

2024

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment, Parks and Land Management)

Environment Protection Legislation Amendment Bill 2024

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THE LEGISLATIVE ASSEMBLY
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(As presented)

(Minister for the Environment, Parks and Land Management)

Environment Protection Legislation Amendment Bill 2024

A Bill for

An Act to amend legislation about protection of the environment, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Environment Protection Legislation Amendment Act*
4 *2024*.

5 **2 Commencement**

6 (1) This Act (other than the provisions mentioned in subsection (2))
7 commences on the day after its notification day.

8 *Note* The naming and commencement provisions automatically commence on
9 the notification day (see [Legislation Act](#), s 75 (1)).

10 (2) The following provisions commence 6 months after this Act's
11 notification day:

- 12 • section 4
13 • section 40
14 • sections 42 to 44.

15 **3 Legislation amended**

16 This Act amends the following legislation:

- 17 • [Environment Protection Act 1997](#)
18 • [Environment Protection Regulation 2005](#)
19 • [Water Resources Act 2007](#).

Part 2 Environment Protection Act 1997

4 Offences against Act—application of Criminal Code etc Section 3B, note 1, new dot point

insert

- sch 2, s 2.4 (Sale or installation of solid fuel-burning equipment without certification or plate)

5 Objects of Act Section 3C (1) (d)

omit

economic and social

substitute

economic, social and cultural

6 Principles applying to Act New section 3D (1) (f)

insert

(f) the principle of ecologically sustainable development.

7 Section 3D (2), new definition of *ecologically sustainable development*

insert

ecologically sustainable development means the effective integration of economic and environmental considerations in decision-making processes, achievable through implementation of the following:

- (a) the precautionary principle;
- (b) the inter-generational equity principle;

- 1 (c) conservation of biological diversity and ecological integrity;
2 (d) improved valuation and pricing of environmental resources.

3 **8 Criminal liability of the Territory**
4 **Section 10, new note**

5 *insert*

6 *Note* This Act binds all governments, including the Commonwealth
7 (see [Legislation Act](#), s 121 (1) and the [Australian Capital Territory](#)
8 [\(Self-Government\) Regulations 2021](#) (Cwlth)). However, this Act does
9 not make a government (other than the Territory) liable to be prosecuted
10 for an offence (see [Legislation Act](#), s 121 (3)).

11 **9 Division 2.2 heading**

12 *substitute*

13 **Division 2.2 Public access to documents**

14 **10 Section 19 heading**

15 *substitute*

16 **19 Public access to documents**

17 **11 Section 19 (1)**

18 *omit everything before paragraph (a), substitute*

- 19 (1) The authority must make the following documents available to the
20 public:

21 **12 New section 19 (1) (ca)**

22 *insert*

- 23 (ca) an environment protection policy made under part 4;

1 **13 Section 19 (1) (h)**

2 *after*
3 results
4 *insert*
5 given to the authority

6 **14 Section 19 (1) (l)**

7 *substitute*
8 (l) an order under section 91C (1) (Order to assess whether land
9 contaminated);

10 **15 Section 19 (1) (o)**

11 *substitute*
12 (o) an order under section 91D (1) (Order to remediate land);

13 **16 Section 19 (1) (q)**

14 *substitute*
15 (q) the register of contaminated sites kept under section 21A;

16 **17 Section 19 (2)**

17 *substitute*
18 (2) The authority must make a document mentioned in subsection (1)
19 available by—
20 (a) making the document available for inspection without charge
21 during ordinary business hours at an ACT government office; or
22 (b) making the document accessible without charge on an ACT
23 government website, or by a link on an ACT government
24 website; or

1 (c) if a person requests a copy of the document—giving the person
2 a copy of the document on payment of any reasonable copying
3 costs.

4 (3) This section is subject to section 21 (Exclusion of material from
5 public access).

6 **18 Copies of documents**
7 **Section 20**

8 *omit*

9 **19 Section 21**

10 *substitute*

11 **21 Exclusion of material from public access**

12 (1) This section applies if a person provides a document to the authority
13 in relation to—

14 (a) the grant, variation or review of an environmental authorisation;
15 or

16 (b) the submission of an environmental improvement plan; or

17 (c) the approval of an emergency plan; or

18 (d) the entry into an environment protection agreement; or

19 (e) the making of an order under—

20 (i) section 91C (1) (Order to assess whether land
21 contaminated); or

22 (ii) section 91D (1) (Order to remediate land); or

23 (f) the making of an environment protection order; or

24 (g) setting out the results of monitoring or testing required by the
25 authority to be conducted; or

26 (h) the submission of an environmental audit report; or

- 1 (i) the conduct of an activity to which section 159A (National
2 pollutant inventory—provision of information) applies.
- 3 (2) The person, or another person whose interests are affected by the
4 provision of the document, may apply to the authority to exclude the
5 document, or a stated part of the document, from public access under
6 section 19 because—
- 7 (a) public access to the document or part of the document—
- 8 (i) would reveal a trade secret; or
- 9 (ii) would, or would reasonably be expected to, adversely
10 affect the applicant in relation to the lawful business affairs
11 of the applicant; and
- 12 (b) it would not be in the public interest for the document or part of
13 the document to be published.
- 14 (3) The application must—
- 15 (a) be in writing; and
- 16 (b) be made at the same time as the document is provided to the
17 authority.
- 18 (4) If the authority is satisfied of the matters mentioned in
19 subsection (2) (a) and (b), it must—
- 20 (a) for a document—not make the document available to the public
21 under section 19; or
- 22 (b) for part of a document—
- 23 (i) exclude that part from any copy of the document made
24 available to the public under section 19; and
- 25 (ii) include a statement in the copy made available to the
26 public that an unspecified part of the document has been
27 excluded to protect the confidentiality of information in
28 the excluded part.

- 1 (5) The authority must not make a document, or part of a document, that
2 is the subject of an application available to the public under section 19
3 until the later of—
- 4 (a) 28 days after the authority makes a decision on the application;
5 and
- 6 (b) if an entity applies to the ACAT for review of the decision—
7 the application (including any appeal) has been decided.

8 **20 Notification of making of certain entries in register**
9 **Section 21B (2)**

10 *omit everything before paragraph (a), substitute*

- 11 (1) The notice must state where the following documents are available to
12 the public under section 19:

13 **21 Section 21B (2) (a)**

14 *after*

15 section 91C (1)

16 *insert*

17 (Order to assess whether land contaminated)

18 **22 Section 21B (2) (d)**

19 *after*

20 section 91D (1)

21 *insert*

22 (Order to remediate land)

1	23	Consultation on draft environment protection policy
2		Section 25 (1) (b)
3		<i>substitute</i>
4		(b) stating where the draft policy is available to the public; and
5	24	Section 25 (4)
6		<i>omit</i>
7		copies of the draft environment protection policy available for
8		inspection
9		<i>substitute</i>
10		the draft environment protection policy available to the public
11	25	Notification of environment protection policies etc
12		Section 28 (2) (c), except note
13		<i>substitute</i>
14		(c) a statement of where the policy is made available to the public
15		under section 19.
16	26	Inspection
17		Section 29
18		<i>omit</i>
19	27	Public notice of accredited codes of practice
20		Section 32 (2)
21		<i>substitute</i>
22		(2) A public notice under subsection (1) must state where the accredited
23		code of practice is available to the public under section 19 (Public
24		access to documents).

- 1 **28 Notification of environmental protection agreements**
2 **Section 41 (1) (b)**
- 3 *substitute*
- 4 (b) is available to the public under section 19 (Public access to
5 documents).
- 6 **29 Notification of grant**
7 **Section 50 (3) (b)**
- 8 *substitute*
- 9 (b) is available to the public under section 19 (Public access to
10 documents).
- 11 **30 Notification of review of environmental authorisations**
12 **Section 59 (1) (b)**
- 13 *substitute*
- 14 (b) indicating that a copy of the review is available to the public
15 under section 19 (Public access to documents).
- 16 **31 Matters required to be taken into account for certain**
17 **decisions under div 8.2**
18 **Section 61 (d)**
- 19 *omit*
- 20 economic and social
- 21 *substitute*
- 22 economic, social and cultural

**32 Notification of certain people about orders for
assessment or remediation
Section 91E (2) (b)**

omit

may be inspected

substitute

is available to the public

33 Section 91F

substitute

91F Certain documents to be available free of charge

The authority must—

- (a) make a document mentioned in section 91E (2) (b) available to the public without charge by—
 - (i) making it accessible on an ACT government website, or by a link on an ACT government website; or
 - (ii) making it available for inspection during ordinary business hours at an ACT government office; and
- (b) on request by a person, give the person a copy of the document without charge.

**34 Directions of Minister
Section 93 (2)**

substitute

- (2) The Minister must not give a direction to the authority in relation to a matter under—
 - (a) part 11 (Powers of authorised officers); or
 - (b) part 12 (Powers of analysts); or

- 1 (c) part 13 (Enforcement); or
2 (d) part 14 (Notification and review of decisions); or
3 (e) part 14A (Enforceable undertakings).

4 **35 New section 164B**

5 *insert*

6 **164B Incorporation of documents**

7 (1) A statutory instrument under this Act may apply, adopt or incorporate
8 a law or instrument as in force from time to time.

9 (2) The [Legislation Act](#), section 47 (5) and (6) do not apply to a law or
10 instrument applied, adopted or incorporated under a statutory
11 instrument under this Act (an *incorporated law or instrument*).

12 *Note* An incorporated law or instrument does not need to be notified under the
13 [Legislation Act](#) because s 47 (5) and (6) do not apply (see [Legislation](#)
14 [Act](#), s 47 (7)).

15 (3) The authority must ensure an incorporated law or instrument is—

- 16 (a) on the ACT legislation register; or
17 (b) available for inspection without charge during ordinary business
18 hours at an ACT government office; or
19 (c) accessible without charge on an ACT government website, or by
20 a link on an ACT government website.

21 (4) An incorporated law or instrument is not enforceable by or against
22 the Territory or anyone else unless it is made accessible in accordance
23 with subsection (3).

24 (5) However, subsections (3) and (4) do not apply if the incorporated law
25 or instrument is—

- 26 (a) a law of another jurisdiction; or

- 1 (b) an Australian Standard; or
- 2 (c) an Australian/New Zealand Standard.
- 3 *Note* Laws of other jurisdictions are available on each jurisdiction’s legislation
- 4 website. Standards are available at www.standards.org.au.
- 5 (6) In this section:
- 6 *law of another jurisdiction*—see the [Legislation Act](#), section 47 (10).

7 **36 Regulation-making power**

8 **Section 166 (2) and notes**

- 9 *substitute*
- 10 (2) A regulation may make provision in relation to the sampling and
- 11 analysis of pollutants.

12 **37 Section 166 (3)**

- 13 *omit*
- 14 10 penalty units
- 15 *substitute*
- 16 20 penalty units

17 **38 Class A activities**

18 **Schedule 1, table 1.2, item 35**

- 19 *substitute*

35	the commercial production of alcoholic beverages or distilled alcohol at a facility designed to produce more than—
	(a) 30 kL of alcoholic beverages or distilled alcohol per day; or
	(b) 10 000kL of alcoholic beverages or distilled alcohol per year

1 **39 Schedule 2, section 2.1 (2) and note**

2 *omit*

3 **40 Schedule 2, section 2.4**

4 *substitute*

5 **2.4 Sale or installation of solid fuel-burning equipment**
6 **without certification or plate**

- 7 (1) A person commits an offence if—
- 8 (a) the person sells fuel-burning equipment; and
- 9 (b) the equipment is solid fuel-burning equipment; and
- 10 (c) the equipment is sold for use at residential premises; and
- 11 (d) 1 or more of the requirements mentioned in subsection (3) are
- 12 not met in relation to the equipment.

13 Maximum penalty: 30 penalty units.

- 14 (2) A person commits an offence if—
- 15 (a) the person installs fuel-burning equipment on premises; and
- 16 (b) the equipment is solid fuel-burning equipment; and
- 17 (c) the premises are residential premises; and
- 18 (d) 1 or more of the requirements mentioned in subsection (3) are
- 19 not met in relation to the equipment.

20 Maximum penalty: 30 penalty units.

- 1 (3) For subsections (1) (d) and (2) (d), the following requirements apply
2 in relation to solid fuel-burning equipment:
- 3 (a) if AS/NZS 4012 applies to the equipment—
- 4 (i) a certificate of compliance issued by a certifying entity
5 must be in force, certifying—
- 6 (A) that the equipment, or equipment of the same model
7 and manufacturer, has been tested in accordance with
8 AS/NZS 4012; and
- 9 (B) the overall average efficiency under AS/NZS 4012 of
10 the tested equipment; and
- 11 (ii) the certified overall average efficiency of the tested
12 equipment must be equal to, or higher than, the minimum
13 overall average efficiency prescribed by regulation; and
- 14 (iii) a plate marked in accordance with AS/NZS 4012 must be
15 attached to the equipment; and
- 16 (b) if AS/NZS 4013 applies to the equipment—
- 17 (i) a certificate of compliance issued by a certifying entity
18 must be in force, certifying—
- 19 (A) that the equipment, or equipment of the same model
20 and manufacturer, has been tested in accordance with
21 AS/NZS 4013; and
- 22 (B) the appliance particulate emission factor under
23 AS/NZS 4013 for the tested equipment; and
- 24 (ii) the certified appliance particulate emission factor for the
25 tested equipment must be equal to, or less than, the
26 maximum appliance particulate emission factor prescribed
27 by regulation; and
- 28 (iii) a plate marked in accordance with AS/NZS 4013 must be
29 attached to the equipment.

Section 41

- 1 (4) Subsections (1) and (2) do not apply—
2 (a) to solid fuel-burning equipment prescribed by regulation; or
3 (b) if the person has a reasonable excuse.
- 4 *Note* The defendant has an evidential burden in relation to the matters
5 mentioned in s (4) (see [Criminal Code](#), s 58).
- 6 (5) The authority may declare an entity to be a certifying entity.
7 (6) A declaration under subsection (5) is a disallowable instrument.
8 (7) In this section:
9 *certifying entity* means an entity declared to be a certifying entity by
10 the authority under subsection (5).

41 Reviewable decisions
Schedule 3, item 1

13 *substitute*

1	21 (4)	refuse to exclude document or part of document from being made available to the public	applicant
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1	Part 3	Environment Protection
2		Regulation 2005
3	42	Section 14B heading
4		<i>substitute</i>
5	14B	Minimum overall average efficiency—Act, sch 2,
6		s 2.4 (3) (a) (ii)
7	43	Section 14B
8		<i>after</i>
9		overall
10		<i>insert</i>
11		average
12	44	Section 14C heading
13		<i>substitute</i>
14	14C	Maximum appliance particulate emission factor—Act,
15		sch 2, s 2.4 (3) (b) (ii)
16	45	Definitions for pt 3
17		Section 21, definition of <i>affected person</i>, paragraph (b),
18		note
19		<i>omit</i>

Section 46

- 1 **46** **Sale and hiring of things**
 2 **Section 40 (1), new note 2**
- 3 *insert*
- 4 *Note 2* The [Protection of the Environment Operations Act 1997](#) (NSW) does not
 5 need to be notified under the [Legislation Act](#) because s 47 (6) does not
 6 apply (see [Act](#), s 164B).
- 7 **47** **Section 40 (3), note**
- 8 *omit*
- 9 **48** **Definitions—pt 6**
 10 **Section 53, definition of *agvet code*, note 2**
- 11 *substitute*
- 12 *Note 2* The [Agricultural and Veterinary Chemicals Code Act 1994](#) (Cwlth) does
 13 not need to be notified under the [Legislation Act](#) because s 47 (6) does
 14 not apply (see [Act](#), s 164B).
- 15 **49** **Definitions—div 6.4**
 16 **Section 55C, definition of *registered training***
 17 ***organisation*, new note**
- 18 *insert*
- 19 *Note* The [National Vocational Education and Training Regulator Act 2011](#)
 20 (Cwlth) does not need to be notified under the [Legislation Act](#) because
 21 s 47 (6) does not apply (see [Act](#), s 164B).
- 22 **50** **Definitions for pt 7**
 23 **Section 56, definition of *NEPM*, notes 2 and 3**
- 24 *substitute*
- 25 *Note 2* The NEPM does not need to be notified under the [Legislation Act](#) because
 26 s 47 (6) does not apply (see [Act](#), s 164B). The NEPM is accessible at
 27 www.legislation.gov.au.

51 Application of div 7.2
Section 57 (b), note

substitute

Note The [Hazardous Waste \(Regulation of Exports and Imports\) Act 1989](#) (Cwlth) does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Act](#), s 164B).

52 Procedures and protocols
Section 65 (a), notes 2 and 3

omit

53 Section 65 (d), note

omit

54 Section 65, note

substitute

Note A law or instrument applied by this section does not need to be notified under the [Legislation Act](#) because s 47 (5) and (6) do not apply (see [Act](#), s 164B). A law or instrument applied by this section is available:

- for a law of another jurisdiction—on the jurisdiction’s legislation website
- for a standard published by or on behalf of Standards Australia—at www.standards.org.au
- for another law or instrument—in accordance with the [Act](#), s 164B (3).

55 Sections 67 to 69

omit

- 1 **56** **Definitions for pt 2.1**
2 **Schedule 2, section 2.1, definition of *Central National***
3 ***Area (City Hill Precinct)*, note**
- 4 *substitute*
- 5 *Note* The national capital plan does not need to be notified under the
6 [Legislation Act](#) because s 47 (6) does not apply (see [Act](#), s 164B). The
7 national capital plan is accessible at www.legislation.gov.au.
- 8 **57** **Schedule 2, section 2.1, definition of *Queanbeyan city***
9 ***business zone*, note**
- 10 *omit*
- 11 **58** **Dictionary, definition of *Poisons Standard*, note**
- 12 *substitute*
- 13 *Note* The Poisons Standard does not need to be notified under the
14 [Legislation Act](#) because s 47 (6) does not apply (see [Act](#), s 164B). The
15 Poisons Standard is accessible at www.legislation.gov.au.

Part 4 Water Resources Act 2007

59 ACT water resource plan Section 11A (2) and (3)

omit

an instrument

substitute

a law or instrument

60 Section 11A (3), note

omit

An instrument

substitute

A law or instrument

61 Section 100

substitute

100 Incorporation of documents

- (1) A statutory instrument under this Act may apply, adopt or incorporate a law or instrument as in force from time to time.

Note The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

- (2) The [Legislation Act](#), section 47 (5) and (6) do not apply to any of the following laws or instruments applied, adopted or incorporated under a statutory instrument under this Act:

- (a) a law of another jurisdiction;

Section 62

1 (b) an Australian Standard;

2 (c) an Australian/New Zealand Standard.

3 *Note* These laws and instruments do not need to be notified under the
4 [Legislation Act](#) because s 47 (5) and (6) do not apply (see
5 [Legislation Act](#), s 47 (7)). Laws of other jurisdictions are available on
6 each jurisdiction's website. Standards are available at
7 www.standards.org.au.

8 (3) In this section:

9 *law of another jurisdiction*—see the [Legislation Act](#), section 47 (10).

10 **62 Regulation-making power**
11 **Section 109 (2) and notes**

12 *omit*

13 **63 Section 109 (3)**

14 *omit*

15 10 penalty units

16 *substitute*

17 20 penalty units

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 14 May 2024.

2 Notification

Notified under the [Legislation Act](#) on 2024.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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