

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

**ENVIRONMENT PROTECTION ACT 1997  
ENVIRONMENT PROTECTION REGULATIONS**

**EXPLANATORY STATEMENT**

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Gary Humphries MLA  
Minister for the Environment, Land and Planning

# ENVIRONMENT PROTECTION REGULATIONS

## History

The *Environment Protection Bill 1997*, the *Environment Protection (Consequential Provisions) Bill 1997* and an Exposure Draft of these Environment Protection Regulations were tabled in the Legislative Assembly on 15 May 1997.

The Standing Committee on Planning and Environment conducted an inquiry into the draft legislation and presented its *Report on the Inquiry into the Environment Protection Bill 1997 and the Environment Protection (Consequential Provisions) Bill 1997* to the Legislative Assembly on 4 November 1997.

The Government tabled its response to the Committee's report on 11 November 1997 and accepted the majority of the Committee's recommendations.

The *Environment Protection Act 1997* was passed by the Legislative Assembly on 13 November 1997.

The Environment Protection Regulations have been revised since the Exposure Draft to:

- take into account the Government's response to the Committee's recommendations; and
- include provisions dealing generally with noise emitted in the ACT but affecting premises in NSW and, in particular, setting a limit for noise emitted by motorsport activities at Fairbairn Park.

In addition, additional minor environmental offences which can lead to on-the-spot fines being issued have been added to Schedule 5. These offences relate to pollutants entering the stormwater system.

There are also other minor and technical changes from the Exposure Draft.

There are two areas where the Regulations do not reflect the recommendations of the Standing Committee on Planning and Environment. First, the Government has not changed its policy in relation to limiting noise from motor sports at Fairbairn Park to 50 dB(A). The Government stated its position on this matter in its response to the Committee's recommendations tabled in the Legislative Assembly on 11 November 1997. Second, Regulation 27 has not been changed in relation to averaging noise zone standards at boundaries where noise zones abut residential areas as recommended by the Committee. In its response, the Government indicated it would review this provision. The regulation has not been changed from the Exposure Draft as under the current system, background noise, and therefore the "background plus 5" noise standard would inevitably be higher where residential premises are close to commercial or industrial areas. Given this, averaging at boundaries is a necessary part of the new system based on fixed noise standards. If

averaging is not included the zone noise standard at the boundary between a residential and another zone may well be artificially low.

## Outline

The *Environment Protection Act 1997* (the Act) will afford greater protection for the environment by integrating environmental protection measures into a single and comprehensive legislative regime.

The Environment Protection Regulations (the Regulations) give effect to provisions of the Act by specifying standards in relation to air, noise and water. The Regulations specify protocols in relation to the analysis of pollutants. The Regulations will also prescribe controls in relation to hazardous materials and petroleum products. Fines for minor environmental offences are also specified.

The provisions in the Regulations relating to air will place obligations on individuals as well as corporations about matters such as the lighting of fires, the burning of material and other activities that could release pollutants into the air.

The Regulations will recognise the transitory nature of noise pollution by utilising the concepts of noise zones and affected persons. Various noise zones will be specified and these zones will have a fixed standard rather than relying on a "background noise" formula. In addition, to establish that there has been a failure to comply with the Act it will be necessary for the person affected by the noise to complain to a person appointed under the Act. It will then be necessary to establish that the noise level exceeds the standard specified in the Regulations.

The provisions relating to water will prescribe ambient standards as protection measures. These standards may be revised when national protocols are developed by the National Environment Protection Council under the Commonwealth legislation.

## DETAIL OF REGULATIONS

### ***Part I - Preliminary***

#### *Regulations 1, 2 and 3 - Machinery provision*

Regulations 1, 2 and 3 are machinery provisions. Regulation 1 specifies the title of the Regulations. Regulation 2 provides for the commencement of the Regulations. Regulation 3 is an interpretative provision.

Note that the definition of "affected occupier" in Regulation 3 refers to public land in NSW. This will ensure that the framework established by the regulations for dealing with excessive noise generated in the ACT applies also to affected persons and places in NSW.

### ***Part II - Air***

*Part II of the Regulations deals with air, the lighting of fires; and the emission of pollutants into the air*

#### *Regulation 4 - Application to tobacco products.*

Regulation 4 specifies that Part II of the Regulations will not apply to the lighting or smoking of a cigar, cigarette or pipe.

#### *Regulation 5 - Application of concept of "adverse impact on the environment" in relation to air*

Paragraph 5(a) of the Act specifies that a pollutant shall be taken to cause environmental harm if a pollutant entering the environment exceeds the measure prescribed by the Regulations.

Regulation 5 specifies that a pollutant specified in Table 1 or 2 of the national emission guidelines emitted into the air from a source specified in the Table shall be taken to cause environmental harm if the pollutant being emitted exceeds the standard specified in the Table.

#### *Regulation 6 - Relaxation of application of standard*

Regulation 6 identifies circumstances where the standard prescribed by regulation 5 will not apply.

Subregulation 6(1) specifies that the standard prescribed by regulation 5 in relation to smoke may be exceeded for a period not exceeding 20 minutes during a 24 hour period if:

- the emission is due solely to the lighting of a boiler or incinerator from cold;
- the concentration of pollutant does not exceed the concentration that appears as Shade 3 on the Ringlemann chart; and

- such steps as are practicable and reasonable have been taken to prevent or minimise the emission.

In addition, the concentration of smoke may exceed Shade 3 on the Ringlemann chart for a period not exceeding 10 minutes in any period of 8 hours if the emission of smoke is due solely to the blowing of tubes of a boiler and such steps as are practicable and reasonable have been taken to prevent or minimise the emission.

Subregulation 6(2) specifies that the standard prescribed by regulation 5 in relation to a concentration of soot may be exceeded for a period not exceeding 20 minutes in any period of 24 hours if:

- the emission is due solely to the lighting of a boiler or incinerator from cold;
- the concentration does not exceed the concentration that appears as a blackening index of Shade 5 when tested by the Bacharach filter paper method; and
- such steps as are practicable and reasonable have been taken to prevent or minimise the emission.

In addition, the concentration of soot may exceed the concentration that appears as a blackening index of Shade 5 when tested by the Bacharach filter paper method for a period that does not exceed 5 minutes in any period of 8 hours if the emission of soot is due solely to the blowing of tubes of a boiler and such steps as are practicable and reasonable are taken to prevent or minimise the emission.

#### Regulations 7 and 8 - Relaxation of obligation relating to emission of pollutants

Regulations 7 and 8 specify that a pollutant being emitted into the air shall not be taken to cause environmental harm if the source of the pollutant is a fire authorised under Division 3 of Part II of the Regulations or is a motor vehicle that complies with the requirements of the *Motor Traffic Act 1936* or a regulation made under that Act.

#### Regulation 9 - Sulfur content of fuel oil

Regulation 9 declares sulfur to be a prescribed constituent of fuel oil and at the same time it sets limits on the proportion by percentage weight, of sulfur that may be present in fuel oil which is being used in erected equipment capable of consuming fuel oil.

### Regulation 10 - Minor environmental offences

Regulation 10 specifies that for the purposes of Division I of Part XIII of the Act an offence under Division 3 of Part II of the Regulations shall be a minor environmental offence and may attract an on-the-spot fine of \$120.00 if the offender is a natural person.

### Regulation 11 - Prohibition on the burning of certain substances

Regulation 11 creates an offence of burning certain substances other than in accordance with an environmental authorisation which authorises such substances to be burnt in an incinerator.

Subregulation 11(1) prohibits a person, except in accordance with an environmental authorisation, from burning, or causing or permitting the burning of:

- synthetic plastics;
- synthetic polymers;
- wood that is painted, chemically treated or contaminated with chemicals; or
- chemicals other than a chemical recommended by the manufacturer as a fuel for a fire.

A penalty of 10 penalty units applies for a natural person or 50 penalty units for a body corporate.

Subregulation 11(2) prohibits a person from burning, or causing or permitting the burning of, waste or unseasoned wood in an area that is within the built-up area. Waste is defined to include garden waste but not paper or cardboard that is burnt to start a fire.

Waste generated by a resident of land outside the built up area, which is generated as a result of residence on that land may be burnt. This is because land outside the built-up area is not usually serviced by domestic garbage or other waste collection.

A penalty of 10 penalty units for a natural person or 50 penalty units for a body corporate could be imposed.

### Regulation 12 - Open air fires

Regulation 12 creates an offence of lighting or maintaining a fire in the open air.

Subregulation 12(1) prohibits a person from causing the burning of combustible material in the open air; or from lighting, using or maintaining a fire, in the open air. A penalty of 5 penalty units for a natural person or 25 penalty units for a body corporate could be imposed.

Subregulation 12(2) specifies that the prohibition specified in subregulation 12(1) will not apply in relation to an activity specified in Schedule 1 of the Regulations or where the activity is authorised under the *Environment Protection Act 1997* or the Regulations.

#### Regulation 13 - Prohibition of fire related activities

Regulation 13 specifies a procedure that will enable the Minister to prohibit a person lighting or using a fire in the open air because the weather conditions may exacerbate the pollution that may result. The Minister will not have power to prohibit the use of a fire used solely for the purpose of cooking food or for the heating of a potable liquid, as these cause minimal pollution and are necessary for daily living in some circumstances.

Subregulation 13(1) specifies that the Minister may make a notice prohibiting fire related activities where the Minister is satisfied that the meteorological conditions are, or are likely to become, such that the fire related activities would cause environmental harm or unduly increase pollutants in the air.

Subregulation 13(2) imposes conditions on the Minister in relation to the making of the notice prohibiting fire related activities. Such a notice shall specify the area of the Territory to which the prohibition applies and the times and periods during which the prohibition applies. The notice is to be brought to the attention of the public. The notice is to be:

- published in a daily newspaper printed and circulated in the Territory;
- broadcast from a radio broadcasting station in the Territory; or
- televised from a television station in the Territory.

Subregulation 13(3) is an offence provision. The subregulation prohibits a person from contravening a notice made by the Minister prohibiting fire related activities and announced in one of the media. A penalty of 10 penalty units for a natural person or 50 penalty units for a body corporate could be imposed.

Subregulation 13(4) defines the term "fire related activities" to mean the burning of combustible material or the lighting, using or maintaining of a fire (other than a fire solely for the purpose of cooking food or heating a potable liquid) in the open air.

#### Regulation 14 - Conditions imposed on indoor fires

Regulation 14 is an offence provision. Regulation 14 prohibits a person lighting, using or maintaining a fire inside a building unless that person has taken such steps as are practicable and reasonable to prevent or minimise the emission of pollutants into the air. A penalty of 5 penalty units for a natural person or 25 penalty units for a body corporate could be imposed.

### ***Part III - Hazardous Materials***

*Part III of the Regulations deals with control of hazardous materials*

#### *Regulation 15 - Entry of products into the environment*

Paragraph 5(a) of the Act specifies that a pollutant shall be taken to cause environmental harm if the measure of the pollutant which enters the environment exceeds the measure prescribed by the Regulations.

Regulation 15 specifies that a registered or permitted agvet chemical product shall be taken to cause environmental harm if the measure of the product entering the environment exceeds the measure authorised by the National Registration Authority for Agricultural and Veterinary Chemicals.

Regulation 15 also specifies that an agvet chemical product that is not registered or permitted by the National Registration Authority shall be taken to cause environmental harm if it enters the environment.

An agvet chemical product is an agricultural chemical product or a veterinary chemical product within the meaning of the Agricultural and Veterinary Chemicals Code under the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth.

#### *Ozone depleting substances*

Paragraph 5(b) of the Act provides that a pollutant prescribed by the Regulations that enters the environment shall be taken to have caused environmental harm.

#### *Regulation 16 - Articles containing ozone depleting substances*

Regulation 16 defines discarded domestic articles which may contain ozone depleting substances as domestic aerosols, domestic refrigerators or domestic air conditioning equipment. Discarded motor vehicle air conditioning equipment does not fall into this category.

#### *Regulation 17 - Application of Division 2 Part III of the Regulations*

Regulation 17 specifies that Division 2 does not apply to the sale, purchase, storage, supply, use or disposal of a substance or a thing that contains a substance, merely because that substance contains an insignificant amount of an ozone depleting substance. Similarly, the Division does not apply to the sale or supply of ozone depleting substances as part of a transaction involving the servicing of a thing which uses such a substance.



Regulation 18 - Entry of ozone depleting substances into the atmosphere

Regulation 18 specifies that an ozone depleting substance shall be taken to cause environmental harm if it enters the atmosphere.

Regulations 19 and 20 - Relaxation from application of adverse impact statement

Regulations 19 and 20 specify situations where specified ozone depleting substances entering the atmosphere shall not be taken to cause environmental harm.

Regulation 21 - Identification of Class A activities

Section 42 of the Act prohibits a person from conducting an activity listed in Schedule 1 of the Act as a Class A activity unless that person holds an environmental authorisation. Paragraph 2(a) of Schedule 1 of the Act provides for the Regulations to prescribe activities in relation to an ozone depleting substance or thing.

Regulation 21 lists certain activities in relation to halons, CFCs or HCFCs which attract the prohibition specified in section 40.

Regulation 22 - Prohibition on sale or hire of articles

Regulation 22 prohibits the sale of a new article or other thing, or the hiring out of an article or other thing containing an ozone depleting substance unless the sale or hiring is authorised under Regulation 22.

Regulation 22 also specifies that where the sale is permitted under the *Ozone Protection Act 1989* (NSW) or the *Ozone Protection Regulations 1997* made under that Act, the sale or hiring shall be taken to have been authorised under Regulation 22. The adoption of this procedure will ensure consistency with NSW.

Regulation 23 - Entry of polychlorinated biphenyls (PCBs) into the environment

Paragraph 5(b) of the Act provides that a pollutant prescribed by the Regulations that enters the environment shall be taken to cause environmental harm.

Regulation 23 specifies that polychlorinated biphenyl material or a thing containing such material shall be taken to cause environmental harm if the material or thing enters the environment.

## **Part IV - Noise**

*Part IV of the Regulations deals with measuring noise levels and what constitutes excessive noise*

### Regulation 24 - Procedures for taking measurements

Regulation 24 specifies the noise level to be applied for deciding whether the emission is excessive and the procedure for measuring noise emitted.

Regulation 24 specifies that the noise level shall be  $L_{10,T}$  which is the upper 10th percentile of noise emitted during the period measured. Regulation 24 also specifies that measurement of noise levels shall be taken and adjustments for the nature of the noise shall be determined in accordance with procedures set out in the manual called the Environmental Noise Control Manual published by the NSW Environment Protection Authority.

### Regulation 25 - Definitions of compliance locations

Regulation 25 specifies that noise levels must be measured at a compliance location to determine whether or not there is compliance with the Act or the Regulations. Regulation 25 outlines criteria for determining the compliance location.

First, the compliance location in respect to noise being emitted during an authorised activity, or where an environmental protection agreement under Section 38 of the Act is in effect, is the location specified in the authorisation or agreement where that authorisation or agreement specifies the compliance location. An authorised activity is an activity for which there is environmental authorisation under Part VIII of the Act.

Second, the compliance location in respect of the noise emitted during the course of an activity which is approved under a law of the Territory on public land (and for which the criterion noted in the preceding paragraph does not apply), shall be the location specified in the approval.

Third, if the boundary of leased land is formed by a road separating two noise zones that have different noise standards and first criterion noted above does not apply, then the compliance location is any point on, or as near as practicable to, the boundary of the noise zone with the lowest noise standard.

Fourth, where the noise is emitted from one of two or more sole occupancy units on leased land and categories 1 or 3 do not apply, then the compliance location is any point within any of the other occupancy units and any point on, or as near as practicable to, the boundary of the leased land.

In any other case, the compliance location for leased land is any point on or as near as practicable to the boundary of the leased land and any point as near as practicable to 5 metres from the source of the noise for unleased land.

### Regulation 26 - Adjoining noise zones

Regulation 26 specifies that noise zones are adjoining if the zones have a common boundary or would have a common boundary but for a road separating the zones.

### Regulation 27 - Zone noise standards

Paragraph 5(a) of the Act specifies that a pollutant shall be taken to cause environmental harm if the measure of the pollutant entering the environment exceeds the measure prescribed by the Regulations.

Regulation 27 deals with noise levels. Particular zone noise standards that will be applied are stated in Table 1 in Schedule 2 of the Regulations. Regulation 27 specifies that the noise emitted from a parcel of land in a noise zone shall be taken to cause environmental harm if the noise level exceeds the zone noise standard.

The noise standard in respect of a sole occupancy unit for noise coming from another sole occupancy unit on the leased land is 5dB(A) below the zone noise standard.

Where the boundary of a parcel of leased land is also the boundary of a noise zone which adjoins another noise zone, then the zone noise standard is the average of the adjoining zone noise standards. The average should be rounded up to the nearest dB(A).

### Regulations 28 and 29 - Relaxation from application of causing environmental harm standard

Regulations 28 and 29 specify circumstances where noise will not be taken to cause environmental harm.

Regulation 28 specifies the circumstances where noise emitted from a parcel of land shall not be taken to cause environmental harm. Such circumstances are where the noise is emitted during an activity for the purposes of:

- protecting life and property; or
- preventing, minimising or remedying environment harm;
- maintaining an essential service; or
- constructing or maintaining an arterial road.

Regulation 29 specifies that noise being emitted during an activity specified in Table 2 in Schedule 2 shall not be taken to cause environmental harm if the activity is conducted in accordance with the conditions specified in Table 2 for that activity. The time periods referred to in Table 2 are defined in Table 3.

Note that item 10 of Table 2 permits noise from motorsports activities at Fairbairn Park between 10am and 5pm on any day, provided the noise that is emitted does not

exceed 50dB(A) at the location specified. That location is adjacent to the residence at the Ridgeway Estate, NSW, that is closest to Fairbairn Park. This compliance location has been selected because this is the residence most affected by noise from Fairbairn Park.

#### Regulation 30 - Inconsistency between approval and Part IV of the Regulations

Regulation 30 specifies that where there is an inconsistency between an approval and Part IV of the Regulations then the approval prevails. An approval is a licence, lease, permit or other instrument under a law of the Territory authorising the conduct of an activity on specified public land.

#### Regulation 31 - Complaints

Regulation 31 specifies that it will be necessary for two conditions to be satisfied before a person who conducts an activity that emits noise can be held to have committed an offence against the Act or the Regulations. First, a person who is affected by the noise must make a complaint to an officer authorised under section 14 of the Act, and second, that the noise level at the affected land exceeds the zone noise standard specified in Schedule 2.

#### Regulation 32 - Restriction on sale or hire of articles

Regulation 32 is an offence provision that prohibits a person from selling or hiring out an article or other thing if the sale of that article or other thing in NSW is prohibited under the *Noise Control Act 1975* (NSW) and any regulations under that Act. A penalty of 10 penalty units for a natural person or 50 penalty units for a body corporate could be imposed. The adoption of this standard will provide for consistency with procedures adopted in NSW.

### **Part V - Petroleum Products**

*Part V of the Regulations deal with petroleum products*

#### Regulation 33 - Construction and marking of petrol pumps

Regulation 33 outlines specifications for the construction and marking of petrol pumps.

### **Part VI - Water**

*Part VI of the Regulations deals with water*

These regulations provide details on the quality attributes of water consistent with meeting ecological sustainability objectives and protecting environmental values.

Environmental values are the values associated by the community with particular uses of water and include intrinsic values such as the maintenance of natural ecosystems. For example the community expects that water for stock watering will

not harm stock and that water for aquatic ecosystems will support the flora and fauna present.

#### Regulation 34 - Environmental values

Regulation 34 explains that the environmental values specified in Schedules 3 and 4 are the same as the environmental values specified in the Territory Plan.

#### Regulation 35 - Pollutants into waterways

Paragraph 5(b) of the Act specifies that a pollutant shall be taken to cause environmental harm if the pollutant entering the environment is prescribed by the Regulations.

Regulation 35 and Schedule 3 lists substances under each environmental value which can cause environmental harm for that specified use. Activities which release these substances into water will be controlled by authorisations or other appropriate measures.

#### Regulation 36 - Water quality standards

Regulation 36 and Schedule 4 list the acceptable levels of substances permitted in waters of particular environmental values. . Activities will be controlled by authorisations or other appropriate means to ensure these levels are not exceeded.

#### Regulation 37 - Compliance with standards

Regulation 37 specifies the criteria to be applied to establish compliance with the standards.

### **Part VII - Minor Environmental Offences**

*Part VII of the Regulations deals with minor environmental offences.*

#### Regulation 38 - Offences

Regulation 38 specifies that the offences specified in Schedule 5 could, on conviction, attract the penalty specified in column 3 of Schedule 5 for a natural person or 5 times that penalty for a body corporate.

Regulation 38 specifies that the on-the-spot fine for an offence specified in Schedule 5 shall be the amount specified in column 2 of Schedule 5. Division 1 of Part XIII of the Act provides for on-the-spot fines.

#### Regulation 39 - No offence committed

Regulation 39 provides that a person does not commit a minor environmental offence where their actions are either:

- expressly permitted by the Act or Regulations; or

- otherwise lawful, provided the person was complying with the general environmental duty.

This provision extends the no offence committed provision (section 143 of the Act) to the Regulations.

***Part VIII - Other matters to be prescribed***

*Part VIII of the Regulations deals with the sampling and analysis of pollutants other than noise*

*Regulation 40 - Sampling and analysis of pollutants other than noise*

Regulation 40 specifies the procedures that are to be adopted for the sampling and analysis of a pollutant other than noise. Regulation 40 also specifies the organisations that can conduct an analysis of a pollutant other than noise.

***Part IX - Miscellaneous***

*Part IX of the Regulations provides for review of decisions*

*Regulation 41 - Review of decisions*

Regulation 41 specifies that application may be made to the Administrative Appeals Tribunal for a decision of the Environment Management Authority approving or refusing to approve a laboratory where an analysis of a pollutant could be conducted.