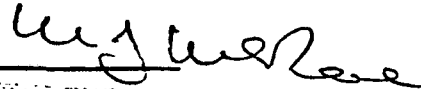


1997

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY



(As presented)

(Minister for the Environment, Land and Planning)

Environment Protection Bill 1997

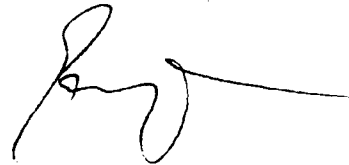


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1997

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment, Land and Planning)

Environment Protection Bill 1997

A BILL

FOR

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

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Environment Protection Act 1997*.

Commencement

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

- 10 (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.

Objects

3. (1) The objects of this Act are—

- 5
- (a) to protect and, where practicable, restore and enhance the quality of the environment through management of the environment as an integrated and dynamic whole;
- (b) to prevent, minimise or, where practicable, eliminate adverse impact on the environment by encouraging or requiring—
- 10
- (i) the use of alternative or altered production methods and technologies;
- (ii) better management of resources, including strategies for the reduced use of resources and the re-use and recycling of resources, especially where resources cannot be renewed;
- 15
- and
- (iii) waste minimisation;
- (c) to achieve an appropriate balance between environmental, economic and social considerations in decision making processes;
- (d) to promote the concept of a shared responsibility for the
- 20
- environment by—
- (i) providing people in business with the opportunity, where practicable and appropriate, to develop their own solutions and responses to environmental problems occurring in relation to their business activities;
- 25
- (ii) fostering public education and involvement in decisions about the protection, restoration and enhancement of the environment;
- (iii) acknowledging environmental needs in economic and social decision making; and
- 30
- (iv) providing for the disclosure of, and public access to, information about significant environmental hazards and incidents;
- (e) to promote the principles of ecologically sustainable development;
- 35
- (f) to allocate environment protection costs equitably, having regard to the responsibility of those who cause or may cause environmental harm or nuisance to bear the cost of prevention, containment, abatement or remediation; and

- (g) to implement national environment protection measures made under the national scheme laws;

and this Act shall be construed and administered accordingly.

5 (2) For the purposes of paragraph (1) (e), 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:

- 10 (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;
- 15 (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.

Interpretation

4. In this Act, unless the contrary intention appears—

20 “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—

- 25 (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 water feature overlay along so much of the Murrumbidgee River as is within the Territory; or
- 30 (d) any other prescribed area;

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

5 “authorisation fee”, in relation to an environmental authorisation, means the annual fee or the whole of period fee under section 50 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);

10 “Authority” means the Environment Management Authority under section 11;

“conduct” includes acts and omissions;

“determined fee” means the fee—

(a) determined under paragraph 155 (1) (a); or

15 (b) calculated at the rate, or by the formula or other method, determined under paragraph 155 (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 76;

20 “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;

25 (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;

30 (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;

5

“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—

10

(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 37;

15

“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—

20

(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 67;

25

(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 116;

30

“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 80;

“general environmental duty” means the duty of care described in subsection 22 (1);

35

“Heritage Places Register” means the register of heritage places incorporated in the Territory Plan;

“information discovery order” means an information discovery order under section 123;

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

5 “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;

10 (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;

15 (c) results in loss or damage to property to the value of more than \$5,000; or

(d) results in necessary remedial action costing more than \$5,000;

“motor vehicle” has the same meaning as in the *Motor Traffic Act 1936*;

20 “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;

25 “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;

30 (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;

5 “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
- 10 (c) an activity in respect of which a person has been given a notice under subsection 41 (1);

“serious environmental harm” means environmental harm—

- (a) that is very significant, including environmental harm that becomes very significant—

- 15 (i) over time;
- (ii) due to its frequent recurrence; or
- (iii) due to its cumulative effect with other relevant events;

- 20 (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
- 25 (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;

30 “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.

Things taken to have an impact causing environmental harm

5 5. 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.

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

10 6. (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.

15 (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.

20 **Construction consistent with certain other laws**

7. (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.

25 (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;

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

Application in respect of people and certain things is limited

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

35 (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
- 5 (e) a motor vehicle being driven on a public street, unless—
 - (i) the motor vehicle is being driven on the public street for the purpose of conducting reliability trials or speed tests; and
 - 10 (ii) a permit has been issued under section 217 of the *Motor Traffic Act 1936* exempting the persons taking part in the trials or tests from the provisions of that Act.

(2) In subsection (1)—

“public street” has the same meaning as in the *Motor Traffic Act 1936*.

Civil remedies and common law not affected

15 9. (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.

Criminal liability of Crown agents

20 10. (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.

25 (2) Subsection (1) does not apply in relation to a prosecution for an offence against section 43, subsection 127 (3), 128 (3) or 129 (3) or section 131 or 132, or a minor environmental offence within the meaning of Division 1 of Part XIII.

(3) In subsection (1)—

30 “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

Appointment

5 11. (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.

10 (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).

Functions and powers

15 12. (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.

20 (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.

Delegations

25 13. 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.

Authorised officers

30 14. (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:

35 (a) the Authority;

- (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.

Analysts

- 10 15. (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*;
- 15 (b) any other person appointed in writing by the Authority for the purpose.

Identity cards

20 16. (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.

25 (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;

30 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.

Disclosure of interests

35 17. (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.

5 (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.

10 (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.

15 (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).

Minimum disruption

20 18. When exercising a power under Part XI or XII, an authorised officer or an analyst shall use his or her best endeavours to keep any disruption of any business or activity being conducted on the premises at which the power is being exercised to the minimum necessary for the authorised officer or analyst to perform his or her duties.

Legal immunity

25 19. (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;

30 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.

35 (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.

Division 2—Public inspection of documents

inspection of documents

5 20. (1) A person may, on payment of the determined fee, inspect at any reasonable time any of the following documents kept by or on behalf of the Authority:

- 10 (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) any environmental protection agreement entered into by the Authority;
- 15 (e) any environment protection order;
- (f) any document setting out the results of monitoring or testing required by the Authority to be conducted;
- (g) the list of authorised officers;
- (h) any prescribed document.

20 (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.

25 (3) Where the Authority is satisfied that the inspection of a document by a person is in the interest of the public or a substantial section of the public, the Authority may remit all or part of the determined fee payable under subsection (1).

Copies of documents

21. (1) A person may, on payment of the reasonable copying costs, obtain a copy of a document specified in subsection 20 (1).

30 (2) Where a person wishes to obtain a copy of a document specified in subsection 20 (1) that is not in the Authority's possession, the Authority shall make arrangements for the person to obtain the copy.

PART III—ENVIRONMENTAL DUTIES

General environmental duty

22. (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 be had to all the circumstances of the conduct of the activity, including but not limited to—

- (a) the nature of the harm or nuisance or potential harm or nuisance;
- (b) the nature and sensitivity of the receiving environment;
- (c) the current state of technical knowledge for the activity;
- (d) the financial implications of taking each of those measures; and
- (e) the likelihood and degree of success in preventing or minimising the harm or nuisance of each of the measures that might be taken.

(3) Subject to sections 116, 133 and 150, 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.

Duty to notify of actual or threatened environmental harm

23. (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.

(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.

PART IV—ENVIRONMENT PROTECTION POLICIES

Contents

24. 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.

Consultation

25. (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.

Promulgation

26. (1) The Authority shall notify an environment protection policy or a variation of an environment protection policy in the *Gazette*.

5 (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;
- 10 (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.

15 Formal changes

27. 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.

Revocation

20 28. (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.

25 (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.

30 Inspection

29. 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.

Legal character

35 30. 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.

5 PART V—ACCREDITED CODES OF PRACTICE

Accrediting codes of practice

31. (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—

- 10 (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.

15 (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.

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

Deemed compliance with general environmental duty

20 32. 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

25 Schemes for economic measures

33. The Authority may develop and implement schemes involving economic measures as a means of achieving cost effective environmental regulation, examples of which include bubble licence schemes and tradeable permit schemes.

30 Bubble licences

34. 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.

Tradeable permits

35. A tradeable permit scheme may include any of the following:

- 5 (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;
- 10 (c) the allocation (whether by sale or otherwise) from time to time of tradeable permits or credits.

Regulations may make provision for schemes

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

- 15 (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

Entering agreements

37. The Authority may—

- 25 (a) for the purposes of paragraph 40 (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.

Form and terms of agreements

38. An environmental protection agreement—

- 0 (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—

5 (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;

10 (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;

15 (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

20 (d) may be varied in writing by the parties, including by extending the term of the agreement.

Effect of agreements

25 39. (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.

PART VIII—ENVIRONMENTAL AUTHORISATIONS

Division 1—Requirements to hold and comply with an authorisation

Conducting prescribed classes of activities

35 40. (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:

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

Authority may require an environmental authorisation

10 **41. (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—

- 15 (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.

20 (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 45 on or before the date specified in the notice, being a date not less than 10 working days after the date of the notice.

25 (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.

Conducting activities other than prescribed activities

30 **42. (1)** A person who is served with a notice under subsection 41 (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.

Compliance with an authorisation

43. (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 only have regard to the environmental harm caused by the excess pollutant.

Division 2—Grant, variation, cancellation and suspension

Kinds of authorisation

44. 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.

Application

5 **45. (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;

10 (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.

15 **(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.

20 **Grant**

46. (1) Subject to section 56, the Authority shall, within 20 working days of the receipt of an application under section 45—

25 (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;

30 (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 88—

(i) to direct that an Assessment be made of the possible environmental impact of the specified activity; or

35 (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);
- 5 (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).

10 (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).

15 (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
- 20 (b) refuse to grant the environmental authorisation pursuant to paragraph (1) (b).

(5) Where—

25 (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 88—

(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

30 (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—

- 35 (c) grant the environmental authorisation pursuant to paragraph (1) (a);
or

(d) refuse to grant the environmental authorisation pursuant to paragraph (1) (b).

5 (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.

Notification of grant

47. (1) The Authority shall notify the applicant of its decision under section 46 granting an environmental authorisation.

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

- 10 (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
- 15 (b) specify the amount of the authorisation fee and state that the fee is payable as a lump sum.

Kinds of conditions

48. Subject to section 56, the conditions that the Authority may impose under paragraph 46 (1) (a) or section 55 are—

- 20 (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 72 a report of the audit;
 - 25 (ii) that the applicant prepare and submit to the Authority for approval under section 66 a draft environmental improvement plan;
 - (iii) that the applicant prepare and submit to the Authority for approval under section 79 a draft emergency plan;
 - 30 (iv) that the applicant provide to the Authority under section 80 a financial assurance of a specified kind and amount;
 - 35 (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;

- 5
- (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
- 10 (b) such other conditions as the Authority thinks necessary.

Period of authorisation

49. (1) Environmental authorisations may be granted for the following periods:

- 15
- (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.

20 (2) A standard environmental authorisation or accredited environmental authorisation granted for an unlimited period—

- 25
- (a) takes effect on the day after the day on which—
 - (i) if the annual fee under section 50 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 50 for the first year of the authorisation is payable as a lump sum—the total amount of the fee is paid; and

- 30
- (b) has effect until—
 - (i) the authorisation is cancelled under section 52 or 58; or
 - (ii) the authorisation is surrendered under section 61.

(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 50 is payable by instalments—the first instalment of the fee is paid; or
 - (ii) if the whole of period fee under section 50 is payable as a lump sum—the total amount of the fee is paid; and
- 5 (b) has effect until—
- (i) the expiry of the period specified in the authorisation;
 - (ii) the authorisation is cancelled under section 52 or 58; or
 - (iii) the authorisation is surrendered under section 61.

Authorisation fees

10 **50. (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”).

15 **(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—

- 20 (a) the determined fee; and
- (b) the amount calculated at the rate, or by the formula or other method, determined under section 155 for the purposes of calculating the authorisation fee.

25 **(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—

- 30 (a) if there is a determination under subsection 51 (1) in force in respect of the payment of the fee by instalments—in accordance with the determination; or
- (b) as a lump sum.

35 **(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.

Determination of fee instalments

51. (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.

5 (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.

10 (3) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Non-payment of fees

52. (1) Where the holder of an environmental authorisation does not pay an amount under section 50 by the due date, the Authority shall by notice in writing to the holder—

15 (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—

20 (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.

Annual review of certain authorisations

25 53. (1) Subject to section 56, 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.

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

Review of accredited environmental authorisations

54. (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.

5 (3) Where as a result of the review and after taking into account the matters referred to in section 56, 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.

10 (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 46 for the unexpired period of the former accredited environmental authorisation.

Variation

15 55. (1) Subject to sections 56 and 57, 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
- 20 (c) where the Authority has reasonable grounds for believing—
- (i) that—
- 25 (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;
- 30 (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
- 35 (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.

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

56. In making a decision under subsection 46 (1) or sections 48 or 53 or subsection 55 (1), the Authority shall take into account—

- 5 (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;
- 10 (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 55—
 - 15 (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 57 (1) (c); and
- (f) any other matters, that the Authority considers relevant.

Notice of intention to vary an authorisation

20 57. (1) Subject to subsection (2), before acting under section 55, 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
- 25 (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—

- 30 (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—
 - 35 (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 55 (1) (a).

5 **Suspension and cancellation**

58. (1) Subject to section 59, 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—

- 10 (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
- 15 (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.

20 (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—

- !5 (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 59 (c).

Notice of intention to suspend or cancel an authorisation

0 **59.** Before acting under section 54 or 58, the Authority shall give the holder of the environmental authorisation a notice—

(a) stating that the Authority is—

- (i) under section 54—proposing to cancel the authorisation; or
- (ii) under section 58—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.

Effect of suspension

60. 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.

10 Surrender of environmental authorisation

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

Notification of ceasing activity

15 62. 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 5 working days of that cessation.

Penalty:

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

PART IX—ENVIRONMENTAL PROTECTION

Division 1—Environmental improvement plans

Contents of an environmental improvement plan

25 63. (1) For the purposes of section 64, 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—
- 30 (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.

Authority may require an environmental improvement plan

5 **64.** (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—

10 (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

15 (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—

20 (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;

25 (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—

30 (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;
- 5 (b) if the offender is a body corporate—250 penalty units.

Submission of environmental improvement plan

65. A draft environmental improvement plan submitted in compliance with—

- (a) a notice under subsection 64 (1); or
- 10 (b) a condition of an environmental authorisation;

shall be submitted together with the determined fee.

Approval of environmental improvement plan

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

- 15 (a) a notice under subsection 64 (1); or
- (b) a condition of an environmental authorisation;

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

- 20 (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.

25 (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
- 30 (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.

Accreditation of voluntary improvement plans

67. (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;
- (c) the state of available technology; and
- (d) whether the cost of implementing a measure to reduce environmental harm is reasonably proportional to the reduction in harm likely to be achieved by implementing the measure.

Division 2—Environmental audits

Interpretation

68. In this Division—

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

Conduct of audits

69. For the purposes of section 71 or 73, an environmental audit is an assessment of an activity to determine—

- 5 (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
- 10 (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.

Certain auditors to be approved

70. (1) An environmental audit for the purposes of section 71 or 73 shall be conducted by a person approved by the Authority to conduct the environmental audit.

15 (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.

20 (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.

25 (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.

Authority may require an environmental audit

30 71. (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—

- 35 (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;

5 (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—

10 (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;

15 (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

20 (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.

25 (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.

30 (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.

Authority's response to environmental audit report

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

5 (a) a notice under subsection 71 (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—

5 (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

10 (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—

15 (a) receipt of the further information; or

(b) the expiry of the date specified in the notice under paragraph (1) (c);

whichever occurs first.

20 (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.

25 **Protection for reports of voluntary audits**

73. (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.

30 (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.

35 (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—

- 5 (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.

10 (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.

15 (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.

20 (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.

Protection does not extend to environment protection orders

25 74. A grant of protection under section 73 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

Interpretation

30 75. In this Division—

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

- 35 (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 76 (1) (b).

5 **Contents of an emergency plan**

76. (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;
- 10 (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.

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

Authority may require an emergency plan

20 **77. (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;
- 25 (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;
- 30 (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—

- 5 (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.

10 (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.

Submission of emergency plan

15 78. A draft emergency plan submitted in compliance with—

- (a) a notice under subsection 77 (1); or
- (b) a condition of an environmental authorisation;

shall be submitted together with the determined fee.

Approval of emergency plan

20 79. (1) Where the Authority receives a draft emergency plan submitted in compliance with—

- (a) a notice under subsection 77 (1); or
- (b) a condition of an environmental authorisation;

25 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

(d) reject the draft plan and require the person to—

- 30 (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—

- 5 (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—

- 10 (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):

- 15 (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

Authority may require a financial assurance

20 **80.** (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—

- 25 (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—

- 30 (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.

- 5 (4) A financial assurance shall be provided—
- (a) for the period specified in the authorisation; or
 - (b) if no period is so specified, until—
 - 10 (i) the authorisation is varied to remove the condition requiring the financial assurance; or
 - (ii) the authorisation is cancelled under section 52 or 58 or is surrendered under section 61.

Show cause why financial assurance should not be provided

15 81. (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;
 - 20 (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
 - 25 (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—

- 30 (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.

Non-provision of financial assurance

82. 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.

5 **Claim on or realisation of a financial assurance**

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

- 10 (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.

15 (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.

Notice before claim on or realisation of a financial assurance

20 84. (1) Before acting under section 83, 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;
- 25 (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.
- 30

(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—

- 35 (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.

Recovery of extra costs

5 85. (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
10 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—

- 15 (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;

20 so much of the specified amount as remains unpaid, together with interest
calculated at the rate per centum per annum determined under section 155 on
the unpaid amount, is a debt due to the Territory by the holder.

Moneys held by Territory as financial assurance

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

25 (a) interest accrues, at the rate per centum per annum determined under
section 155, on so much of that original amount as from time to
time remains unclaimed by the Authority under section 84;

30 (b) for the purposes of any claim the Authority may make under
section 84, 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);

35 (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 84;

(d) when—

- (i) the financial assurance is no longer required by the
Authority; or

- (ii) the environmental authorisation is cancelled under section 52 or 58 or is surrendered under section 61;

so much of the original amount and accrued interest as remains unclaimed by the Authority under section 84 shall be paid by the Territory to the holder of the authorisation.

5

PART X—FUNCTIONS OF THE MINISTER

Decisions by Minister

87. (1) The Minister may 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.

10

(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.

15

(3) A decision made by the Minister under paragraph (2) (b) shall be notified in the *Gazette*.

Environmental Assessments and Inquiries

88. (1) This section applies in relation to an application for an environmental authorisation.

20

(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.

25

(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—

30

- (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

5 (b) a copy of the report of any Inquiry panel established under paragraph (2) (b).

PART XI—AUTHORISED OFFICERS' POWERS

Division 1—Preliminary

Interpretation

10 89. (1) In this Part—

“enter” includes board;

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

15 “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

20 (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.

25 *Division 2—Entry and inspection generally*

Entry of premises—routine inspections

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

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

(b) any premises with the consent (obtained pursuant to section 94) 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.

Entry of premises—search warrants

5 91. (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 95.

(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.

10 Identity cards must be produced

92. An authorised officer who enters premises under subsection 90 (1) or 91 (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.

15 Inspection of premises

93. (1) An authorised officer who enters premises under subsection 90 (1) or 91 (1) may do any of the following in respect of the premises or anything on the premises:

- 20 (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 99, seize the thing;
- 25 (f) if the thing is a document—take copies of, or extracts from, the document.

(2) An authorised officer who enters premises under subsection 90 (1) or 91 (1) may require the occupier or a person on the premises to do any of the following:

- 30 (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).

(3) Where an authorised officer takes a sample under paragraph (1) (c), the officer shall—

- 35 (a) divide the sample into 3 parts;

- 5
- (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 person apparently in charge of the premises;
 - (ii) an analyst;
 - (iii) the Authority.

10 **Consent to entry**

94. (1) Before obtaining the consent of a person for the purposes of paragraph 90 (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.

15 (2) Where an authorised officer obtains the consent of a person for the purposes of paragraph 90 (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;
- 20 (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—

- 25 (a) it is material, in any proceedings, for a court to be satisfied that the consent of a person for the purposes of paragraph 90 (1) (b) was voluntary; and
- (b) an acknowledgment, in accordance with subsection (2), signed by the person is not produced in evidence;

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

Search warrants

95. (1) Where—

- 5
- (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;

10 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;
- (d) to search the premises for things of the kind mentioned in paragraph (a); and
- 15 (e) to exercise any of the powers listed in section 93 in relation to those things.

(2) A magistrate shall not issue a warrant unless—

- 20 (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—

- 25 (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;
- 30 (c) include a description of the kind of things in relation to which the powers listed in section 93 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—

- 35
- (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

5 (b) is satisfied that it is necessary to exercise any of the powers listed in section 93 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

10 **Emergency situations**

96. 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

15 (b) is satisfied that it is necessary to take immediate action to prevent, minimise or remedy the harm (in this Division called “emergency action”).

Taking or directing action

97. (1) The authorised officer may—

20 (a) take emergency action; or

(b) direct another person, orally or in writing, to take emergency action.

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

25 **Entry and exercise of powers**

98. (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

30 (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 93.

(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.

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

Seizure

99. (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—

- 10 (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.

15 (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.

20 **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.

25 (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.

Retention to adduce evidence

30 100. (1) The following provisions apply in relation to anything seized under this Part:

- (a) the thing shall be held by the authorised officer 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;

5 (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;

10 (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);

15 the authorised officer shall, subject to section 101, 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)—

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

Disposal

101. (1) Instead of releasing a thing pursuant to paragraph 100 (1) (c), the Authority may give written notice to—

25 (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) A notice shall specify—

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

(b) the period, not being less than 2 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 (3).

(3) The Authority shall—

- (a) after the period specified in a notice under subsection (1) 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.

(4) 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.

(5) Where a thing is disposed of pursuant to subsection (3), the Territory shall compensate the owner.

Division 5—Other powers

Power to require name and address

102. (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

Entry of premises

5 103. (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:

10 (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.

15 (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.

Evidence of analysis

104. A certificate purporting to be signed by an analyst—

20 (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

25 (c) setting out the results of the analysis;

is evidence of the matters so stated.

PART XIII—ENFORCEMENT

Division 1—On-the-spot fines

Interpretation

0 105. In this Division—

“administrative charge” means the administrative charge determined under section 155 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—

5

- (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.

Infringement notices

10

106. 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—

15

- (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;

20

- (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—

25

- (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 111 (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 111 (3) (b);

30

- (g) in the case of a final notice—

35

- (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 111 (3) (b);

- (h) specifies the place at which, and the manner in which, the amount payable under the notice may be paid;
- 5 (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;
- 10 (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.

First notice

- 15 **107.** 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.

Final notice

- 20 **108.** 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
 - 25 (ii) the person has not applied for the withdrawal of the notice under section 110; or
- (b) if the person applied for the withdrawal of the first notice under section 110—
 - (i) the application has been rejected; and
 - 30 (ii) the person has not paid the on-the-spot fine within the extended period allowed under paragraph 111 (3) (b).

Discharge of liability

109. (1) This section applies where—

- 5
- (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 111 (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 111 (3) (b).

(2) Where this section applies—

- 10
- (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.

15 (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.

Application for withdrawal of infringement notices

20 110. (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—

- 25
- (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.

Withdrawal of infringement notices

30 111. (1) On receipt of an application under section 110, the Authority may withdraw the infringement notice if satisfied that—

- 35
- (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.

Prosecution of minor environmental offences

112. (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 111 (1) and the extended period allowed under paragraph 111 (3) (b) has expired.

(2) Nothing in section 107 or 108 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;
- 5 (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.

Non-antecedent value of infringement notice offences

10 **113.** (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
- 15 (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—

- 20 (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.

Service of notices

114. (1) For the purposes of this Division, a notice may be served on a person—

- 25 (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
- (c) by leaving the notice at the person’s last-known place of residence or business with some other person who is apparently—
- 30 (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 109 to such a person if the amount payable under any of the notices so served has been paid.

- 5 (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.

Evidence

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

- 10 (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—
- 15 (i) an extended period for payment was, or was not, allowed under paragraph 111 (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
- 20 was allowed;

is evidence of the matters so stated.

Division 2—Environment protection orders

Environment protection orders

25 116. (1) Where the Authority has reasonable grounds for believing—

- (a) that a person has contravened or is contravening an environmental authorisation or a provision of this Act; and
- (b) that, as a result, environmental harm or an environmental nuisance has occurred or is occurring;

30 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;
- (b) if the order is grounded on a contravention of this Act, specify—
- 35 (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—
- 5 (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
- 10 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
- 15 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—
- 20 (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
- 25 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;
- 30 (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
- 35 read as including a reference to a failure to comply with the general environmental duty.

Contravention of an environment protection order

117. A person shall not contravene an environment protection order.

Penalty:

- 5 (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—
 - 10 (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

Application for order

15 118. (1) An application for an order under section 119 may be made to the Supreme Court by—

- (a) the Authority;
- (b) any person who has standing to bring the proceedings to which the application relates; or
- (c) any other person with the leave of the Court.

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

- 25 (a) there is a significant likelihood that the respondent has contravened the Act or will, if not restrained, contravene the Act;
- (b) environmental harm has been or is likely to be caused by the contravention;
- (c) the proceedings on the application would not otherwise be an abuse of process;
- (d) it is in the public interest that the proceedings should be brought;
- 30 (e) the person has requested the Authority in writing to make an application for an order under this section and the Authority has failed to do so within a time that is reasonable in the circumstances; and
- (f) the person is able to adequately represent the public interest in the conduct of the proceedings.

Making of order

119. (1) If the Supreme Court is satisfied—

(a) that—

(i) the respondent has contravened or is contravening; or

5 (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

10 (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

15 (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.

20 (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;

25 (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—

30 (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.

Interim order

120. (1) Where—

- (a) an application for an order under section 119 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 119 (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.

Security for costs etc.

121. The Supreme Court may order an applicant for an order under section 119—

- (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 122.

Compensation

122. If, on an application for an order under section 119 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;

5 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

10 **Information discovery orders**

123. (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
- 15 (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—

- 20 (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
- 25 (d) set out the maximum penalty, on conviction, for a failure to comply with the order.

Contravention of information discovery order

124. A person shall not contravene an information discovery order.

Penalty:

- 30 (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

Review of decisions

125. (1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Authority—

- 5 (a) under subsection 20 (3) refusing to remit all or part of the determined fee payable under subsection 20 (1);
- (b) under subsection 41 (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;
- 10 (c) under subsection 41 (4) refusing to revoke a notice under subsection 41 (1);
- (d) under paragraph 46 (1) (a), (2) (a), (3) (a) or (4) (a) granting an environmental authorisation;
- 15 (e) under paragraph 46 (1) (a), (2) (a), (3) (a) or (4) (a) granting an environmental authorisation for a specified period;
- (f) under paragraph 46 (1) (a), (2) (a), (3) (a) or (4) (a) granting an environmental authorisation subject to a specified condition;
- (g) under paragraph 46 (1) (b), (2) (b), (3) (b) or (4) (b) refusing to grant an environmental authorisation;
- 20 (h) under subparagraph 48 (a) (ix) preventing the commencement of a specified activity on the ground that the Authority is not satisfied of a specified matter;
- (j) under subsection 53 (2) deciding not to take any action under this Act;
- 25 (k) under section 54 to cancel an accredited environmental authorisation;
- (l) under subsection 55 (1) varying an environmental authorisation;
- (m) under subsection 55 (1) refusing to vary an environmental authorisation on the application of a person under paragraph 55 (1) (a);
- 30 (n) under subsection 58 (1) suspending an environmental authorisation;
- (p) under subsection 58 (1) cancelling an environmental authorisation;
- 35 (q) under subsection 58 (1) suspending an environmental authorisation until a specified condition referred to in subsection 58 (2) has been fulfilled;

- 5
- (r) under subsection 58 (2) refusing to lift a suspension of an environmental authorisation on the ground that a specified condition has not been fulfilled;
- (s) under subsection 64 (1) requiring a person to prepare and submit for approval a draft environmental improvement plan;
- (t) under paragraph 66 (1) (d) rejecting a draft environmental improvement plan and requiring the plan to be amended and resubmitted;
- 10
- (u) under paragraph 66 (2) (b) rejecting a draft environmental improvement plan;
- (v) under subsection 67 (3) accrediting or refusing to accredit an environmental improvement plan;
- (w) under subsection 70 (2) refusing to approve a person to conduct a particular environmental audit;
- 15
- (x) under subsection 70 (4) removing the name of an auditor from the list of auditors maintained by the Authority;
- (y) under subsection 71 (1) requiring a person to commission an environmental audit and submit a report on the audit;
- 20
- (z) under subsection 73 (3) refusing to grant protection in respect of an environmental audit report;
- (za) under subsection 73 (3) granting protection in respect of an environmental audit report subject to a specified condition referred to in subsection 73 (4);
- 25
- (zb) under subsection 77 (1) requiring a person to prepare and submit for approval a draft emergency plan;
- (zc) under paragraph 79 (1) (d) rejecting a draft emergency plan and requiring the plan to be amended and resubmitted;
- (zd) under paragraph 79 (2) (b) rejecting a draft emergency plan;
- 30
- (ze) under paragraph 81 (3) (a) imposing a condition requiring the provision of a financial assurance;
- (zf) under subsection 101 (3) that disposal of a thing seized is necessary;
- (zg) under subsection 116 (1) serving an environment protection order; and
- 35
- (zh) under subsection 116 (1) serving an environment protection order imposing a specified requirement referred to in subsection 116 (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—

- 5 (a) in the case of a decision referred to in paragraph (1) (a), (d), (e), (f), (g), (z), (za) or (ze)—the applicant;
- (b) in the case of a decision referred to in paragraph (1) (b), (c), (h), (s), (t), (u), (v), (y), (zb), (zc), (zd) or (ze)—the person conducting, or proposing to conduct, the relevant activity;
- 10 (c) in the case of a decision referred to in paragraph (1) (j), (k), (l), (m), (n), (p), (q) or (r)—the holder of the environmental authorisation;
- (d) in the case of a decision referred to in paragraph (1) (v)—the person who is refused approval under subsection 70 (2) and the person commissioning the environmental audit; or
- 15 (e) in the case of a decision referred to in paragraph (1) (zg) or (zh)—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*.

20 (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 (r) of Schedule 1.

Review of Minister's decisions

25 126. (1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister under paragraph 87 (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 125 (2) had the decision been made by the Authority.

30 (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

Causing serious environmental harm

5 **127. (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;
- 10 (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:

- 15 (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:

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

25 **(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.

Causing material environmental harm

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

Penalty:

- 5 (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.

10 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.

15 (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.

20 (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.

25 (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.

Causing environmental harm

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

30 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:

- 5 (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:

- 10 (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.

- 15 (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.

Person may be found guilty of lesser charge

20 **130.** (1) If in proceedings for an offence against section 127, 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 128 (1), (2) or (3), the court may find the defendant guilty of the latter offence.

25 (2) If in proceedings for an offence against section 127 or 128, 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 129 (1), (2) or (3), the court may find the defendant guilty of the latter offence.

Causing an environmental nuisance

131. A person shall not cause an environmental nuisance.

30 Penalty:

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

Placing a pollutant where it could cause harm

132. 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.

5 Penalty:

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

No offence committed

10 133. A person does not commit an offence against section 127, 128, 129, 131 or 132 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—

- 15 (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
- 20 (ii) in conducting the activity, the person was complying with the general environmental duty.

Liability limited to harm caused by excess pollutants

134. For the purposes of sections 127, 128 and 129, 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

Offences in Schedule 2

135. Certain offences against this Act are specified in Schedule 2.

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

Conduct of directors, servants and agents

136. (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.

5 (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
- 10 (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 unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- 20 (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.

25 (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.

Criminal liability of officers of body corporate

30 **137. (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.

35 (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;

5 (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; and

10 (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—

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

(a) an officer of the body corporate who is involved in the direction, management or control of the body corporate; or

20 (b) an employee of the body corporate whose duties include advising or making decisions concerning matters to which the offence relates.

Division 3—Other offences

Notice to transferee on transfer of activity or place

25 **138. (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:

30 (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;

- 5
- (c) a notice under section 64 requiring a person to prepare and submit to the Authority a draft environmental improvement plan;
 - (d) a notice under section 71 requiring a person to commission an environmental audit;
 - (e) a notice under section 77 requiring a person to prepare and submit to the Authority a draft emergency plan; or
 - (f) an environment protection order.

Notice to Authority of alteration to equipment and works

10 **139. (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):

- 15
- (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—

- 20
- (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 permit to carry out the relevant building work.

25 (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):

- 30
- (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.

5 **Self-incrimination**

140. (1) A person 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.

10 (2) Where a person (whether a natural person or body corporate) answers a question, furnishes information or produces a document in compliance with a requirement under this Act—

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

15 is not admissible in evidence against the person in any proceedings (whether civil or criminal), other than proceedings for an offence against section 141 or 142.

Obstructing etc. authorised officers

20 141. (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;
- 25 (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):

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

False or misleading statements

142. 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.

5 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

10 **Due diligence**

15 **143. (1)** It is a defence to a prosecution for an offence against section 127, 128, 129, 131, 132 or 137 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 shall have regard to—

- 20 (a) 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) the steps taken by the defendant to ensure that an appropriate environmental management system was established;
 - 25 (ii) whether the defendant was aware, and had taken steps to ensure other persons for whom it was relevant were aware, of applicable environmental standards;
 - 30 (iii) whether the defendant was aware of, and had taken steps to ensure other persons for whom it was relevant were aware, of the requirements of this Act and any other applicable legislation relating to the prevention or minimisation of environmental harm;
 - 35 (iv) the steps taken by the defendant to ensure compliance with any environmental management system established, including by way of the provision of appropriate training to persons operating the system, periodic review of the system's operations and the timely reporting of any substantial non-compliance with the system; or

- (v) whether the defendant reacted immediately and personally when he or she became aware of any non-compliance with the environment management system or other incident connected with the environmental harm that occurred; or
- 5 (b) 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—
- 10 (i) whether the defendant had taken all reasonable steps to become familiar with the applicable requirements of any environmental management system or other operating procedures designed to prevent or minimise environmental harm;
- (ii) whether the defendant had taken all reasonable steps to give effect to the requirements referred to in subparagraph (i); or
- 15 (iii) 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.

Defence of emergency

20 **144. (1)** Subject to subsection (2), it is a defence to a prosecution for an offence against section 43, 127, 128, 129, 131 or 132 or a minor environmental offence within the meaning of Division 1 of Part XIII, that—

- 25 (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.

30 **(2)** Subsection (1) does not apply in relation to a prosecution for an offence against subsection 127 (1), 128 (1) or 129 (1) for recklessly polluting the environment causing environmental harm.

35 **(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 137 (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

Strict liability offences

5 **145.** Subject to sections 143 and 144, an offence against section 43, subsection 127 (3), 128 (3) or 129 (3) or section 131 or 132 or a minor environmental offence within the meaning of Division 1 of Part XIII are offences of strict liability.

Continuing offences

10 **146.** 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.

Additional court orders

15 **147. (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—

- 20 (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—
- 25 (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—
- 30 (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
- 35 (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:

- 5
- (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;
 - 10 (c) that the person pay any other specified costs or expenses incurred by the Authority in relation to conducting the proceedings.

Matters to be considered in imposing penalty

148. 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)—

- 15
- (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;
 - 20 (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
 - 25 (e) whether, in committing the offence, the person was complying with orders from an employer or a supervising employee.

PART XVI—MISCELLANEOUS

Authorised acts and omissions

149. A person does not—

- 30
- (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.

Recovery of clean-up costs

150. (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 154 on the unpaid amount, is a debt due to the Territory by that person.

Assessment of reasonable costs and expenses

151. 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.

Statutory declarations

5 152. (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.

10 Environmental record of directors, servants and agents

15 153. 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.

Evidentiary matters

154. (1) A certificate purporting to be signed by the Authority stating that—

- 20 (a) on a specified date or during a specified period an environment protection policy was or was not in effect under section 24;
- (b) on a specified date or during a specified period, an environmental authorisation—
- 25 (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 73—
- (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;
- 30 (d) on a specified date, a specified environmental improvement plan was or was not approved under section 66; or
- (e) on a specified date, a specified emergency plan was or was not approved under section 79;

is evidence of the matters so stated.

(2) A certificate purporting to be signed by the Australian Capital Territory Planning Authority stating that—

- 5
- (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.

Determination of fees

155. (1) The Minister may, by notice in the *Gazette*, determine—

- 10
- (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 50 (1) (b);
 - 15 (d) the rate per centum per annum at which interest payable under subsection 85 (3) or 150 (4) is to be calculated;
 - (e) the rate per centum per annum at which interest accruing under paragraph 86 (a) is to be calculated; or
 - 20 (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*.

Regulations

25 156. (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—
 - 30 (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.

5 (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 (r) of Schedule 1 relates), including regulating or prohibiting certain conduct.

(4) The regulations may make provision in relation to—

10 (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

15 (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.

20 (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

25 (b) by making any other amendments of that Schedule arising from, connected with or consequential on an amendment under paragraph (a).

SCHEDULE 1

Section 40

**ACTIVITIES REQUIRING AN ENVIRONMENTAL
AUTHORISATION**

Interpretation

1. In this Schedule, unless the contrary intention appears—

- 5 “aquifer” means a geological formation or structure, or an artificial landfill, permeated or capable of being permeated (whether permanently or intermittently) with water;
- 10 “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;
- 15 “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;
 - 20 (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;
- 25 “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;
- 30 “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;
- “motor racing event” means—
- (a) a motor vehicle race or practice for such a race; or

SCHEDULE 1—continued

- (b) a motor vehicle reliability trial or speed test, including a trial or test in relation to which the persons taking part have a permit under section 217 of the *Motor Traffic Act 1936*;

5 “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;

10 “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;

15 “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;

20 “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;

25 “water” includes water that contains impurities;

“waterway” means—

- (a) a river, creek, stream or other natural channel in which water flows (whether permanently or intermittently);
- 30 (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

SCHEDULE 1—continued

- (c) a lake, pond, lagoon or marsh (whether formed by geomorphic processes or by works) in which water collects (whether continuously or intermittently);

5

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.

Class A activities

10

2. For the purposes of section 40, the following activities are Class A activities:

- (a) the manufacture, sale, storage, supply, transport, use, servicing or disposal of, or other dealing with—

15

(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;

20

- (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, including a crematorium, primarily conducted for the destruction, by means of thermal oxidation, of wastes (including biological, veterinary, medical, dental, cytotoxic, quarantine, chemical and municipal wastes);

25

- (d) commercial landfill activities, being the disposal of household or commercial waste under layers of earth;

30

(e) 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;

(f) commercial aquaculture, being the propagation or rearing of fish or other freshwater organisms in the course of which supplementary feeding is used;

35

- (g) 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

SCHEDULE 1—continued

for feeding during a drought or other emergency or the holding of stock at an abattoir or saleyard;

- 5 (h) 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;
- (j) woolscouring or wool carbonising activities, being the commercial cleaning or carbonising of wool;
- 10 (k) 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;
- (m) 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;
- 15 (n) the generation of electricity by a generator classified as a scheduled generating unit under clause 2.2.2 of the National Electricity Code;
- (p) motor racing events, other than such events held at an authorised racing venue;
- 20 (q) the management of a motor racing venue at which motor racing events are held;
- (r) 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;
- 25 (ii) to clear the land; or
- (iii) to conserve biological diversity or ecological integrity;
- (s) 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.
- 30

Class B activities

3. For the purposes of section 40, the following activities are Class B activities:

- 35 (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;

SCHEDULE 1—continued

- 5 (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;
- 10 (e) forestry activities, being the growing, harvesting and management of forestry products;
- (f) major land development or construction activities, being—
- 15 (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;
- 20 (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;
- 25 (h) 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;
- (j) wastewater recycling activities, being—
- 30 (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;
- (k) the collection of waste from commercial premises.

SCHEDULE 2

Section 135

SPECIFIC OFFENCES

Part I—Preliminary

Interpretation

1. In this Schedule, unless the contrary intention appears—

5 “AS 4013” means Australian Standard 4013, “Domestic solid fuel burning appliances—Method for determination of flue gas emission”;

10 “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;

15 “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;

20 “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;

25 “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;

30 “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;

35 (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

SCHEDULE 2—continued

(e) has a motor octane number of not less than 82.0.

Part II—Offences relating to articles that emit noise

Sale of articles that emit excessive noise

5 2. 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

10 **Emission of pollutants in excess of prescribed concentrations**

3. (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.

15 (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.

Sale of solid fuel-burning equipment

20 4. (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.

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

- 30 (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—

SCHEDULE 2—continued

5. (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*.

- 10 (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.

15 **Interference with solid fuel-burning equipment or attached plates**

5. (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.

- 20 (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.

- 25 (3) Subclause (2) does not apply to the sale or installation of prescribed equipment.

(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—

- 30 (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

Determination of higher sulfur content of unleaded petrol

- 35 6. (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

SCHEDULE 2—continued

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.

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

Sale of leaded petrol as unleaded petrol

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

- 10 (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;

15 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.

20 (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;
(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;

25 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.

30 (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—

SCHEDULE 2—continued

- (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
- 5 (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.

10 **Prohibition of sale of leaded petrol unless low lead**

8. (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)—

- 15 (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.

20 (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—

- (a) sell or distribute for sale leaded petrol;
- 25 (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:

- 30 (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 8, a person shall not, otherwise than 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;

5 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.

10 (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:

- 15 (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—

- 20 (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.

Exemption

9. (1) Where the Authority is satisfied—

- 25 (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;

30 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).

SCHEDULE 2—continued

(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

5 (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.

Petrol pumps to be constructed and marked as prescribed

10 10. 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;

15 (b) if the offender is a body corporate—100 penalty units.

Petrol additives

11. (1) A person shall not—

(a) sell or distribute for sale; or

(b) advertise for sale;

20 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;

25 (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.

30 **Type of petrol to be used**

12. (1) A person shall not—

(a) fuel with leaded petrol a motor vehicle that is designed to operate on unleaded petrol; or

SCHEDULE 2—continued

- (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.

5 Penalty:

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

(2) In subclause (1)—

- 10 (a) a reference to a motor vehicle that is designed to operate on unleaded petrol shall be read as a reference to a motor vehicle that complies with any of the design rules known as Australian Design Rule 37, 40 or 41; and
(b) “Australian Design Rule” has the same meaning as in section 7A of the *Motor Traffic Act 1936*.

15 **Sale of high octane unleaded petrol**

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

Penalty:

- 20 (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.

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

Part V—Summary proceedings for indictable offences

Certain offences may be dealt with summarily

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

30 (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.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

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