- the classifications expire, are revoked or cease to be in force; or
- the Environment Management Authority takes a form of action specified in clause 3 of this Bill (see 1.2 - *Interpretation* above);

whichever occurs first.

**5.3.5 Ozone protection notice (clause 23)**

Under the Ozone Protection Act, the Pollution Control Authority or inspectors can issue ozone protection notices to ensure the activity complies with the provisions of that Act. The provisions of the Ozone Protection Act continue to apply to any such notices in force when the provisions of this Bill take effect. The Ozone Protection Act provisions continue to apply in relation to the notices until:

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- the notices are revoked; or
- the Environment Management Authority takes a form of action specified in clause 3 of this Bill (see 1.2 - *Interpretation* above);

whichever occurs first.

**5.3.6 Ozone depleting substance seized or surrendered (clause 24)**

The relevant provisions of the Ozone Act continue to apply to ozone depleting substances that have been seized or surrendered immediately before the provisions of this Bill take effect.

**Division 4 - Water Pollution Act**

**5.4 Water Pollution Act**

This Division preserves certain matters in force under the *Water Pollution Act 1984*, (the *Water Pollution Act*), when that Act is repealed by this Bill. These matters are explained below.

**5.4.1 Licences (clause 25)**

Under the *Water Pollution Act*, the Pollution Control Authority can grant licences dealing with discharge to waters. The provisions of the *Water Pollution Act* continue to apply to any such licences in force when the provisions of this Bill take effect. The *Water Pollution Act* provisions continue to apply in relation to the licences until:

- the licences expire or are cancelled; or
- the Environment Management Authority takes a form of action specified in clause 3 of this Bill (see 1.2 - *Interpretation* above);

whichever occurs first.

**5.4.2 Emergency authorities (clause 26)**

Under the *Water Pollution Act*, the Minister can issue emergency authorities allowing certain discharge to waters or suspending the operation of certain licences. The provisions of the *Water Pollution Act* continue to apply to any such authorities in force when the provisions of this Bill take effect. The *Water Pollution Act* provisions continue to apply in relation to the emergency authorities until:

- the authorities expire or are cancelled; or

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- the Environment Management Authority takes a form of action specified in clause 3 of this Bill (see 1.2 - *Interpretation* above);

whichever occurs first.

**5.4.3 Pollution abatement notices (clause 27)**

Under the Water Pollution Act, inspectors can issue pollution abatement notices requiring activities to conform with the requirements of that Act. The provisions of the Water Pollution Act continue to apply to any such notices in force when the provisions of this Bill take effect. The Water Pollution Act provisions continue to apply in relation to the pollution abatement notices until:

- the notices are revoked; or
- the Environment Management Authority takes a form of action specified in clause 3 of this Bill (see 1.2 - *Interpretation* above);

whichever occurs first.

## **Part VI      Miscellaneous**

**6.1 Savings and transitional regulations (clause 28)**

Matters dealt with under the Acts being repealed by this Bill are complex and varied, and can have significant impacts on businesses in the ACT. It is therefore important that a smooth transition between the current and the new legislative system is achieved. With this aim in mind, this clause makes provisions for other savings or transitional provisions to be made through regulations.

Similar provisions appear in the *Consumer Credit Act 1995* (section 12) and the *Competition Policy Reform Act 1996* (section 45).

**6.2 Regulations (clause 29)**

This clause allows for a more general regulation-making power, enabling regulations for the purposes of this Bill to be made.

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## **Schedule 1**

### **7.1 Repealed Acts**

This Schedule lists the Acts to be repealed by the Bill. The repealed Acts are:

- the *Air Pollution Act 1984*;
- the *Noise Control Act 1988*;
- the *Ozone Protection Act 1991*;
- the *Pesticides Act 1989*;
- the *Water Pollution Act 1984*; and
- related amendment Acts.

## **Schedule 2**

### **8.1 Amendments to Acts**

This Schedule details the amendments to be made to other legislation as a result of the Environment Protection Bill.

#### **8.1.1 Bushfire Act 1936**

Section 4 of the *Bushfire Act 1936* (the *Bushfire Act*), which provides that the *Bushfire Act* is subject to the *Air Pollution Act*, is to be repealed. This section will be replaced by a provision that the *Bushfire Act* is to be subject to the Environment Protection Bill, except for the matters exempted under clause 6(1) of the Environment Protection Bill.

These clauses mean that in emergency situations, actions provided for under the *Bushfire Act* take precedence over the requirements of the Environment Protection Bill. In other situations, activities dealt with by the *Bushfire Act* must comply with the provisions of the Environment Protection Bill.

#### **8.1.2 Business Franchise (Tobacco and Petroleum Products) Act 1984**

This Act currently uses a definition of 'unleaded motor spirit' which relies on the *Air Pollution Act 1984*. As the *Air Pollution Act* is to be repealed, the relevant reference will be replaced with a reference to the same term in the Environment Protection Bill.

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**8.1.3 Fair Trading (Fuel Prices) Act 1993**

This Act currently uses a definition of 'unleaded petrol' which relies on the *Air Pollution Act 1984*. As the *Air Pollution Act* is to be repealed, the relevant reference will be replaced with a reference to the same term in the Environment Protection Bill.

**8.1.4 Fire Brigade Act 1957**

This section will be replaced by a provision that the *Fire Brigade Act 1957* (the *Fire Brigade Act*) is to be subject to the Environment Protection Bill, except for the matters exempted under clause 6(1) of the Environment Protection Bill. These clauses mean that in emergency situations, actions provided for under the *Fire Brigade Act* take precedence over the requirements of the Environment Protection Bill. In other situations, activities dealt with by the *Fire Brigade Act* must comply with the provisions of the Environment Protection Bill.

Section 12C of the *Fire Brigade Act* deals with the elimination of fire hazards, and requires that directions about this matter are not inconsistent with the *Air Pollution Act 1984*. As the *Air Pollution Act* is to be repealed, the relevant reference will be replaced with a reference to the Environment Protection Bill.

**8.1.5 Motor Traffic Act 1936**

Section 217 of the *Motor Traffic Act 1936* (the *Motor Traffic Act*) provides that permits may be granted to motor vehicles in specific situations. The permits exempt the motor vehicles from certain parts of the *Motor Traffic Act*, including parts dealing with the noise emitted by vehicles. Clause 8 of the Environment Protection Bill provides that where these exemptions are granted, motor vehicles are then covered by the air and noise pollution provisions of that Bill. This amendment to the *Motor Traffic Act* ensures that the Environment Management Authority is aware of any exemptions which result in motor vehicles becoming covered by the air and noise pollution provisions of the Environment Protection Bill.

**8.1.6 Nature Conservation Act 1980**

Clause 7 of the Environment Protection Bill provides that the Bill must be construed and administered consistent with other environment laws. This amendment to the *Nature Conservation Act* establishes a direction corresponding to this clause in the Environment Protection Bill.