

Queensland



# ENVIRONMENTAL PROTECTION ACT 1994

**Reprinted as in force on 6 July 1998  
(includes amendments up to Act No. 19 of 1998)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 3**

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This Act is reprinted as at 6 July 1998. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have been made to use standard punctuation consistent with current drafting practice (s 27).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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# **ENVIRONMENTAL PROTECTION ACT 1994**

[as amended by all amendments that commenced on or before 6 July 1998]

**An Act about the protection of Queensland's environment**

## **CHAPTER 1—PRELIMINARY**

### **PART 1—INTRODUCTORY PROVISIONS**

#### **Short title**

1. This Act may be cited as the *Environmental Protection Act 1994*.

#### **Commencement**

- 2.(1) This Act commences on a day to be fixed by proclamation.

(2) However, section 223 and schedule 3 (so far as they relate to the amendment of the *Wet Tropics World Heritage Protection and Management Act 1993*) commence, or are taken to have commenced, on 1 November 1994.

### **PART 2—OBJECT AND ACHIEVEMENT OF ACT**

#### **Object**

3. The object of this Act is to protect Queensland's environment while allowing for development that improves the total quality of life, both now

and in the future, in a way that maintains the ecological processes on which life depends (“**ecologically sustainable development**”).

### **How object of Act is to be achieved**

**4.(1)** The protection of Queensland’s environment is to be achieved by an integrated management program that is consistent with ecologically sustainable development.

**(2)** The program is cyclical and involves the following phases—

- (a) **phase 1**—establishing the state of the environment and defining environmental objectives;
- (b) **phase 2**—developing effective environmental strategies;
- (c) **phase 3**—implementing environmental strategies and integrating them into efficient resource management;
- (d) **phase 4**—ensuring accountability of environmental strategies.

**(3)** The relationship between each of the phases is shown in the figure appearing at the end of this Act.

**(4) Phase 1** is achieved by—

- (a) researching the state of the environment, including essential ecological processes; and
- (b) deciding environmental values to be protected or achieved by consulting industry, government departments and the community.

**(5) Phase 2** is achieved by—

- (a) developing environmental protection policies that, among other things—
  - (i) decide environmental indicators; and
  - (ii) establish ambient and emission standards for contaminants; and
  - (iii) require waste management, including waste prevention and minimisation; and
  - (iv) advise on management practices; and

- (b) promoting environmental responsibility and involvement within the community.

**(6) Phase 3** is achieved by—

- (a) integrating environmental values into land use planning and management of natural resources; and
- (b) ensuring all reasonable and practicable measures are taken to protect environmental values from all sources of environmental harm; and
- (c) monitoring the impact of the release of contaminants into the environment; and
- (d) requiring persons who cause environmental harm to pay costs and penalties for the harm.

**(7) Phase 4** is achieved by—

- (a) reviewing the results of human activities on the environment; and
- (b) evaluating the efficiency and effectiveness of environmental strategies; and
- (c) reporting publicly on the state of the environment.

### **Obligations of persons to achieve object of Act**

**5.** If, under this Act, a function or power is conferred on a person, the person must perform the function or exercise the power in the way that best achieves the object of this Act.

### **Community involvement in administration of Act**

**6.** This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, industry, Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally.

## **PART 3—INTERPRETATION**

### *Division 1—Standard definitions*

#### **Definitions—dictionary**

7. The dictionary in schedule 4 defines particular words used in this Act.<sup>1</sup>

### *Division 2—Key definitions*

#### *Subdivision 1—The environment and its values*

#### **Environment**

8. “**Environment**” includes—

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (d) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a) to (c).

#### **Environmental value**

9. “**Environmental value**” is—

- (a) a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety; or

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<sup>1</sup> In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14.

- (b) another quality of the environment identified and declared to be an environmental value under an environmental protection policy or regulation.

### *Subdivision 2—Environmental contamination*

#### **Contamination**

**10. “Contamination”** of the environment is the release (whether by act or omission) of a contaminant into the environment.

#### **Contaminant**

**11. A “contaminant”** can be—

- (a) a gas, liquid or solid; or
- (b) an odour; or
- (c) an organism (whether alive or dead), including a virus; or
- (d) energy, including noise, heat, radioactivity and electromagnetic radiation; or
- (e) a combination of contaminants.

#### **Noise**

**12. “Noise”** includes vibration of any frequency, whether emitted through air or another medium.

#### **Waste**

**13.(1) “Waste”** includes any thing that is—

- (a) left over, or an unwanted by-product, from an industrial, commercial, domestic or other activity; or
- (b) surplus to the industrial, commercial, domestic or other activity generating the waste.

*Example of paragraph (a)—*

Abandoned or discarded material from an activity is left over, or an unwanted by-product, from the activity.

(2) “**Waste**” can be a gas, liquid, solid or energy, or a combination of any of them.

(3) A thing can be waste whether or not it is of value.

### *Subdivision 3—Environmental harm and nuisance*

#### **Environmental harm**

**14.(1) “Environmental harm”** is any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance.

(2) “**Environmental harm**” may be caused by an activity—

- (a) whether the harm is a direct or indirect result of the activity; or
- (b) whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors.

#### **Environmental nuisance**

**15. “Environmental nuisance”** is unreasonable interference or likely interference with an environmental value caused by—

- (a) noise, dust, odour, light; or
- (b) an unhealthy, offensive or unsightly condition because of contamination; or
- (c) another way prescribed by regulation.

#### **Material environmental harm**

**16.(1) “Material environmental harm”** is environmental harm (other than environmental nuisance)—

- (a) that is not trivial or negligible in nature, extent or context; or



- (b) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount but less than the maximum amount; or
- (c) that results in costs of more than the threshold amount but less than the maximum amount being incurred in taking appropriate action to—
  - (i) prevent or minimise the harm; and
  - (ii) rehabilitate or restore the environment to its condition before the harm.

(2) In this section—

**“maximum amount”** means the threshold amount for serious environmental harm.

**“threshold amount”** means \$5 000 or, if a greater amount is prescribed by regulation, the greater amount.

### **Serious environmental harm**

**17.(1) “Serious environmental harm”** is environmental harm (other than environmental nuisance)—

- (a) that causes actual or potential harm to environmental values that is irreversible, of a high impact or widespread; or
- (b) that causes actual or potential harm to environmental values of an area of high conservation value or special significance; or
- (c) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount; or
- (d) that results in costs of more than the threshold amount being incurred in taking appropriate action to—
  - (i) prevent or minimise the harm; and
  - (ii) rehabilitate or restore the environment to its condition before the harm.

(2) In this section—

**“threshold amount”** means \$50 000 or, if a greater amount is prescribed by regulation, the greater amount.

#### *Subdivision 4—Environmental management*

##### **Best practice environmental management**

**18.(1)** The **“best practice environmental management”** of an activity is the management of the activity to achieve an ongoing minimisation of the activity’s environmental harm through cost-effective measures assessed against the measures currently used nationally and internationally for the activity.

**(2)** In deciding the **“best practice environmental management”** of an activity, regard must be had to the following measures—

- (a) strategic planning by the person carrying out, or proposing to carry out, the activity;
- (b) administrative systems put into effect by the person, including staff training and monitoring and review of the systems;
- (c) public consultation carried out by the person;
- (d) product and process design;
- (e) waste prevention, treatment and disposal.

**(3)** Subsection (2) does not limit the measures to which regard may be had in deciding the **“best practice environmental management”** of an activity.

## **PART 4—OPERATION OF ACT**

### **Act binds all persons**

**19.** This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

**Effect of Act on other Acts**

**20.(1)** This Act is in addition to, and does not limit, any other Act.

**(2)** However, this Act does not apply to a circumstance if any of the following Acts apply to the circumstance—

- *Ambulance Service Act 1991*
- *Fire Service Act 1990*<sup>2</sup>
- *Radioactive Substances Act 1958*
- *State Counter-Disaster Organisation Act 1975*
- *Transport Operations (Marine Pollution) Act 1995*.

**Effect of Act on other rights, civil remedies etc.**

**21.(1)** This Act does not limit any civil right or remedy that exists apart from this Act, whether at common law or otherwise.

**(2)** Without limiting subsection (1), compliance with this Act does not necessarily show that an obligation that exists apart from this Act has been satisfied or has not been breached.

**(3)** In addition, a breach of the general environmental duty does not, of itself, give rise to a civil right or remedy.

**Extra-territorial application of Act**

**22.** A person commits an offence against this Act if—

- (a) the person causes environmental harm within the State by conduct engaged in outside the State; and
- (b) the conduct would constitute the offence against this Act if it were engaged in by the person within the State.

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<sup>2</sup> Now see *Fire and Rescue Authority Act 1990*.

## **CHAPTER 2—ENVIRONMENTAL PROTECTION POLICIES**

### **Preparation of draft policies**

**23.** The Minister may prepare a draft environmental protection policy to enhance or protect Queensland's environment.<sup>3</sup>

### **Scope of policies**

**24.(1)** An environmental protection policy may be made about the environment or anything that affects or may affect the environment.<sup>4</sup>

**(2)** Without limiting subsection (1), an environmental protection policy may be made about any of the following—

- (a) a contaminant, including, for example, an ozone depleting substance;
- (b) an industry or activity;
- (c) a technology or process;
- (d) an environmental value;
- (e) waste management;
- (f) contamination control practice;
- (g) land, air or water quality;
- (h) noise;
- (i) litter.

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<sup>3</sup> An environmental protection policy may be prepared on the Minister's own initiative or if asked by someone else.

<sup>4</sup> Under the *Statutory Instruments Act 1992*, section 24, a statutory instrument may be of general or limited application, eg. an instrument may apply generally throughout the State or be limited in its application to a particular part of the State.

**Contents of policies**

**25.(1)** An environmental protection policy must—

- (a) state that the policy applies to the environment generally or to an aspect or part of the environment specified in the policy; and
- (b) identify the environmental values to be enhanced or protected under the policy.

**(2)** An environmental protection policy may—

- (a) state the objectives to be achieved and maintained under the policy; or
- (b) state indicators, parameters, factors or criteria to be used in measuring or deciding any quality or condition of the environment; or
- (c) establish a program by which the stated objectives are to be achieved and maintained, including, for example, the following—
  - (i) quantifying ambient conditions;
  - (ii) the qualities and maximum quantities of any contaminant permitted to be released into the environment;
  - (iii) the minimum standards to be complied with in the installation or operation of vehicles, plant or equipment for the control of contaminants or waste from stated sources or places;
  - (iv) measures designed to protect the environment or minimise the possibility of environmental harm; or
- (d) provide for a program performance assessment procedure.

**(3)** An environmental protection policy may make provision about anything about which a regulation may be made under this Act, and, in particular—

- (a) prescribing offences for contraventions of the policy; and
- (b) fixing a maximum penalty of a fine of not more than 40 penalty units for the contravention.

**Notice of proposal to prepare draft policy**

**26.(1)** Before preparing a draft environmental protection policy, the Minister must give public notice of a proposal to prepare the draft policy.

**(2)** The notice must—

(a) be published—

(i) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and

(ii) if the policy applies only to a particular area of the State—in a newspaper circulating generally in the area; and

(b) if the policy is about an aspect or part of the environment—state the aspect or part; and

(c) state where copies of the proposal may be obtained; and

(d) invite submissions on the proposal to prepare the draft policy from government departments, public authorities, local governments, land-holders, industry, interested groups and persons and members of the public; and

(e) state a day by which submissions may be made to the Minister.

**(3)** The last day for making submissions must be at least 40 days after the first publication of the notice in the newspaper mentioned in subsection (2)(a)(i).

**(4)** The Minister may also publish the notice in other ways.

**Preparation of draft policy**

**27.** In preparing a draft environmental protection policy, the Minister must consider all submissions properly made to the Minister.

**Notice of preparation of draft policy**

**28.(1)** When a draft environmental protection policy has been prepared, the Minister must give public notice of the draft policy.

**(2)** The notice must—

(a) be published—

- (i) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and
- (ii) if the policy applies only to a particular area of the State—in a newspaper circulating generally in the area; and
- (b) state where copies of the draft policy may be obtained; and
- (c) invite submissions on the draft policy from government departments, public authorities, local governments, land-holders, industry, interested groups and persons and members of the public; and
- (d) state a day by which submissions may be made to the Minister.

(3) The last day for making submissions must be at least 40 days after the first publication of the notice in the newspaper mentioned in subsection (2)(a)(i).

(4) The Minister may also publish the notice in other ways.

### **Preparation of final policy**

**29.(1)** In preparing a final environmental protection policy, the Minister must consider all submissions properly made to the Minister on the draft policy.

(2) If, when making a submission, a person asks the Minister for a response on the submission, the Minister must advise the person in writing whether the submission was accepted or rejected and, if it was rejected, the reasons for the rejection.

### **Approval of final policy**

**30.(1)** A final environmental protection policy is subordinate legislation and does not have effect until it is approved by the Governor in Council.

(2) The chief executive must keep the approved policy open for inspection by members of the public during office hours on business days at—

- (a) the department's head office; and
- (b) other places the chief executive considers appropriate.

### **Giving effect to policies**

**31.** On approval of an environmental protection policy, the administering authority must give effect to the policy.

### **Amendment and repeal of policies**

**32.(1)** An environmental protection policy may be amended by a later policy only if the procedures applying to the preparation and approval of policies under this chapter are followed for the later policy.

**(2)** However, subsection (1) does not apply to—

- (a) the amendment of an environmental protection policy to—
  - (i) correct an error in the policy; or
  - (ii) make a change (other than a change of substance) in the policy; or
  - (iii) if the policy or a regulation provides that an amendment of a stated type may be made to the policy by amendment under this subsection—make an amendment of that type; or
- (b) the amendment or repeal of an environmental protection policy because of the commencement under the national scheme laws of a national environment protection measure.

**(3)** In addition, the following sections do not apply to the preparation and approval of the later policy—

- section 26 (Notice of proposal to prepare draft policy)
- section 27 (Preparation of draft policy).

### **Review of policies**

**33.(1)** The Minister must review each environmental protection policy within 7 years after its commencement.

**(2)** To help the Minister review an environmental protection policy, the chief executive must prepare a report on the policy's environmental effectiveness and economic efficiency.

**(3)** In reviewing the policy, the Minister must have regard to the chief



executive's report.

(4) The procedures applying to the preparation and approval of policies under this chapter apply to the review of policies with all necessary changes and any changes prescribed by regulation.

### **Effect of national environment protection measures**

34. If a national environment protection measure commences under the national scheme laws, the measure is taken to be an environmental protection policy approved under this chapter if it is approved by regulation.

## **CHAPTER 3—ENVIRONMENTAL MANAGEMENT**

### **PART 1—INTERPRETATION**

#### **Application date**

35.(1) This section applies to—

- (a) an application for an environmental authority; or
- (b) an amendment of a licence or level 1 approval; or
- (c) a transfer of a licence; or
- (d) a submission for the approval of—
  - (i) a draft environmental management program; or
  - (ii) an amendment of an approval for an environmental management program.

(2) The “**application date**” for the application or submission is—

- (a) if, within 10 days after the application or submission is made to the administering authority, the authority requires additional information about the environmental authority, transfer or program—the date the authority states as the application date in a

written notice given by the authority to the person who made the application or submission; or

- (b) if paragraph (a) does not apply—the date that is 14 days after the application or submission is made to the administering authority.

(3) However, the application date stated in a notice under subsection (2)(a) must not be a date that is earlier than 2 days after the person's receipt of the notice.

## **PART 2—ENVIRONMENTAL DUTIES**

### **General environmental duty**

**36.(1)** A person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm (the “**general environmental duty**”).<sup>5</sup>

(2) In deciding the measures required to be taken under subsection (1), regard must be had to, for example—

- (a) the nature of the harm or potential harm; and
- (b) the sensitivity of the receiving environment; and
- (c) the current state of technical knowledge for the activity; and
- (d) the likelihood of successful application of the different measures that might be taken; and
- (e) the financial implications of the different measures as they would relate to the type of activity.

### **Duty to notify environmental harm**

**37.(1)** This section applies to a person who, while carrying out an activity

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<sup>5</sup> A breach of the general environmental duty does not, of itself, give rise to a civil right or remedy—see section 21(3).

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(the “**primary activity**”), becomes aware that serious or material environmental harm is caused or threatened by the person’s or someone else’s act or omission in carrying out the primary activity or another activity being carried out in association with the primary activity.

(2) However, this section does not apply if the harm is authorised to be caused under—

- (a) an environmental protection policy; or
- (b) an environmental management program; or
- (c) an environmental protection order; or
- (d) an environmental authority; or
- (e) a development condition of a development approval; or
- (f) an emergency direction.

(3) As soon as reasonably practicable after becoming aware of the event involving the harm, the person must—

- (a) if the person is carrying out the primary activity during the person’s employment or engagement by, or as the agent of, someone else (the “**employer**”)—
  - (i) tell the employer of the event, its nature and the circumstances in which it happened; or
  - (ii) if the employer cannot be contacted—give written notice to the administering authority of the event, its nature and the circumstances in which it happened; or
- (b) if paragraph (a) does not apply to the person—give written notice to the administering authority of the event, its nature and the circumstances in which it happened.

(4) If subsection (3)(a)(i) applies, the employer must immediately give written notice to the administering authority of the event, its nature and the circumstances in which it happened.

(5) A person must not, without reasonable excuse, fail to comply with subsection (3) or (4).

Maximum penalty—100 penalty units.

(6) It is not a reasonable excuse for a person to fail to give notice to the

administering authority of the circumstances involving the harm on the ground that the notice, or the giving of the notice, might tend to incriminate the person.

(7) A notice given by a person is not admissible in evidence against the person (or, if subsection (3)(a) applies, the person or employer) in a prosecution for an offence against this Act constituted by the act or omission that caused or threatened the harm under the notice.

(8) Subsection (7) does not prevent other evidence obtained because of the notice, or the giving of the notice, being admitted in any legal proceeding against the person (or employer).

## **PART 3—ENVIRONMENTALLY RELEVANT ACTIVITIES**

### **Environmentally relevant activities may be prescribed**

**38.(1)** An activity may be prescribed by regulation as an environmentally relevant activity if the Governor in Council is satisfied—

- (a) a contaminant will or may be released into the environment when the activity is carried out; and
- (b) the release of the contaminant will or may cause environmental harm.

(2) An environmentally relevant activity must be prescribed as a level 1 or level 2 environmentally relevant activity, depending on the risk of environmental harm.

### **Licence or approval required to carry out level 1 environmentally relevant activities**

**39.(1)** A person must not carry out a level 1 environmentally relevant activity without a licence or a level 1 approval.

Maximum penalty—400 penalty units.

(2) Subsection (1) has effect subject to section 61A.<sup>6</sup>

### **Approvals required to carry out certain level 2 environmentally relevant activities**

**40.** A regulation may provide that a person must not carry out a level 2 environmentally relevant activity without a level 2 approval.

## **PART 4—ENVIRONMENTAL AUTHORITIES FOR ENVIRONMENTALLY RELEVANT ACTIVITIES WITHOUT DEVELOPMENT APPROVALS**

### *Division 1A—Preliminary*

#### **Application of pt 4**

**40A.(1)** This part applies to the following environmental authorities—

- (a) an environmental authority in force immediately before the commencement of this section to carry out an environmentally relevant activity;
- (b) an environmental authority issued on or after the commencement on application for an environmental authority made before the commencement, to carry out an environmentally relevant activity;
- (c) an environmental authority issued before the commencement but effective from a date on or after the commencement to carry out an environmentally relevant activity;
- (d) an environmental authority to carry out an environmentally relevant activity for which a development approval is not required;

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<sup>6</sup> Section 61A (Special provisions for environmental authorities to carry out new environmentally relevant activities)

- (e) an environmental authority to carry out an environmentally relevant activity for which a development approval is in force immediately before the commencement.

### *Division 1—Applications for, and grant of, environmental authorities*

#### **Application for environmental authority**

**41.(1)** An application for an environmental authority must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the authority to decide the application, including, for example, relevant information about the likely risks to the environment, details of wastes to be generated and any waste minimisation strategy; and
- (c) be accompanied by the appropriate application fee.

**(2)** An application for a level 1 approval for a level 1 environmentally relevant activity may be made only by a person who—

- (a) has held a licence (other than a provisional licence) to carry out the activity for 2 years or more; and
- (b) has not contravened the conditions of the licence in the 2 years immediately before the application is made; and
- (c) is not the holder of an environmental management program approval for the activity or subject to an environmental protection order in carrying out the activity.<sup>7</sup>

**(3)** A regulation may prescribe a circumstance when the application fee, or part of the fee, is not required to accompany the application.

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<sup>7</sup> Section 44(2) sets out the criteria the administering authority must consider in deciding an application for a level 1 approval. The administering authority may grant the application only if it is satisfied the risk of environmental harm from the activity carried out by the licensee is insignificant. In particular, section 44(2)(d) provides that the administering authority must be satisfied the licensee's implementation of best practice environmental management techniques has resulted in levels of environmental protection over and above the levels required by the conditions of the licence.

***Public notice of applications for licences***

**42.(1)** *Within 2 days after the application date for a licence, the applicant must give public notice of the application by—*

- (a) advertisement published in a newspaper circulating generally in the area in which the environmentally relevant activity to which the application relates is proposed to be carried out; and*
- (b) if the application relates to premises—*
  - (i) placing a notice on the premises; and*
  - (ii) serving a notice on the occupiers of all premises adjoining the premises.*

**(2)** *The notice must—*

- (a) be in the approved form; and*
- (b) invite submissions on the application from government departments, public authorities, local governments, land-holders, industry, interested groups and persons and members of the public; and*
- (c) state the day (at least 10 business days after compliance with subsection (1)) nominated by the administering authority as the day by which submissions may be made to the authority.*

**(3)** *From the application date to the review date, the administering authority must—*

- (a) keep the application open for inspection by members of the public at—*
  - (i) if the authority is a local government—at the local government's public office; or*
  - (ii) if subparagraph (i) does not apply—at the authority's head office and the other places the administering executive considers appropriate; and*
- (b) permit a person to take extracts from the application or, on payment of the appropriate fee by a person, give the person a copy of the application.*

**(4)** *The fee for a copy of the application or part of it is the amount that—*

- (a) *the administering authority considers to be reasonable; and*
- (b) *is not more than the reasonable cost of making the copy.*<sup>8</sup>

### **Administering authority to decide application for authority**

**43.(1)** The administering authority must decide each application for an environmental authority within 28 days after the application date.

*(2) Before deciding an application for a licence, the administering authority must be satisfied public notice of the application has been properly given.*<sup>9</sup>

### **Criteria for deciding application**

**44.(1)** In deciding whether to grant or refuse an application for an environmental authority or what should be the conditions of the authority, the administering authority—

- (a) must comply with any applicable environmental protection policy requiring it to—
  - (i) follow stated procedure in evaluating an application for an environmental authority; or
  - (ii) grant or refuse to grant an application for an environmental authority or to impose conditions on an environmental authority; and
- (b) subject to paragraph (a), must also consider the following—
  - (i) the standard criteria;
  - (ii) additional information given in relation to the application;
  - (iii) any report about the applicant's suitability to hold, or continue to hold, an environmental authority;
  - (iv) the views expressed at a conference held in relation to the application.

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<sup>8</sup> This provision had not commenced on or before the reprint date.

<sup>9</sup> This provision had not commenced on or before the reprint date.



(2) Also, if the application is for a level 1 approval for a level 1 environmentally relevant activity, the administering authority may grant the application only if it is satisfied the risk of environmental harm from the activity is insignificant because of—

- (a) any applicable cleaner production techniques used by the licensee; and
- (b) any applicable waste minimisation practices used by the licensee; and
- (c) contingency plans the licensee has developed to manage abnormal or emergency situations that may arise in carrying out the activity; and
- (d) the licensee's implementation of best practice environmental management techniques has resulted in levels of environmental protection over and above the levels required by the conditions of the licence; and
- (e) the licensee's compliance with the general environmental duty.

### **Grant of application for environmental authority**

**45.(1)** If the administering authority decides to grant an application for an environmental authority, the authority must, within the prescribed period—

- (a) issue an appropriate environmental authority in the form approved by the chief executive; and
- (b) insert it in the appropriate register; and
- (c) give a copy of it to the applicant; and
- (d) *if the authority is a licence—give written notice to interested parties of its issue; and*<sup>10</sup>
- (e) if the authority is a level 1 approval—cancel the applicant's licence.

(2) *The notice must state—*

- (a) *the reasons for its issue; and*

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<sup>10</sup> This provision had not commenced on or before the reprint date.

(b) *that the parties may apply for a review of, or appeal against, the decision within 14 days.*<sup>11</sup>

(3) A level 2 approval takes effect from the day of its issue, or a later day stated in it, and continues in force for the term stated in it.

(3A) A level 1 approval takes effect from the day stated in it.

(4) A licence takes effect from the day stated in it, but the day stated must not be a day before the review date.

(5) In this section—

**“prescribed period”** means—

- (a) if, under a regulation, the application fee, or part of the fee, is not required to accompany the application for an environmental authority—within 10 days after the later of—
  - (i) the decision to grant the application is made; or
  - (ii) payment of the application fee or part of the fee; or
- (b) if paragraph (a) does not apply—within 10 days after the decision to grant the application is made.

### **Conditions of environmental authority**

**46.(1)** The administering authority may issue an environmental authority subject to the relevant conditions the authority considers necessary or desirable.<sup>12</sup>

(2) The conditions must include any the administering authority is required to impose under an applicable environmental protection policy.

(3) Without limiting subsection (2), conditions of a licence may—

- (a) require the licensee to do all or any of the following—
  - (i) to install and operate stated plant or equipment in a stated way within a stated time;

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<sup>11</sup> This provision had not commenced on or before the reprint date.

<sup>12</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to impose conditions on an environmental authority.

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- (ii) to take stated measures to minimise the likelihood of environmental harm being caused;
  - (iii) to carry out and report on a stated monitoring program;
  - (iv) to prepare and carry out an environmental management program;
  - (v) to give relevant information reasonably required by the administering authority for the administration or enforcement of this Act;
- (b) prohibit the licensee from changing, replacing or operating any plant or equipment installed in the licensed place if the change, replacement or operation of the plant or equipment increases, or is likely to substantially increase, the risk of environmental harm.

(4) Without limiting subsection (2), conditions of an approval may require the approval holder to take stated measures to minimise the likelihood of environmental harm being caused.

(5) Also, for a level 1 approval, the conditions must include the conditions to which the licence held by the applicant for the environmentally relevant activity immediately before the issue of the approval was subject.

(6) Any additional conditions of a level 1 approval (other than conditions mentioned in subsection (2)) must not be more stringent than the conditions imposed under the licence for the activity held by the person immediately before the issue of the approval.

**Provisional licence**

**47.(1)** The administering authority may issue a provisional licence to an applicant if—

- (a) in the authority's opinion, the applicant is not able to give enough information about the application to permit the authority to issue a licence; but
- (b) the authority is satisfied the applicant will be able to comply with all relevant environmental protection policies and the applicant gives the authority an undertaking to comply with them.

(2) The administering authority must—

- (a) issue a provisional licence in the form approved by the chief executive; and
- (b) insert it in the appropriate register; and
- (c) give a copy of it to the applicant; and
- (d) *give written notice to interested parties of its issue and the reasons for its issue.*<sup>13</sup>

**(3)** The licence—

- (a) takes effect from the day stated in it; and
- (b) remains in force for the term (not longer than 5 years) stated in the licence.

**(4)** However, the day stated in the licence under subsection (3)(a) must not be a day before the review date.

**(5)** The administering authority must not issue more than 1 provisional licence for the same environmentally relevant activity carried out at the same place.

### **Provisional licensee may apply for new licence**

**47A.(1)** A licensee under a provisional licence may apply to the administering authority to have the licence cancelled and a new licence under section 45 issued if the licensee is able to give it the information the licensee was previously unable to give to permit the issue of a licence under section 45.

**(2)** This division (other than section 47) applies to the application with all necessary changes and any changes prescribed under a regulation.

**(3)** If the administering authority issues a new licence, it must cancel the provisional licence.

### **Refusal of application for environmental authority**

**48.(1)** In this section—

**“interstate environmental authority”** means a licence, permit or other

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<sup>13</sup> This provision had not commenced on or before the reprint date.

authority that—

- (a) is issued under an interstate law; and
- (b) is prescribed under a regulation to be an environmental authority for this section.

**“interstate law”** means a law of a State (including a law that has been repealed) prescribed by regulation to be an interstate law for this section.

**“this Act”** includes an Act repealed by this Act.

(2) If the administering authority decides to refuse an application for an environmental authority, the authority must, within 10 days after making the decision, give written notice to the applicant *and interested parties*<sup>14</sup> of the decision.

(3) The notice must state—

- (a) the reasons for the refusal; and
- (b) that the person may apply for a review of, or appeal against, the decision within 14 days.<sup>15</sup>

(4) Without limiting subsection (2), the administering authority may refuse an application for an environmental authority if it is satisfied the applicant is not a suitable person to hold the authority, including, for example—

- (a) if the applicant has been convicted of an offence against this Act or an interstate law, or has held an environmental authority or interstate environmental authority that has been cancelled or suspended under this Act or an interstate law; or
- (b) if the applicant is a corporation—an executive officer of the corporation—
  - (i) has been convicted of an offence against this Act or an interstate law, or has held an environmental authority or

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<sup>14</sup> This provision so far as it relates to “interested parties” had not commenced on or before the reprint date.

<sup>15</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse an application for an environmental authority.

interstate environmental authority that has been cancelled or suspended under this Act or an interstate law; or

- (ii) is or has been an executive officer of another corporation that has been convicted of an offence against this Act or an interstate law, or has held an environmental authority or interstate environmental authority that has been cancelled or suspended under this Act or an interstate law.

### *Division 2—Amendment of licences*

#### **Amendment of licence on application of licensee**

**49.(1)** A licensee may apply to the administering authority for an amendment of the licence.

**(2)** The application must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the authority to decide the application; and
- (c) be accompanied by the appropriate application fee.

**(3)** *The administering authority may direct the applicant to give public notice of the application if the authority is satisfied there is likely to be a substantial increase in the risk of environmental harm under the amended licence because of a substantial change in—*

- (a) *the quantity or quality of contaminant licensed to be released into the environment; or*
- (b) *the results of the release of a quantity or quality of contaminant licensed to be released into the environment.*

**(4)** *Without limiting subsection (3)(a), an increase of 10% or more in the quantity of a contaminant to be released into the environment is a substantial change.*

**(5)** *The notice must be given by—*

- (a) *advertisement published in a newspaper circulating generally in the area in which the licensed activity is, or is proposed to be,*

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*carried out; and*

(b) *if the application relates to a licensed place—*

(i) *placing a notice on the licensed place; and*

(ii) *-serving a notice on the occupiers of all premises adjoining the licensed place.*

(6) *The notice must—*

(a) *be in the approved form; and*

(b) *invite submissions on the application from government departments, public authorities, local governments, land-holders, industry, interested groups and persons and members of the public; and*

(c) *state the day (at least 10 business days after compliance with subsection (5)) nominated by the administering authority as the day by which submissions may be made to the authority.<sup>16</sup>*

(7) The administering authority must decide the application within 28 days after the application date.

(8) *If public notice of the application is required, the administering authority must be satisfied public notice has been properly given before deciding the application.<sup>17</sup>*

(9) The criteria for deciding an application for an environmental authority mentioned in section 44 apply to the application for the amendment of the licence.

(10) If the administering authority is satisfied the amendment is necessary or desirable, the authority must—

(a) grant the application;<sup>18</sup> and

(b) *give written notice to interested parties of its decision and the*

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<sup>16</sup> These provisions had not commenced on or before the reprint date.

<sup>17</sup> This provision had not commenced on or before the reprint date.

<sup>18</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to grant an application to amend the licence.

*reasons for the decision.*<sup>19</sup>

(11) If the administering authority is not satisfied the amendment is necessary or desirable, it must give written notice to the applicant *and interested parties*<sup>20</sup> of its decision and the reasons for the decision.<sup>21</sup>

(12) Notice under subsection (10)(b) or (11) must be given within 10 days after the administering authority decides to grant or refuse the application.

### **Amendment of licence by administering authority**

**50.(1)** The administering authority may amend a licence at any time if—

- (a) the licensee agrees to the amendment; or
- (b) the authority considers it is necessary or desirable because—
  - (i) of a contravention of this Act by the licensee; or
  - (ii) the licence was issued because of a materially false or misleading representation or declaration (made either orally or in writing); or
  - (iii) the licence was issued on the basis of a miscalculation of the quantity or quality of contaminant licensed to be released into the environment; or
  - (iv) the licence was issued on the basis of a miscalculation of the effects of the release of a quantity or quality of contaminant licensed to be released into the environment; or
  - (v) of a change in the way in which, or the place where, contaminants are, or are likely to be, released into the environment; or
  - (vi) of the approval of an environmental protection policy or the

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<sup>19</sup> This provision had not commenced on or before the reprint date.

<sup>20</sup> This provision so far as it relates to “interested parties” had not commenced on or before the reprint date.

<sup>21</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse an application to amend a licence.



approval of the amendment of an environmental protection policy; or

(vii) of an environmental report; or

(viii) of another circumstance prescribed by regulation.

(2) If the administering authority considers it necessary or desirable to amend a licence under subsection (1)(b), the authority must give the licensee a written notice under this section.

(3) The notice must—

(a) state the proposed amendment and the grounds for the amendment; and

(b) outline the facts and circumstances forming the basis for the grounds; and

(c) invite the licensee to make representations to the administering authority to show why the licence should not be amended; and

(d) state the term (at least 30 days after the notice is given to the licensee) within which the representations may be made.

(4) The representations must be made in writing.

(5) After the end of the term stated in the notice, the administering authority must consider the representations properly made by the licensee.

(6) The administering authority may amend the licence if it is satisfied the amendment is necessary or desirable.<sup>22</sup>

(7) If the administering authority is not satisfied the amendment is necessary or desirable, it must promptly give written notice to the licensee of its decision.

### **Procedure for amending licence**

**51.(1)** This section applies if the administering authority—

(a) grants an application to amend a licence; or

(b) decides to amend a licence.

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<sup>22</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to amend a licence.

(2) The administering authority must amend the licence and give a copy of the amended licence to the licensee.

(3) The amendment of the licence takes effect from—

- (a) the day after the review date; or
- (b) if subsection (1)(a) applies—the earlier date agreed to by the licensee.

### *Division 3—Dealings with licences*

#### **Surrender of licence**

**52.(1)** A licensee may surrender the licence by written notice given to the administering authority.

(2) The surrender of the licence takes effect—

- (a) on the day on which the notice is given; or
- (b) if a later day is specified in the notice—on the later day.

#### **Notice of disposal by licensee**

**53.(1)** This section applies if a licensee proposes to dispose of the licensee's business to someone else (the “**buyer**”).

(2) Before agreeing to dispose of the business, the licensee must give written notice to the buyer that the buyer must make application under this Act for the transfer of the licence or for a new licence.

Maximum penalty—50 penalty units.

(3) If the licensee does not comply with subsection (2), the buyer may rescind the agreement by written notice given to the licensee before the completion of the agreement or possession under the agreement, whichever is the earlier.

(4) On rescission of the agreement under subsection (3)—

- (a) a person who was paid amounts by the buyer under the agreement must refund the amounts to the buyer; and
- (b) the buyer must return to the licensee any documents about the

disposal (other than the buyer's copy of the agreement).

(5) Subsections (3) and (4) have effect despite any other Act or anything to the contrary in the agreement.

### **Notice of ceasing to carry out licensed activity**

**54.** Within 14 days after ceasing the environmental relevant activity to which a licence relates, the licensee must give written notice of the ceasing of the activity to the administering authority.

Maximum penalty—50 penalty units.

### **Application for transfer of licence**

**55.** An application for the transfer of a licence must—

- (a) be made to the administering authority by the buyer in the approved form; and
- (b) be supported by enough information to enable the administering authority to decide the application; and
- (c) be accompanied by the appropriate application fee.

### **Administering authority to decide application for transfer of licence**

**56.** The administering authority must decide each application for the transfer of a licence within 28 days after the application date.

### **Grant of application for transfer of licence**

**57.(1)** If the administering authority decides to grant an application for the transfer of a licence, the authority must, within 10 days after making the decision cancel the existing licence and issue a new licence.

(2) The administering authority must insert the new licence in the appropriate register and give a copy of it to the applicant.

(3) The new licence takes effect from the day of its issue or a later day stated in it.

**Refusal of application for transfer of licence**

**58.(1)** In this section—

**“interstate environmental authority”** means a licence, permit or other authority that—

- (a) is issued under an interstate law; and
- (b) is prescribed under a regulation to be an environmental authority for this section.

**“interstate law”** means a law of a State (including a law that has been repealed) prescribed by regulation to be an interstate law for this section.

**“this Act”** includes an Act repealed by this Act.

**(2)** If the administering authority decides to refuse an application for the transfer of a licence, the authority must give written notice to the applicant of the refusal and the reasons for the refusal within 10 days after making the decision.<sup>23</sup>

**(3)** Without limiting subsection (2), the administering authority may refuse an application for the transfer of a licence if the authority is satisfied the applicant is not a suitable person to hold the licence, including, for example—

- (a) if the applicant has been convicted of an offence against this Act or an interstate law, or has held an environmental authority or interstate environmental authority that has been cancelled or suspended under this Act or an interstate law; or
- (b) if the applicant is a corporation—an executive officer of the corporation—
  - (i) has been convicted of an offence against this Act or an interstate law, or has held an environmental authority or interstate environmental authority that has been cancelled or suspended under this Act or an interstate law; or
  - (ii) is or has been an executive officer of another corporation that has been convicted of an offence against this Act or an

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<sup>23</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse the transfer of a licence.

interstate law, or has held an environmental authority or interstate environmental authority that has been cancelled or suspended under this Act or an interstate law.

#### *Division 4—Suspension and cancellation of licences*

### **Licence may be suspended or cancelled**

**59.** The administering authority may suspend or cancel a licence issued by it on the following grounds—

- (a) the licensee has been convicted of an offence against this Act;
- (b) the licence was issued because of a materially false or misleading representation or declaration (made either orally or in writing).

### **Procedure for suspension or cancellation**

**60.(1)** If the administering authority considers a ground exists to suspend or cancel the licence (the “**proposed action**”), the authority must give the licensee written notice that—

- (a) states the proposed action; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is suspension of the licence—states the proposed suspension period; and
- (e) invites the licensee to show, within a stated time of at least 30 days, why the proposed action should not be taken.

**(2)** If, after considering all written representations made within the stated time, the administering authority still considers a ground to take the proposed action exists, the authority may—

- (a) if the proposed action was to suspend the licence for a stated period—suspend the licence for not longer than the proposed suspension period; or
- (b) if the proposed action was to cancel the licence—either cancel the

licence or suspend it for a period.

(3) The administering authority must inform the licensee of the decision by written notice.

(4) The notice must be given within 10 days after the administering authority makes its decision.

(5) If the administering authority decides to suspend or cancel the licence, the notice must state—

- (a) the reasons for the decision; and
- (b) that the licensee may apply for a review of, or appeal against, the decision within 14 days.<sup>24</sup>

(6) The administering authority must record particulars of the suspension or cancellation on the licence.

(7) The decision takes effect on the later of—

- (a) the day when the notice is given to the licensee; or
- (b) the day of effect stated in the notice.

(8) However, if the licence is suspended or cancelled because of the conviction of the licensee for an offence—

- (a) the suspension or cancellation does not take effect until—
  - (i) the end of the time to appeal against the conviction; and
  - (ii) if the appeal is made against the conviction—the appeal is finally decided; and
- (b) the suspension or cancellation has no effect if the conviction is quashed on appeal.

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<sup>24</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to suspend or cancel a licence.

***Division 4A—Amendment, suspension and cancellation of level 1 approvals***

***Subdivision 1—Amendment of level 1 approvals***

**Amendment of level 1 approval on application of approval holder**

**60A.(1)** The holder of a level 1 approval may apply to the administering authority for an amendment of the approval.

**(2)** The application must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the authority to decide the application.

**(3)** The administering authority must decide the application within 28 days after the application date.

**(4)** In deciding whether to grant or refuse the application, the administering authority must consider the standard criteria.

**(5)** If the administering authority is satisfied the amendment is necessary or desirable, the authority must grant the application.

**(6)** If the administering authority is not satisfied the amendment is necessary or desirable, it must, within 10 days after making its decision, give written notice to the applicant of its decision.

**(7)** The notice must state—

- (a) the reasons for the decision; and
- (b) that the applicant may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.<sup>25</sup>

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<sup>25</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse an application to amend an approval.

**Amendment of level 1 approval by administering authority**

**60B.(1)** The administering authority may amend a level 1 approval at any time if—

- (a) the approval holder agrees to the amendment; or
- (b) the authority considers it necessary or desirable because—
  - (i) the administering authority is satisfied the risk of environmental harm from the environmentally relevant activity carried out under the approval is no longer insignificant because the grounds in section 44(2)<sup>26</sup> no longer apply; or
  - (ii) of a contravention of this Act by the approval holder; or
  - (iii) the approval was issued because of a materially false or misleading representation or declaration (made either orally or in writing); or
  - (iv) of the approval of an environmental protection policy or the approval of the amendment of an environmental protection policy; or
  - (v) of another circumstance prescribed under a regulation.

**(2)** If the administering authority considers it necessary or desirable to amend a level 1 approval under subsection (1)(b), the authority must give the approval holder a written notice under this section.

**(3)** The notice must—

- (a) state the proposed amendment and the grounds for the amendment; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) invite the approval holder to make written representations to the administering authority to show why the approval should not be amended; and
- (d) state the term (at least 30 days after the notice is given to the approval holder) within which the representations must be made.

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<sup>26</sup> Section 44 (Criteria for deciding application)



(4) After the end of the term stated in the notice, the administering authority must consider the representations properly made by the approval holder.

(5) The administering authority may amend the approval if it is satisfied the amendment is necessary or desirable.

(6) If the administering authority is not satisfied the amendment is necessary or desirable, it must promptly give written notice to the approval holder of its decision.

### **Procedure for amending level 1 approval**

**60C.(1)** This section applies if the administering authority—

- (a) grants an application to amend a level 1 approval; or
- (b) decides to amend a level 1 approval.

(2) The administering authority must amend the approval and give the approval holder—

- (a) a copy of the amended approval; and
- (b) for a decision to amend the approval—a notice stating—
  - (i) the reasons for the decision; and
  - (ii) that the approval holder may apply for a review of, and appeal against, the decision with 14 days after receipt of the notice.<sup>27</sup>

(3) The amended approval takes effect from the day after the review date.

### ***Subdivision 2—Suspension and cancellation of level 1 approvals***

#### **Level 1 approval may be suspended or cancelled**

**60D.** The administering authority may suspend a level 1 approval issued by it, or cancel a level 1 approval issued by it and issue a licence in its place,

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<sup>27</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to amend a level 1 approval.

on the following grounds—

- (a) the administering authority is satisfied risk of environmental harm from the environmentally relevant activity carried out under the approval is no longer insignificant because the grounds in section 44(2)<sup>28</sup> no longer apply;
- (b) the approval holder has been convicted of an offence against this Act;
- (c) the approval was issued because of a materially false or misleading representation or declaration (made either orally or in writing).

### **Procedure for suspension or cancellation**

**60E.(1)** If the administering authority considers a ground exists to suspend the approval, or cancel the approval and issue a licence in its place, (the “**proposed action**”), the authority must give the approval holder written notice that—

- (a) states the proposed action; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is suspension of the approval—states the proposed suspension period; and
- (e) invites the approval holder to show, within a stated time of at least 30 days, why the proposed action should not be taken.

**(2)** If, after considering all written representations made within the stated time, the administering authority still considers a ground to take the proposed action exists, the authority may—

- (a) if the proposed action was to suspend the approval for a stated period—suspend the approval for not longer than the proposed suspension period; or
- (b) if the proposed action was to cancel the approval and issue a

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<sup>28</sup> Section 44 (Criteria for deciding application)

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licence in its place—

- (i) cancel the approval and issue a licence subject to the relevant conditions the administering authority is required to impose under an applicable environmental protection policy and any other conditions the authority considers necessary or desirable; or
- (ii) suspend it for a period.

**(3)** The administering authority must—

- (a) inform the approval holder of the decision by written notice; and
- (b) if the administering authority decides to cancel the approval and issue a licence in its place—
  - (i) issue an appropriate licence in the form approved by the chief executive; and
  - (ii) insert it in the appropriate register.

**(4)** The notice must be given within 10 days after the administering authority makes its decision.

**(5)** If the administering authority decides to suspend the approval or cancel the approval and issue a licence in its place, the notice must—

- (a) state the reasons for the decision; and
- (b) state that the approval holder may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice;<sup>29</sup> and
- (c) for a decision to cancel the approval—be accompanied by a copy of the licence issued to the approval holder in place of the approval.

**(6)** The administering authority must record particulars of the suspension or cancellation on the approval.

**(7)** The decision takes effect on—

- (a) for a decision to suspend the approval—the later of—

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<sup>29</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to suspend or cancel a level 1 approval.

- (i) the day when the notice is given to the approval holder; or
  - (ii) the day of effect stated in the notice; or
- (b) for a decision to cancel the approval and issue a licence in its place—the day after the review date.
- (8) However, if the approval is suspended or cancelled because of the conviction of the approval holder for an offence—
- (a) the suspension or cancellation does not take effect until—
    - (i) the end of the time to appeal against the conviction; and
    - (ii) if the appeal is made against the conviction—the appeal is finally decided; and
  - (b) the suspension or cancellation has no effect if the conviction is quashed on appeal.

## **PART 4A—ENVIRONMENTAL AUTHORITIES FOR LEVEL 1 ENVIRONMENTALLY RELEVANT ACTIVITIES WITH DEVELOPMENT APPROVALS**

### *Division 1—Preliminary*

#### **Application of pt 4A**

**60F.** This part applies to the carrying out of a level 1 environmentally relevant activity for which a development approval is required.

***Division 2—Licences******Subdivision 1—Applications for, and grant of, licences*****Application for licence**

**60G.(1)** An application for a licence to carry out the activity must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the authority to decide the application; and
- (c) be accompanied by the appropriate application fee.

**(2)** However, a regulation may prescribe a circumstance when the application fee, or part of the fee, is not required to accompany the application.

**Administering authority to decide application for licence**

**60H.** The administering authority must decide the application within 28 days after the application date.

**Criteria for deciding application**

**60I.** In deciding whether to grant or refuse the application or what should be the conditions of the licence, the administering authority must consider—

- (a) additional information given in relation to the application; and
- (b) any report about the applicant's suitability to hold, or continue to hold, a licence; and
- (c) any submission by the applicant for an integrated environmental management system for the activity.

**Grant of application for licence**

**60J.(1)** If the administering authority decides to grant the application, the authority must, within the prescribed period—

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- (a) issue a licence in the approved form; and
- (b) insert it in the appropriate register; and
- (c) give to the applicant—
  - (i) a copy of the licence; and
  - (ii) if the authority has imposed conditions on the licence—a written notice stating that the licensee may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice.<sup>30</sup>

(2) The licence takes effect from the day stated in it, but the day stated must not be a day before the review date.

(3) In this section—

**“prescribed period”** means—

- (a) if, under a regulation, the application fee, or part of the fee, is not required to accompany the application for a licence—within 10 days after the later of—
  - (i) the decision to grant the application is made; or
  - (ii) payment of the application fee or part of the fee; or
- (b) if paragraph (a) does not apply—within 10 days after the decision to grant the application is made.

### **Conditions of licence**

**60K.** The administering authority may only impose conditions on the licence—

- (a) about the integrated environmental management system for the activity; or
- (b) requiring a financial assurance under part 9.

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<sup>30</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to impose conditions on a licence.

**Refusal of application for licence**

**60L.(1)** In this section—

**“interstate licence”** means a licence, permit or other authority that—

- (a) is issued under an interstate law; and
- (b) is prescribed under a regulation to be a licence for this section.

**“interstate law”** means a law of a State (including a law that has been repealed) prescribed by regulation to be an interstate law for this section.

**“this Act”** includes an Act repealed by this Act.

**(2)** If the administering authority decides to refuse an application for a licence, the authority must, within 10 days after making the decision, give written notice to the applicant of the decision.

**(3)** The notice must state—

- (a) the reasons for the refusal; and
- (b) that the person may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice.<sup>31</sup>

**(4)** Without limiting subsection (2), the administering authority may refuse an application for a licence if it is satisfied the applicant is not a suitable person to hold the authority, including, for example—

- (a) if the applicant has been convicted of an offence against this Act or an interstate law, or has held a licence or interstate licence that has been cancelled or suspended under this Act or an interstate law; or
- (b) if the applicant is a corporation—an executive officer of the corporation—
  - (i) has been convicted of an offence against this Act or an interstate law, or has held a licence or interstate licence that has been cancelled or suspended under this Act or an interstate law; or

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<sup>31</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse an application for a licence.

- (ii) is or has been an executive officer of another corporation that has been convicted of an offence against this Act or an interstate law, or has held a licence or interstate licence that has been cancelled or suspended under this Act or an interstate law.

### *Subdivision 2—Suspension and cancellation of licences*

#### **Licence may be suspended or cancelled**

**60M.** The administering authority may suspend or cancel a licence issued by it on the following grounds—

- (a) the licensee has been convicted of an offence against this Act;
- (b) the licence was issued because of a materially false or misleading representation or declaration (made either orally or in writing).

#### **Procedure for suspension or cancellation**

**60N.(1)** If the administering authority considers a ground exists to suspend or cancel a licence issued by it, (the “**proposed action**”), the authority must give the licensee written notice that—

- (a) states the proposed action; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is suspension of the licence—states the proposed suspension period; and
- (e) invites the licensee to show, within a stated time of at least 30 days, why the proposed action should not be taken.

**(2)** If, after considering all written representations made within the stated time, the administering authority still considers a ground to take the proposed action exists, the authority may—

- (a) if the proposed action was to suspend the licence for a stated period—suspend the licence for not longer than the proposed



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suspension period; or

- (b) if the proposed action was to cancel the licence—either cancel the licence or suspend it for a period.

**(3)** The administering authority must inform the licensee of the decision by written notice.

**(4)** The notice must be given within 10 days after the administering authority makes its decision.

**(5)** If the administering authority decides to suspend or cancel the licence, the notice must—

- (a) state the reasons for the decision; and
- (b) state that the licensee may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice.<sup>32</sup>

**(6)** The administering authority must record particulars of the suspension or cancellation on the licence.

**(7)** The decision takes effect on the later of—

- (a) the day the notice is given to the licensee; or
- (b) the day of effect stated in the notice.

**(8)** However, if the licence is suspended or cancelled because of the conviction of the licensee for an offence—

- (a) the suspension or cancellation does not take effect until—
- (i) the end of the time to appeal against the conviction; and
- (ii) if the appeal is made against the conviction—the appeal is finally decided; and
- (b) the suspension or cancellation has no effect if the conviction is quashed on appeal.

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<sup>32</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to suspend or cancel a licence.

***Division 3—Level 1 approvals******Subdivision 1—Applications for, and grant of, level 1 approvals*****Application for level 1 approval**

**60O.** An application for a level 1 approval for a level 1 environmentally relevant activity may be made only by a person who—

- (a) has held a licence to carry out the activity for 2 years or more; and
- (b) in the 2 years immediately before the application is made, has not contravened the conditions of the licence or development conditions of the development approval for the activity; and
- (c) is not the holder of an environmental management program approval for the activity or subject to an environmental protection order in carrying out the activity.

**Administering authority to decide application**

**60P.** The administering authority must decide the application within 28 days after the application date.

**Criteria for deciding application**

**60Q.** The administering authority may grant the application only if it is satisfied the risk of environmental harm from the activity is insignificant because of—

- (a) any applicable cleaner production techniques used by the licensee; and
- (b) any applicable waste minimisation practices used by the licensee; and
- (c) contingency plans the licensee has developed to manage abnormal or emergency situations that may arise in carrying out the activity; and
- (d) the licensee's implementation of best practice environmental management techniques has resulted in levels of environmental

protection over and above the levels required by the development conditions of the development approval for the activity; and

- (e) the licensee's compliance with the general environmental duty.

### **Grant of application**

**60R.(1)** If the administering authority decides to grant the application, the authority must, within 10 days after making the decision—

- (a) cancel the applicant's licence; and
- (b) issue a level 1 approval in the approved form; and
- (c) insert it in the appropriate register; and
- (d) give a copy of the licence to the applicant.

**(2)** The approval takes effect from the day stated in it, but the day stated must not be a day before the review date.

### **Conditions of approval**

**60S.** The administering authority may only impose conditions on the approval about the integrated environmental management system for the activity.

### **Refusal of application**

**60T.(1)** If the administering authority decides to refuse the application, the authority must, within 10 days after making the decision, give written notice to the applicant of the decision.

**(2)** The notice must state—

- (a) the reasons for the refusal; and
- (b) that the person may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice.<sup>33</sup>

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<sup>33</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse an application for a level 1 approval.

*Subdivision 2—Suspension and cancellation of level 1 approvals***Level 1 approval may be suspended or cancelled**

**60U.** The administering authority may suspend a level 1 approval issued by it, or cancel a level 1 approval issued by it and issue a licence in its place, on the following grounds—

- (a) the administering authority is satisfied the risk of environmental harm from the environmentally relevant activity carried out under the environmental authority is no longer insignificant because the grounds in section 60Q<sup>34</sup> no longer apply;
- (b) the holder of the approval has been convicted of an offence against this Act;
- (c) the approval was issued because of a materially false or misleading representation or declaration (made either orally or in writing).

**Procedure for suspension or cancellation**

**60V.(1)** If the administering authority considers a ground exists to suspend the approval, or cancel the approval and issue a licence in its place, (the “**proposed action**”), the authority must give the holder of the approval written notice that—

- (a) states the proposed action; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is suspension of the approval—states the proposed suspension period; and
- (e) invites the holder to show, within a stated time of at least 30 days, why the proposed action should not be taken.

**(2)** If, after considering all written representations made within the stated

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<sup>34</sup> Section 60Q (Criteria for deciding application)

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time, the administering authority still considers a ground to take the proposed action exists, the authority may—

- (a) if the proposed action was to suspend the approval for a stated period—suspend the approval for not longer than the proposed suspension period; or
- (b) if the proposed action was to cancel the approval and issue a licence in its place—
  - (i) cancel the approval and issue a licence subject to the conditions the administering authority may impose on a licence under division 2; or
  - (ii) suspend it for a period.

**(3)** The administering authority must—

- (a) inform the holder of the decision by written notice; and
- (b) if the authority decides to cancel the approval and issue a licence in its place—
  - (i) issue an appropriate licence in the approved form; and
  - (ii) insert it in the appropriate register.

**(4)** The notice must be given within 10 days after the administering authority makes its decision.

**(5)** If the administering authority decides to suspend the approval or cancel the approval and issue a licence in its place, the notice must—

- (a) state the reasons for the decision; and
- (b) state that the holder may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice;<sup>35</sup> and
- (c) for a decision to cancel the approval and issue a licence in its place—be accompanied by a copy of the licence issued to the holder in place of the approval.

**(6)** The administering authority must record particulars of the suspension or cancellation on the approval.

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<sup>35</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to suspend or cancel a level 1 approval.

(7) The decision takes effect on—

(a) for a decision to suspend the approval—the later of—

(i) the day when the notice is given to the approval holder; or

(ii) the day of effect stated in the notice; or

(b) for a decision to cancel the approval and issue a licence in its place—the day after the review date.

(8) However, if the approval is suspended or cancelled because of the conviction of the approval holder for an offence—

(a) the suspension or cancellation does not take effect until—

(i) the end of the time to appeal against the conviction; and

(ii) if the appeal is made against the conviction—the appeal is finally decided; and

(b) the suspension or cancellation has no effect if the conviction is quashed on appeal.

#### *Division 4—Dealings with environmental authorities*

#### **Definition for div 4**

**60W.** In this division—

**“environmental authority”** means a licence under division 2 or level 1 approval under division 3 to carry out a level 1 environmentally relevant activity.

#### **Notice of disposal by authority holder**

**60X.(1)** This section applies if the holder of an environmental authority proposes to dispose of the holder’s business to someone else (the **“buyer”**).

(2) Before agreeing to dispose of the business, the holder must give written notice to the buyer that the buyer must make application for a licence under division 2.

Maximum penalty—50 penalty units.

(3) If the holder does not comply with subsection (2), the buyer may rescind the agreement by written notice given to the holder before the completion of the agreement or possession under the agreement, whichever is the earlier.

(4) On rescission of the agreement under subsection (3)—

- (a) a person who was paid amounts by the buyer under the agreement must refund the amounts to the buyer; and
- (b) the buyer must return to the holder any documents about the disposal (other than the buyer's copy of the agreement).

(5) Subsections (3) and (4) have effect despite any other Act or anything to the contrary in the agreement.

### **Notice of ceasing to carry out activity under environmental authority**

**60Y.** Within 14 days after ceasing to carry out the environmentally relevant activity to which an environmental authority relates, the holder of the authority must give written notice of the ceasing of the activity to the administering authority.

Maximum penalty—50 penalty units.

## **PART 4B—DEVELOPMENT APPROVALS FOR CERTAIN ENVIRONMENTALLY RELEVANT ACTIVITIES**

### *Division 1—Preliminary*

#### **Application of pt 4B**

**60Z.** This part applies if the administering authority is the assessment manager or a referral agency for an application for a development approval for development prescribed under a regulation under this Act for schedule 8, part 1, section 6 of the Integrated Planning Act for carrying out an environmentally relevant activity.

***Division 2—Assessing development applications*****Assessing application**

**60ZA.(1)** The administering authority must assess the development application against the criteria mentioned in section 44 (other than paragraph (b)(iii) and (iv) for deciding an application for an environmental authority as if it were an application for a part 4 environmental authority.

**(2)** However, the stated procedures mentioned in section 44(a)(i) apply only so far as they are not inconsistent with a time allowed or required for doing anything under chapter 3 of the Integrated Planning Act.

**(3)** To remove any doubt it is declared that subsection (1) applies only so far as it relates to the environmentally relevant activity.

**(4)** Subsection (1) does not limit section 3.3.15 or chapter 3, part 5, division 2, of the Integrated Planning Act.<sup>36</sup>

**Conditions of development approval**

**60ZB.(1)** In deciding conditions of the development approval, sections 44 and 46 apply, with all necessary changes, as if the application for the approval were an application for a part 4 environmental authority.<sup>37</sup>

**(2)** Subsection (1) has effect subject to section 3.5.30 of the Integrated Planning Act.<sup>38</sup>

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<sup>36</sup> Under section 3.3.15 of the Integrated Planning Act, the administering authority as a referral agency for the application must, among other things, assess the part of the application against the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the authority. Similar provision is made under chapter 3, part 5, division 2, of the Integrated Planning Act for assessment of the application by the assessment manager.

<sup>37</sup> Under section 3.3.18 of the Integrated Planning Act, a concurrence agency's response may, within the limits of its jurisdiction, require conditions be attached to the approval. Further, under section 3.3.19 of the Integrated Planning Act, an advice agency's response may, within the limits of its jurisdiction, recommend the conditions that should attach to the approval.

<sup>38</sup> Under section 3.5.30 of the Integrated Planning Act, conditions of a development approval must be relevant or reasonable.



***Division 3—Effect of issue of certain development approvals*****Application of div 3**

**60ZC.** This division applies if the development application to which this part applies is made for development prescribed under a regulation for this division.

**Cancellation of pt 4 environmental authority and issue of pt 4A environmental authority**

**60ZD.(1)** This section applies if—

- (a) the development application is made by the holder of a part 4 environmental authority (other than an environmental authority issued under section 61) to carry out an environmentally relevant activity; and
- (b) a development approval is issued to the holder for carrying out the activity.

**(2)** The administering authority must cancel the part 4 environmental authority.

**(3)** The cancellation of the part 4 environmental authority takes effect from immediately before the development approval takes effect.

**(4)** If the part 4 environmental authority is a licence or level 1 approval and, on application of the holder, the administering authority issues the holder a part 4A environmental authority for carrying out the activity, the part 4A environmental authority takes effect when the development approval takes effect.

**Issue of single environmental authority on issue of development approval**

**60ZE.(1)** This section applies if—

- (a) the development application is made by the holder of a part 4 environmental authority issued under section 61 to carry out different environmentally relevant activities or environmentally relevant activities at different places (the “**existing authority**”);

and

- (b) a development approval is issued to the holder for carrying out 1 of the activities (the “**development activity**”); and
- (c) the holder applies for a part 4A environmental authority for the development activity.

(2) If the administering authority grants the application, the authority must—

- (a) cancel the existing authority; and
- (b) issue to the holder a single environmental authority for carrying out the activities.

(3) The cancellation of the existing authority takes effect from immediately before the development approval takes effect.

(4) For subsection (2)(b), the single environmental authority—

- (a) is issued—
  - (i) under part 4A, for carrying out the development activity; and
  - (ii) under part 4, for carrying out the other activities; and
- (b) takes effect when the development approval takes effect.

### *Division 4—Offences*

#### **Offence to contravene development condition**

**60ZF.(1)** A person must not wilfully contravene a development condition of a development approval.

Maximum penalty—2 000 penalty units or 2 years imprisonment.

(2) A person must not contravene a development condition of a development approval.

Maximum penalty—1 665 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

## **PART 4C—GENERAL PROVISIONS ABOUT ENVIRONMENTALLY RELEVANT ACTIVITIES**

### **Single applications and environmental authorities**

**61.(1)** The administering authority may accept a single application for an environmental authority from an applicant for different activities carried out by the applicant or activities carried out by the applicant at different places.

**(2)** If the administering authority grants the application, it may issue a single environmental authority, or 2 or more environmental authorities, for the applicant's activities.

**(3)** To remove any doubt it is declared that the administering authority may issue a single environmental authority in relation to part 4 and part 4A environmental authorities.

**(4)** This Act applies to the application and the environmental authority with all necessary changes and any changes prescribed by regulation.

### **Special provisions for environmental authorities to carry out new environmentally relevant activities**

**61A.(1)** This section applies if—

- (a) an activity first becomes an environmentally relevant activity on or after 1 July 1996; and
- (b) immediately before the activity became an environmentally relevant activity, a person was carrying out the activity; and
- (c) within 4 months after the day the activity becomes an environmentally relevant activity, the person applies under this Act for an environmental authority to carry out the activity.

**(2)** A provision of this Act that creates an offence for carrying out the activity without an environmental authority does not apply to the person until—

- (a) if the application is granted—the day the environmental authority issued to the person for the activity takes effect; or
- (b) if the application is refused—the day after notice of the decision to

refuse it is given to the applicant; or

- (c) if, under section 67, the application is taken to have been refused—the end of the time within which it was required to be decided.

(3) Despite section 43(1), the administering authority must decide the application within 3 months after the application date.

(4) For this section, an activity does not first become an environmentally relevant activity on a day if, immediately before the day, an environmental authority could be issued to a person to carry out the activity.

### **Administering authority may require additional information**

**62.** The administering authority may require—

- (a) an applicant under this part to give it additional information about the application; or
- (b) any information included in the applicant's application, or any additional information required under paragraph (a), to be verified by statutory declaration.<sup>39</sup>

### **Authority may inquire into suitability of applicants**

**63.(1)** The administering authority may make inquiries about a person to help in deciding whether—

- (a) the person is a suitable person to hold, or continue to hold, an environmental authority; or
- (b) the person or another person of whom the person is a partner is a suitable person to hold, or continue to hold, an environmental authority; or
- (c) a corporation of which the person is an executive officer is a suitable person to hold, or continue to hold, an environmental authority.

(2) If asked by the administering authority, the commissioner of the

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<sup>39</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require additional information.

police service must give the authority a written report about the person's criminal history.

(3) Subsection (2) applies to the criminal history in the commissioner's possession or to which the commissioner has access.

(4) If the applicant, or an executive officer of an applicant corporation, holds or previously held in another State a licence or other authority similar to an environmental authority, the administering authority may obtain a report from the administering authority in the other State.

### ***Authority may call conference***

*64.(1) The administering authority may invite an applicant under this part and all or any interested parties to the application to a conference to help it in deciding the application.*

*(2) The administering authority must give written notice to all persons invited to attend the conference of when and where the conference is to be held.*

*(3) However, if the administering authority considers it is impracticable to give notice to all persons invited to attend the conference, the authority may give notice of the conference by publishing a notice in the newspapers the authority decides.*

*(4) The administering authority must endeavour to appoint an independent person to mediate the conference.<sup>40</sup>*

### **Extensions of time for decision on applications**

**65.(1)** The administering authority may, before the time in which it is required to make a decision about an application under this part ends, extend the time for deciding the application.

(2) If the administering authority extends the time, it must give written

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<sup>40</sup> This provision had not commenced on or before the reprint date.

notice to the applicant *and interested parties*<sup>41</sup> of the extension and the reasons for the extension before the extension starts.<sup>42</sup>

### ***Substantial compliance with Act may be accepted as compliance***

**66.(1)** *This section applies if, under this Act, a person is required to give public notice of an application and the administering authority is not satisfied public notice has been properly given.*

**(2)** *The administering authority may consider and decide the application if it is satisfied there has been substantial compliance with this Act.*<sup>43</sup>

### **Failure to decide applications taken to be refusal**

**67.** If the administering authority fails to decide an application under this part within the time it is required to decide the application, the failure is taken to be a decision by the authority to refuse the application at the end of the time.

### **Annual licence fee and return**

**68.(1)** At least 30 days before each anniversary of the day a licence takes effect (the “**anniversary day**”), the administering authority must give written notice (the “**annual notice**”) to the licensee to—

- (a) give to the authority an annual return in the approved form; and
- (b) pay to the authority the appropriate annual licence fee other than in a circumstance prescribed under a regulation for this paragraph.

**(2)** If the licensee does not comply with the annual notice on or before the day before the anniversary day, the administering authority must give a notice (the “**reminder notice**”) to the licensee.

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<sup>41</sup> This provision so far as it relates to “interested parties” had not commenced on or before the reprint date.

<sup>42</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to extend the time for deciding an application.

<sup>43</sup> This provision had not commenced on or before the reprint date.

**(3)** The reminder notice must—

- (a) inform the licensee of the licensee’s failure to comply with the annual notice; and
- (b) state a day (the “**due day**”) by which the licensee must—
  - (i) give to the administering authority an annual return in the approved form; and
  - (ii) if a circumstance mentioned in subsection (1)(b) does not apply to the licensee—pay to the authority the annual licence fee and a late payment fee prescribed under a regulation; and
- (c) inform the licensee that the licence will be cancelled unless the licensee complies with the reminder notice.

**(3A)** If a circumstance is prescribed for subsection (1)(b), a regulation may provide for the giving of a notice to the licensee requiring payment of the fee, or part of the fee, by a day stated in the notice (also the “**due day**”).

**(3B)** The due day for a notice under this section must be at least 14 days after the giving of the notice.

**(4)** If the licensee does not comply with a notice under this section, the licence is cancelled, by operation of this subsection, from the day after the due day.

### **Death of licensee**

**69.** If a licensee dies, the personal representative of the licensee’s estate is taken to be the licensee for—

- (a) 6 months from the day of the licensee’s death; or
- (b) for any longer period the administering authority decides, on written application made by the personal representative.

### **Offence to contravene condition of environmental authority**

**70.(1)** The holder of an environmental authority must not wilfully contravene a condition of the authority.

Maximum penalty—

(a) for a licence or a level 1 approval—2 000 penalty units or 2 years imprisonment; or

(b) for a level 2 approval—300 penalty units.

(2) The holder of an environmental authority must not contravene a condition of the authority.

Maximum penalty—

(a) for a licence or a level 1 approval—1 665 penalty units; or

(b) for a level 2 approval—250 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

### **Material change of use for Integrated Planning Act**

**70A.(1)** This section applies if—

(a) the holder of an environmental authority, or development approval, for an environmentally relevant activity proposes to carry out works for the construction or alteration of premises, or for the installation or alteration of plant or equipment in premises, for carrying out the activity; and

(b) the construction, alteration or installation will result in an increase of 10% or more in the release of contaminant into the environment under the authority or approval.

(2) The increase is a material change of use of the premises for the Integrated Planning Act.

## **PART 5—ENVIRONMENTAL EVALUATIONS**

### **What is an environmental evaluation**

**71.** An environmental evaluation is an evaluation of an activity or event



to decide—

- (a) the source, cause or extent of environmental harm being caused, or the extent of environmental harm likely to be caused, by the activity or event; and
- (b) the need for an environmental management program for the activity or event.

### **When environmental audit required**

**72.(1)** If the administering authority, is satisfied on reasonable grounds, that—

- (a) a licensee is not complying with licence conditions; or
- (b) a person is not complying with a development condition of a development approval; or
- (c) a person is not complying with an environmental protection policy or management program;

the authority may require the person to conduct or commission an audit (an “**environmental audit**”) of the matter and submit a report on the audit to it.<sup>44</sup>

**(2)** The person must comply with the requirement.

Maximum penalty—100 penalty units.

### **When environmental investigation required**

**73.(1)** If the administering authority is satisfied on reasonable grounds—

- (a) an event has happened causing serious or material environmental harm while an activity was being carried out; or
- (b) an activity or proposed activity is causing, or is likely to cause serious or material environmental harm;

the authority may require the person who has carried out, is carrying out or is proposing to carry out the activity to conduct or commission an

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<sup>44</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require an audit.

investigation (an “**environmental investigation**”) and submit a report on the investigation to it.<sup>45</sup>

(2) The person must comply with the requirement.

Maximum penalty—100 penalty units.

(3) This section does not apply if the administering authority requires an environmental audit for the event or activity.

### **Notice to conduct or commission environmental evaluation**

**74.(1)** A requirement to conduct or commission an environmental evaluation must be made by written notice.

(2) The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) state the relevant matters for the evaluation; and
- (d) state the day (at least a reasonable period after the notice is given) by which an environmental report must be submitted to the administering authority.

### **Declarations to accompany report**

**75.(1)** An environmental report submitted to the administering authority must be accompanied by a statutory declaration by the recipient and the auditor or investigator.

(2) The recipient’s declaration must be made—

- (a) if the recipient is an individual—by the recipient; or
- (b) if the recipient is a corporation—by an executive officer of the corporation.

(3) The recipient’s declaration must state that the recipient—

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<sup>45</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and an appeal against, a decision to require an investigation.

- (a) has not knowingly given any false or misleading information to the auditor or investigator; and
  - (b) has given all relevant information to the auditor or investigator.
- (4) A declaration by the auditor or investigator must—
- (a) state his or her qualifications and experience relevant to the evaluation; and
  - (b) state that he or she has not knowingly included any false, misleading or incomplete information in the report; and
  - (c) state that he or she has not knowingly failed to reveal any relevant information or document to the administering authority; and
  - (d) certify that—
    - (i) the report addresses the relevant matters for the evaluation and is factually correct; and
    - (ii) the opinions expressed in it are honestly and reasonably held.

### **Administering authority to consider and act on environmental reports**

**76.(1)** The administering authority must decide whether or not to accept the environmental report within 28 days after receiving it.

- (2) If the administering authority accepts the report, it may—
- (a) require the recipient to prepare and submit an environmental management program to it; or
  - (b) if the recipient is a licensee—amend conditions of the recipient's licence; or
  - (c) if the recipient is the holder of a development approval—under section 6.1.44 of the Integrated Planning Act<sup>46</sup>, change or cancel a development condition of the approval; or

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<sup>46</sup> Under section 6.1.44 of the Integrated Planning Act, the administering authority as assessment manager or concurrence agency may change or cancel development conditions in the circumstances, and in accordance with the procedures, in the section.

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- (d) serve an environmental protection order on the recipient; or
- (e) take any other action it considers appropriate.

(3) If the administering authority is satisfied the report does not adequately address the relevant matters for the environmental evaluation to which the report relates, it may require the recipient to conduct or commission another environmental evaluation and submit a report on the evaluation to it.

(4) If the administering authority is satisfied additional relevant information is required, it may require the recipient to give it the information.<sup>47</sup>

(5) A requirement under subsection (3) or (4) must be made by written notice given to the recipient.

(6) The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) state the relevant matters for the evaluation or the information required; and
- (d) state the day (at least a reasonable period after the notice is given) by which the report or information must be given to the administering authority.

### **Costs of environmental evaluation and report**

77. The recipient must meet the following costs—

- (a) the costs of conducting or commissioning an environmental evaluation and report;
- (b) the costs of giving additional relevant information about the report required by the administering authority.

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<sup>47</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require additional information.

**Extensions of time for decisions on submission of environmental reports**

**78.(1)** The administering authority may decide to extend the time it is required to decide whether or not to accept an environmental report if—

- (a) it has required additional relevant information about the report; or
- (b) it is satisfied there are special circumstances for extending the time.

**(2)** If the administering authority extends the time, it must give written notice of the extension to the recipient.

**(3)** The notice must be given before the extension starts.<sup>48</sup>

**Failure to make decision on environmental report taken to be refusal**

**79.** If the administering authority fails to decide whether or not to accept an environmental report within the time it is required to make a decision on the report, the failure is taken to be a decision by the authority to refuse to accept the report at the end of the time.

## **PART 6—ENVIRONMENTAL MANAGEMENT PROGRAMS**

### *Division 1—Preliminary*

**What is an environmental management program**

**80.** An environmental management program is a specific program that, when approved, achieves compliance with this Act for the matters dealt with by the program by—

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<sup>48</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to extend the time for deciding whether to approve the draft program.

- (a) reducing environmental harm; or
- (b) detailing the transition to an environmental standard.

### **Content of program**

**81.** An environmental management program must—

- (a) state the objectives to be achieved and maintained under the program for an activity; and
- (b) state how the objectives are to be achieved, and a timetable to achieve the objectives, taking into account—
  - (i) the best practice environmental management for the activity; and
  - (ii) the risks of environmental harm being caused by the activity; and
- (c) state appropriate performance indicators at intervals of not more than 6 months; and
- (d) make provision for monitoring and reporting compliance with the program.

### ***Division 2—Submission and approval of environmental management programs***

#### **Administering authority may require draft program**

**82.(1)** The administering authority may require a person or public authority to prepare and submit to it for approval a draft environmental management program as a condition of a licence or a development approval for which the administering authority is the assessment manager or a concurrence agency.<sup>49</sup>

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<sup>49</sup> In deciding conditions of a development approval as assessment manager or concurrence agency, the administering authority may, under section 60ZF and section 46(3)(a)(iv) as applied by that section, require the development approval be subject to the condition that the holder prepare and carry out an environmental management program.

(2) The administering authority may also require a person or public authority to prepare and submit to it for approval a draft environmental management program if it is satisfied—

- (a) an activity carried out, or proposed to be carried out, by the person or authority is causing, or may cause, unlawful environmental harm; or
- (b) it is not practicable for the person or public authority to comply with an environmental protection policy or regulation on its commencement.<sup>50</sup>

(3) A requirement under subsection (1) or (2) must be made by written notice given to the person or public authority.

(4) The notice must state—

- (a) the grounds on which the requirement is made; and
- (b) the matters to be addressed by the program; and
- (c) the period over which the program is to be carried out; and
- (d) the day (at least a reasonable period after the notice is given) by which the program must be prepared and submitted to the administering authority.

### **Voluntary submission of draft program**

**83.(1)** A person or public authority may, at any time, submit for approval a draft environmental management program to the administering authority for an activity the person or public authority is carrying out or proposes to carry out.

(2) A person or public authority may submit a document under subsection (1) if it substantially complies with the requirements of this part for an environmental management program, even though the document was not originally prepared for this Act.

(3) The document is taken to be a draft environmental management program.

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<sup>50</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require a program.

**Fee for consideration of draft program**

**84.** A person or public authority that submits a draft environmental management program to an administering authority for approval must pay the authority the fee prescribed by regulation.

**Public notice of submission for approval of certain draft programs**

**85.(1)** This section applies if a person or public authority submits for approval a draft environmental management program that states a period longer than 3 years over which the program is to be carried out.

**(2)** Within 2 days after the application date, the person or public authority must give public notice of the submission by—

- (a) advertisement published in a newspaper circulating generally in the area in which the activity to which the draft program relates is, or is proposed to be, carried out; and
- (b) if the program relates to premises—
  - (i) placing a notice on the premises; and
  - (ii) serving a notice on the occupiers of all premises adjoining the premises.

**(3)** The notice must—

- (a) be in the approved form; and
- (b) invite submissions on the draft program from government departments, public authorities, local governments, land-holders, industry, interested groups and persons and members of the public; and
- (c) state the day (at least 10 business days after compliance with subsection (1)) nominated by the administering authority as the day by which submissions may be made to the authority.

**Administering authority may require additional information**

**86.** The administering authority may require—

- (a) the person or public authority that submits a draft environmental management program to it to give it additional information about



the program; or

- (b) any information included in the draft program, or any additional information required under paragraph (a), to be verified by statutory declaration.<sup>51</sup>

### **Authority may call conference**

**87.(1)** The administering authority may invite the person or public authority that has submitted a draft environmental management program and all or any interested parties for the program to a conference to help it in deciding whether or not to approve the program.

(2) The administering authority must give written notice to all persons invited to attend the conference of when and where the conference is to be held.

(3) However, if the administering authority considers it is impracticable to give notice to all persons invited to attend the conference, the authority may give notice of the conference by publishing a notice in the newspapers the authority decides.

(4) The administering authority must endeavour to appoint an independent person to mediate the conference.

### **Administering authority to consider draft programs**

**88.(1)** The administering authority must decide whether to approve a draft environmental management program submitted to it within 28 days after the application date.

(2) If public notice is required to be given of the submission of the draft program, the administering authority must be satisfied public notice has been properly given before making a decision.

### **Criteria for deciding draft program**

**89.(1)** In deciding whether to approve or refuse to approve the draft

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<sup>51</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require additional information.

program or the conditions (if any) of the approval, the administering authority—

- (a) must comply with any applicable environmental protection policy requiring it to—
  - (i) follow stated procedure in evaluating an application for approval of an environmental management program; or
  - (ii) grant or refuse to grant an application for approval of an environmental management program or to impose conditions on an approval of an environmental management program; and
- (b) subject to paragraph (a), must also consider the following—
  - (i) the standard criteria;
  - (ii) additional information given in relation to the draft program;
  - (iii) the views expressed at a conference held in relation to the draft program.

(2) If the draft program is prepared because of a requirement of a development condition of a development approval, the authority may approve the draft program only if it is not inconsistent with other conditions of the approval.

### **Approval of draft program**

**90.(1)** This section applies if the administering authority—

- (a) approves a draft environmental management program as amended at the request, or with the agreement, of the administering authority; or
- (b) approves a draft program as submitted.<sup>52</sup>

(2) The administering authority must, within 10 days after the approval, issue and give to the person or public authority that submitted the program a certificate of approval of the program.

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<sup>52</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to approve a draft program.

(3) The certificate may be issued subject to the conditions the administering authority considers appropriate and remains in force for the period specified in the certificate.<sup>53</sup>

### **Refusal to approve draft program**

**91.(1)** If the administering authority refuses to approve a draft environmental management program, the authority must, within 10 days after its decision, give written notice to the person or public authority that submitted the program.

(2) The notice must state—

- (a) the reasons for the decision; and
- (b) that the person or public authority may apply for a review of, or appeal against, the decision within 14 days.

### **Extensions of time for decisions on submission of draft programs**

**92.(1)** The administering authority may decide to extend the time in which it is required to decide whether or not to approve a draft program if—

- (a) it has required additional information about the draft program; or
- (b) it is satisfied there are special circumstances for extending the time.

(2) If the administering authority extends the time, it must give written notice of the extension and the reasons for the extension to the person or public authority that submitted the draft program.<sup>54</sup>

(3) The notice must be given before the extension starts.

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<sup>53</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to impose conditions on approval of a program.

<sup>54</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to extend the time for deciding whether to approve the draft program.

**Substantial compliance with Act may be accepted as compliance**

**93.(1)** This section applies if, under this Act, a person or public authority is required to give public notice of the submission of an environmental management program and the administering authority is not satisfied public notice has been properly given.

**(2)** The administering authority may consider and decide whether to approve the draft program if it is satisfied there has been substantial compliance with this Act.

**Failure to approve draft program taken to be refusal**

**94.** If the administering authority fails to decide whether to approve or refuse an environmental management program within the time it is required to make a decision on the program, the failure is taken to be a decision by the authority to refuse to approve the program at the end of the time.

***Division 3—Amendment of approval for environmental management programs*****Application**

**94A.(1)** Division 2 (other than section 85(1)) applies, with all necessary changes, to a submission by the holder of an approval for an environmental management program for an environmentally relevant activity to amend the approval.

**(2)** Without limiting subsection (1), if the holder submits for approval an amendment of the approval that extends the period over which the program is to be carried out to longer than 5 years, section 85(2) and (3) applies to the submission as if the submission were for the approval of a draft environmental management program.

**(3)** Also, the administering authority may approve the amendment only if it is reasonably satisfied it will result in less environmental harm being caused by the carrying out of the activity under the amended approval than the environmental harm that would be caused by carrying out the activity if the approval were not granted.

**(4)** Without limiting the matters to be considered in deciding the

application, the administering authority must have regard to—

- (a) the period under the original approval; and
- (b) the period that remains under the original approval; and
- (c) any change to the period under the original approval; and
- (d) the nature of the risk of environmental harm being caused by the activity.

#### *Division 4—Miscellaneous*

##### **Annual return**

**95.** The holder of an approval of an environmental management program must, within 30 days after each anniversary of the day of approval of the program, give to the administering authority an annual return in the approved form.

Maximum penalty—100 penalty units.

##### **Compliance with program**

**96.(1)** The holder of an approval of an environmental management program must not wilfully contravene the program.

Maximum penalty—1 665 penalty units or 2 years imprisonment.

**(2)** The holder of a certificate of approval of an environmental management program must not contravene the program.

Maximum penalty—835 penalty units.

**(3)** In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

##### **Effect of compliance with program**

**97.(1)** This section applies if an approved environmental management program authorises the holder to do, or not to do, something under the

program.

(2) The holder may do, or not do, the thing under the program despite anything in—

- (a) a licence held by the holder; or
- (b) a development condition of a development approval; or
- (c) an environmental protection policy.

(3) Without limiting subsection (2), the doing, or not doing, of the thing under the program is not a contravention of—

- (a) a condition of a licence held by the holder; or
- (b) an environmental protection policy.

### **Notice of disposal by holder of program approval**

**98.(1)** This section applies if the holder of an approval of an environmental management program proposes to dispose of the place or business to which the program relates to someone else (the “**buyer**”).

(2) Before agreeing to dispose of the place or business, the holder must give written notice to the buyer of the existence of the program.

Maximum penalty—50 penalty units.

(3) If the holder does not comply with subsection (2), the buyer may rescind the agreement by written notice given to the holder before the completion of the agreement or possession under the agreement, whichever is the earlier.

(4) On rescission of the agreement under subsection (3)—

- (a) a person who was paid amounts by the buyer under the agreement must refund the amounts to the buyer; and
- (b) the buyer must return to the holder any documents about the disposal (other than the buyer’s copy of the agreement).

(5) Subsections (3) and (4) have effect despite any other Act or anything to the contrary in the agreement.

(6) Within 14 days after agreeing to dispose of the place or business, the holder must give written notice of the disposal to the administering

authority.

Maximum penalty for subsection (6)—50 penalty units.

### **Notice of ceasing activity by holder of program approval**

**99.** Within 14 days after ceasing to carry out the activity to which an environmental management program relates, the holder of the approval for the program must give written notice of the ceasing the activity to the administering authority.

Maximum penalty—50 penalty units.

### **Compliance with Act at completion of program**

**100.** The holder of an approval for an environmental management program must achieve full compliance with this Act for the matters dealt with by the program at the end of the period over which the program is carried out.

## **PART 7—SPECIAL PROVISIONS ABOUT VOLUNTARY SUBMISSION OF ENVIRONMENTAL MANAGEMENT PROGRAMS**

### **Program notice**

**101.(1)** A person may give the administering authority a notice (the “**program notice**”) about an act or omission (the “**relevant event**”) that—

- (a) has caused or threatened environmental harm in the carrying out of an activity by the person; and
- (b) is lawful apart from this Act.

**(2)** The notice must—

- (a) be in the approved form; and
- (b) give full details of the relevant event; and

- (c) declare the person's intention to prepare, and submit to the authority an environmental management program for the activity; and
- (d) state the other information prescribed by regulation.

(3) The person may submit with the notice any report, or the results of any analysis, monitoring program, test or examination, carried out by or for the person for the relevant event.

### **Program notice privileged**

**102.(1)** If the relevant event stated in the program notice constitutes an offence against this Act (the “**original offence**”), the giving of the program notice, the program notice and any documents submitted with it are not admissible in evidence against the person in a prosecution for the original offence.

(2) Subsection (1) does not prevent other evidence obtained because of the giving of the program notice, the program notice or any documents submitted with it being admitted in any legal proceeding against the person.

### **Authority to act on notice**

**103.(1)** Within 14 days after receiving the program notice, the administering authority must give written notice to the person of—

- (a) its receiving the notice; and
- (b) the day by which a draft environmental management program dealing with the activity must be submitted to it for approval.

(2) The day mentioned in subsection (1)(b) must not be more than 3 months after the administering authority receives the program notice.

(3) This section has effect subject to section 106.<sup>55</sup>

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<sup>55</sup> Section 106 (Authority may apply to Court for order setting aside immunity from prosecution)



**Effect of program notice**

**104.(1)** On receipt of the program notice by the administering authority, the person giving the notice must not be prosecuted for a continuation of the original offence that happens after the authority receives the notice.

**(2)** Subsection (1) has effect only until whichever of the following happens first—

- (a) the person receives from the administering authority an approval of an environmental management program for the activity;
- (b) the person receives from the administering authority a notice of refusal to approve a draft environmental management program for the activity;
- (c) if the person does not submit a draft environmental management program for the activity to the administering authority by the day stated in the notice given to the person under section 103(1)—the end of the stated day.

**(3)** The person may be prosecuted for a continuation of the original offence under the program notice that happens after the authority received the notice if subsection (1) ceases to apply to the person under—

- (a) subsection (2)(b) if the administering authority states in the notice of refusal to approve the draft program—
  - (i) it is satisfied in the circumstances that subsection (1) should not apply to the person; and
  - (ii) the reasons for the decision; and
  - (iii) that the person may apply for a review of, or appeal against, the decision within 14 days;<sup>56</sup> or
- (b) subsection (2)(c).

**(4)** Subsection (3) applies even if the continuation of the original offence happened while subsection (1) applied.

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<sup>56</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision that section 104(1) not apply to the person.

**Effect of failure to comply with program**

**105.** If the holder of a certificate of approval for an environmental management program for an activity under a program notice does not comply with the program, section 104(1) ceases to apply to the person.

**Authority may apply to Court for order setting aside immunity from prosecution**

**106.(1)** If the administering authority receives a program notice from a person, the authority may apply to the Court for an order that section 104(1) does not apply to the person for any continuation of the original offence.

**(2)** The application must be made—

- (a) within 28 days after the administering authority receives the program notice or the longer period the Court in special circumstances allows; and
- (b) by filing written notice of the application with the registrar of the Court and serving a copy of the application on the person; and
- (c) by complying with rules of court applicable to the application.

**(3)** The making of the application does not stay the operation of section 104(1).

**(4)** The procedure for the application is to be in accordance with the rules of court applicable to it or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.

**Court to decide application**

**107.(1)** The Court may grant an application under section 106 if the Court is satisfied—

- (a) the relevant event was wilfully done or omitted to be done with the intention of relying on the giving of a program notice as an excuse; or
- (b) it is not appropriate for section 104(1) to apply to the person who gave the program notice because of the nature and extent of the environmental harm caused or threatened by the continuation of the original offence.

(2) In deciding the application, the Court may have regard to the following—

- (a) the circumstances in which the relevant event happened;
- (b) the nature and extent of the environmental harm caused or threatened by a continuation of the original offence under the program notice;
- (c) the resilience of the receiving environment;
- (d) the environmental record of the person;
- (e) whether an environmental management program or protection order is in force for the activity.

(3) If the Court grants the application, the Court must make an order that section 104(1) does not apply to the person for a continuation of the original offence under the program notice (whether the continuation happened before or after the receiving of the program notice).

### **Power of Court to make order pending decision on application**

**108.(1)** This section applies if the administering authority has made an application to the Court under section 106<sup>57</sup> but the Court has not decided the application.

(2) On the application of the administering authority, the Court may make any order the Court considers appropriate pending a decision on the application.

(3) Without limiting subsection (2), an order may direct the person who gave the program notice to do, or stop doing, anything specified in the order to prevent a continuation of the original offence under the notice.

(4) The Court's power under this section is in addition to its other powers.

(5) A person who contravenes an order commits an offence against this Act.

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<sup>57</sup> Section 106 (Authority may apply to Court for order setting aside immunity from prosecution)

Maximum penalty for subsection (5)—3 000 penalty units or 2 years imprisonment.

## **PART 8—ENVIRONMENTAL PROTECTION ORDERS**

### **When order may be issued**

**109.** The administering authority may issue an order (an “**environmental protection order**”) to a person—

- (a) if the person does not comply with a requirement to conduct or commission an environmental evaluation and submit it to the authority; or
- (b) if the person does not comply with a requirement to prepare an environmental management program and submit it to the authority; or
- (c) if, because of an environmental evaluation, the authority is satisfied unlawful environmental harm is being, or is likely to be, caused by an activity carried out, or proposed to be carried out, by the person; or
- (d) to secure compliance by the person with—
  - (i) the general environmental duty; or
  - (ii) an environmental protection policy; or
  - (iii) a condition of an environmental authority; or
  - (iv) a development condition of a development approval.

### **Standard criteria to be considered before issue of order**

**110.** Before deciding to issue an environmental protection order, the administering authority must consider the standard criteria.

**Form and content of order**

**111.(1)** An environmental protection order—

- (a) must be in the form of a written notice; and
- (b) must specify the person to whom it is issued; and
- (c) may impose a reasonable requirement to prevent or minimise environmental harm; and
- (d) must state that the recipient may apply for a review of, or appeal against, the decision to issue the order within 14 days;<sup>58</sup> and
- (e) must be served on the recipient.

**(2)** Without limiting subsection (1)(c), an environmental protection order may—

- (a) require the recipient to not start, or stop, a stated activity indefinitely, for a stated period or until further notice from the administering authority; or
- (b) require the recipient to carry out a stated activity only during stated times or subject to stated conditions; or
- (c) require the recipient to take stated action within a stated period.

**Offence not to comply with order**

**112.(1)** The recipient must not wilfully contravene an environmental protection order.

Maximum penalty—2 000 penalty units or 2 years imprisonment.

**(2)** The recipient must not contravene an environmental protection order.

Maximum penalty—1 665 penalty units.

**(3)** In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

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<sup>58</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to issue an order.

**Notice of disposal by recipient**

**113.(1)** This section applies if the recipient of an environmental protection order proposes to dispose of the place or business to which the order relates to someone else (the “**buyer**”).

(2) Before agreeing to dispose of the place or business, the recipient must give written notice to the buyer of the existence of the order.

Maximum penalty—50 penalty units.

(3) If the recipient does not comply with subsection (2), the buyer may rescind the agreement by written notice given to the recipient before the completion of the agreement or possession under the agreement, whichever is the earlier.

(4) On rescission of the agreement under subsection (3)—

- (a) a person who was paid amounts by the buyer under the agreement must refund the amounts to the buyer; and
- (b) the buyer must return to the recipient any documents about the disposal (other than the buyer’s copy of the agreement).

(5) Subsections (3) and (4) have effect despite anything to the contrary in the agreement.

(6) Within 14 days after agreeing to dispose of the place or business, the recipient must give written notice of the disposal to the administering authority.

Maximum penalty for subsection (6)—50 penalty units.

**Notice of ceasing to carry out activity**

**114.** Within 14 days after ceasing to carry out the activity to which an environmental protection order relates, the recipient must give written notice of the ceasing to carry out the activity to the administering authority.

Maximum penalty—50 penalty units.

## **PART 9—FINANCIAL ASSURANCES**

### **When financial assurance may be required**

**115.(1)** The administering authority may, by condition of a licence or approval of an environmental management program or site management plan, require the licensee or holder of the approval to give the authority financial assurance in any 1 or more of the following forms—

- (a) a bank guarantee;
- (b) a bond;
- (c) an insurance policy;
- (d) another form of security the authority considers appropriate.<sup>59</sup>

**(2)** However, the administering authority may impose a condition requiring a financial assurance to be given only if it is satisfied the condition is justified having regard to—

- (a) for a licence or an approval of an environmental management program—
  - (i) the degree of risk of environmental harm being caused by the activity carried out, or to be carried out, under the licence or program; and
  - (ii) the likelihood of action being required to rehabilitate or restore the environment because of environmental harm being caused by the activity; and
  - (iii) the environmental record of the licensee or holder; and
- (b) for an approval of a site management plan—
  - (i) the degree of risk of serious environmental harm being caused as a result of the hazardous contaminant contaminating the land; and
  - (ii) the likelihood of action being required to rehabilitate or

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<sup>59</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to impose conditions on a licence or approval of a program.

restore the land because of serious environmental harm being caused by the hazardous contaminant; and

(iii) the environmental record of the holder.

(3) The administering authority must decide the form and amount of the financial assurance.

(4) However, the administering authority must not require financial assurance of an amount more than the amount that, in the authority's opinion, represents the total of likely costs and expenses that may be incurred taking action to rehabilitate or restore the environment because of environmental harm being caused by the activity.

(5) The administering authority may require a financial assurance to remain in force until it is satisfied no claim is likely to be made on the assurance.

### **Person may show cause why financial assurance should not be required**

**116.(1)** Before issuing a licence or certificate of approval of an environmental management program or site management plan subject to the condition that financial assurance be given, the administering authority must give the applicant for the licence or person who submitted the program or plan a written notice under this section.

(2) The notice must—

- (a) state the grounds for the condition; and
- (b) state the form and extent of the financial assurance; and
- (c) invite the person to make representations to the administering authority to show why the licence or certificate should not be subject to the condition; and
- (d) state the period (at least 30 days after the notice is given to the person) within which the representations may be made.

(3) The representations must be made in writing.

(4) Within 28 days after the end of the period stated in the notice, the administering authority must—

- (a) consider the representations properly made by the person; and



- (b) if the administering authority issues the licence or gives the approval subject to the condition that the licensee or holder give financial assurance—the authority must give written notice to the person giving reasons for imposing the condition.

### **Application for amendment or discharge of financial assurance**

**117.(1)** This section applies to the following persons—

- (a) the holder of a licence subject to the condition that financial assurance be given;
- (b) the holder of a level 1 approval if, immediately before the approval was issued, the person was the holder of a licence subject to the condition that financial assurance be given;
- (c) the holder of an environmental management program approval subject to the condition that financial assurance be given;
- (d) the holder of a site management plan approval subject to the condition that financial assurance be given.

**(1A)** The person may apply in writing to the administering authority to have the assurance amended or discharged.

**(2)** The application must be supported by enough information to enable the administering authority to decide the application.

**(3)** The administering authority must—

- (a) for an application made by the holder of a level 1 approval—discharge the financial assurance for the licence held by the holder immediately before the issue of the approval; and
- (b) for any other application—decide the application within 28 days after receiving it and give written notice to the applicant of its decision.

**(4)** If the decision is to refuse the application, the notice must state—

- (a) the reasons for the decision; and

- (b) that the applicant may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.<sup>60</sup>

### **Claims on financial assurances**

**118.(1)** This section applies if the administering authority incurs costs or expenses in taking action to—

- (a) prevent or minimise environmental harm or rehabilitate or restore the environment, in relation to the carrying out of an activity under a licence or an environmental management program approval for which financial assurance has been given; or
- (b) carry out work to remediate land managed under a site management plan approval for which financial assurance has been given.

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

**(3)** Before making the claim on or realising the financial assurance or part of it, the administering authority must give to the licensee or approval holder a written notice under this section.

**(4)** The notice must—

- (a) state details of the action taken; and
- (b) state the amount of the financial assurance to be claimed or realised; and
- (c) invite the person to make representations to the administering authority to show why the financial assurance should not be claimed or realised as proposed; and
- (d) state the period (at least 30 days after the notice is given to the person) within which the representations may be made.

**(5)** The representations must be made in writing.

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<sup>60</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse to amend or discharge a financial assurance.

(6) After the end of the period stated in the notice, the administering authority must consider the representations properly made by the person.

(7) If the administering authority decides to make a claim on or realise the financial assurance or part of it, the authority must immediately give written notice to the licensee or holder of the environmental management program or site management plan approval of its decision and the reasons for the decision.<sup>61</sup>

## **PART 9A—SPECIAL PROVISIONS ABOUT WASTE MANAGEMENT**

### **Chief executive may require local government to remove waste etc.**

**118A.(1)** The chief executive may, by written notice given to a local government, require the local government to—

- (a) carry out any of the following works (“**waste management works**”)—
  - (i) remove, collect, transport, store, treat or dispose of waste;
  - (ii) clean streets;
  - (iii) clean sanitary conveniences; or
- (b) provide a place, containers or equipment for depositing or disposing of waste.

(2) The notice must state whether the notice applies to the whole or part of the local government’s area.

(3) If the notice requires the disposal of waste, the notice may state the way it is to be disposed.

(4) The notice may apply for a period or without limit of time.

(5) The local government must comply with the notice.

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<sup>61</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to claim, use or realise a financial assurance or part of a financial assurance.

**Waste removal etc. by private contractors**

**118B.(1)** A person must not, for fee or reward, perform waste management works in a local government area other than under—

- (a) a written contract with the local government; or
- (b) the local government's written approval under this section.

Maximum penalty—100 penalty units.

**(2)** An application for an approval must be made to a local government in the approved form.

**(3)** The local government must promptly consider an application for an approval and grant, or refuse to grant, the application.

**(4)** If the local government fails to decide the application within 60 days after its receipt, the failure is taken to be a decision by the local government to refuse to grant the application.

**(5)** The local government may impose relevant conditions on the approval that it considers to be necessary or desirable.

**(6)** The local government may, by written notice given to the holder of the approval—

- (a) revoke it; or
- (b) impose stated conditions on it; or
- (c) vary its conditions in a stated way.

**(7)** The notice must state—

- (a) the grounds for the action; and
- (b) the facts and circumstances forming the basis for the grounds.

**(8)** However, the local government may revoke the approval only if the person does not comply with its conditions.

## PART 9B—CONTAMINATED LAND

### *Division 1—Interpretation*

#### Definitions for pt 9B

**118C.** In this part—

“**owner**”, of land, see section 118D.

“**repealed Act**” means the *Contaminated Land Act 1991* as in force immediately before the commencement of this part.

#### Meaning of “owner” for pt 9B

**118D.(1)** In this part, the “**owner**” of land is—

- (a) for freehold land—the person recorded in the freehold land register as the person entitled to the fee simple interest in the land; or
- (b) for land held under a lease, licence or permit under an Act—the person who holds the lease, licence or permit; or
- (c) for trust land under the *Land Act 1994*—the trustees of the land; or
- (d) for Aboriginal land under the *Aboriginal Land Act 1991*—the persons to whom the land has been transferred or granted; or
- (e) for Torres Strait Islander land under the *Torres Strait Islander Land Act 1991*—the persons to whom the land has been transferred or granted; or
- (f) for land for which there is a native title holder under the *Native Title Act 1993* (Cwlth)—the native title holder.

**(2)** Also, a mortgagee of land is the owner of the land if—

- (a) the mortgagee is acting as a mortgagee in possession of the land and has the exclusive management and control of the land; or
- (b) the mortgagee, or a person appointed by the mortgagee, is in

possession of the land and has the exclusive management and control of the land.

### *Division 2—Inclusion of land on environmental management register*

#### **Owner or occupier of land to notify administering authority**

**118E.(1)** If the owner or occupier of land becomes aware a notifiable activity is being carried out on the land, the owner or occupier must, within 30 days after becoming aware the activity is being carried out, give notice to the administering authority in the approved form.

Maximum penalty—50 penalty units.

**(2)** If the owner or occupier of land becomes aware the land has been, or is being, contaminated by a contaminant the owner or occupier knows is a hazardous contaminant, the owner or occupier must, within 30 days after becoming aware the land has been, or is being, contaminated, give notice to the administering authority in the approved form.

Maximum penalty—100 penalty units.

**(3)** However, the owner or occupier of land does not commit an offence against subsection (1) or (2) if the administering authority has already been given notice about the activity or contamination.

#### **Local government to notify administering authority**

**118F.(1)** If a local government becomes aware a notifiable activity has been, or is being, carried out on land in its area, the local government must, within 30 days after becoming aware of the activity having been, or being, carried out give notice to the administering authority in the approved form.

**(2)** If a local government becomes aware that land in its area has been, or is being, contaminated by a contaminant the local government knows is a hazardous contaminant, the local government must, within 30 days after becoming aware the land has been, or is being, contaminated, give notice to the administering authority in the approved form.

**(3)** However, subsection (1) or (2) does not apply if the administering authority has already been given notice about the activity or contamination.

**Notice to be given to owner of land**

**118G.(1)** This section applies if—

- (a) the administering authority is given notice by an occupier of land (other than the land's owner) that a notifiable activity is being carried out on the land; or
- (b) the administering authority is given notice by a local government that a notifiable activity has been, or is being, carried out on land in its area; or
- (c) the administering authority otherwise reasonably believes that a notifiable activity has been, or is being, carried out on land; or
- (d) the administering authority has conducted a preliminary investigation of land and the authority reasonably believes the land is contaminated land; or
- (e) the administering authority is given a report by the occupier of land or another person about an investigation of the land conducted or commissioned by the occupier or other person and the administering authority reasonably believes the land is contaminated land.

*Example of paragraph (c)—*

The department in which the *Mineral Resources Act 1989* is administered gives the administering authority notice that hazardous mine wastes have been stored on the land.

**(2)** The administering authority must, within the time that is reasonable in the circumstances, give written notice about the activity or contamination to the owner of the land.

**(3)** However, the administering authority is not required to give a notice to the owner of the land if the land has already been investigated and the administering authority is satisfied the land is not contaminated land.

**(4)** The notice must—

- (a) inform the owner that the administering authority believes the land has been, or is being, used for a notifiable activity or is contaminated land; and
- (b) state the grounds on which the administering authority believes the land has been, or is being, used for a notifiable activity or is

- contaminated land; and
- (c) inform the owner that the administering authority is considering including particulars of the land in the environmental management register; and
  - (d) if an investigation of the land has been conducted—be accompanied by a copy of the report prepared about the investigation; and
  - (e) invite submissions from the owner about whether or not the land has been, or is being used, for a notifiable activity or is contaminated land; and
  - (f) state the day (at least 30 days after the day the notice is given) by which submissions may be made to the administering authority; and
  - (g) state that any submissions made to the administering authority must be accompanied by a statutory declaration by the owner declaring that the owner—
    - (i) has not knowingly included any false or misleading information in the submission; and
    - (ii) has given all relevant information to the administering authority.

### **Decision about including land in environmental management register**

**118H.(1)** The administering authority must, after considering any submissions made by the land's owner, decide whether the land has been, or is being, used for a notifiable activity or is contaminated land.

**(2)** Subsection (1) does not limit the matters the administering authority may consider in making the decision.

**(3)** If the administering authority decides the land has been, or is being, used for a notifiable activity or is contaminated land, the administering authority must record particulars of the land in the environmental management register.

**(4)** However, the administering authority is not required to record particulars of land that has been used for a notifiable activity in the



environmental management register if—

- (a) the land is no longer being used for a notifiable activity; and
- (b) the land has been investigated and the administering authority is satisfied the land is not contaminated land.

(5) The administering authority must, within 10 days after making a decision, give written notice of the decision to—

- (a) the owner of the land; and
- (b) the local government for the area in which the land is situated.

(6) The notice must state the reasons for the decision.

(7) Also, if particulars of the land are recorded in the environmental management register, the notice to the owner must state that the owner may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.<sup>62</sup>

### *Division 3—Investigation of land on environmental management register*

#### **Voluntary submission of report about investigation**

**118I.(1)** A person may, at any time, conduct or commission an investigation of land (a “**site investigation**”) for which particulars are recorded in the environmental management register to scientifically assess whether the land is contaminated in a way that is a risk to human health or another part of the environment and submit a report about the investigation to the administering authority.<sup>63</sup>

(2) However, if the person intending to conduct or commission the site investigation and submit the report is not the land’s owner, the person must obtain the owner’s consent before beginning the investigation.

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<sup>62</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to record particulars of the land in the environmental management register.

<sup>63</sup> Under section 118O, a site investigation may be conducted only by a person who is a member of an organisation prescribed under a regulation for that section and has qualifications and experience relevant to the site investigation.

**Administering authority may require site investigation**

**118J.(1)** This section applies if the administering authority is satisfied—

- (a) after a preliminary investigation, particulars of land are recorded in the environmental management register because the land is contaminated land; and
- (b) the hazardous contaminant contaminating the land is in a concentration that has the potential to cause serious or material environmental harm; and
- (c) a person, animal or another part of the environment may be exposed to the hazardous contaminant.

**(2)** The administering authority may require a site investigation to be conducted or commissioned by—

- (a) if the person who released the contaminant is known and can be located—the person; or
- (b) the local government for the area in which the land is located; or
- (c) the owner of the land.

**(3)** However, the administering authority may require the local government to conduct or commission the investigation only if subsection (2)(a) does not apply and—

- (a) the administering authority reasonably believes—
  - (i) the land has been contaminated because the local government gave approval for the use of, or an activity to be carried out on, the land; and
  - (ii) in giving the approval the local government did not comply with the requirements under any Act in relation to the approval; and
  - (iii) the local government should have known the land would be contaminated because of the approval; or
- (b) under the repealed Act, particulars of the land were recorded in the contaminated sites register as a restricted site and, after the recording, the local government gave approval for the use of, or an activity to be carried out on, the land contrary to the restriction; or

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- (c) under the repealed Act, particulars of the land were recorded in the contaminated sites register or, under this Act, particulars of the land are recorded in the environmental management register or contaminated land register, and—
- (i) after the recording, the local government approved the land be used for a use or activity that was or is inconsistent with particulars of the land being recorded in the register; and
  - (ii) the use or activity has caused environmental harm to human health or another part of the environment.

(4) Also, the administering authority may require the owner of the land to conduct or commission the investigation only if subsection (2)(a) and (3) do not apply and—

- (a) the administering authority reasonably believes the land was contaminated before the commencement of the repealed Act; or
- (b) when the land was acquired by the owner, particulars of the land were recorded—
  - (i) under the repealed Act, in the contaminated sites register as a confirmed site, restricted site or probable site; or
  - (ii) under this Act, in the environmental management register or the contaminated land register; or
- (c) the contamination happened after the owner acquired the land.

(5) However, the administering authority must not require the owner of the land to conduct or commission an investigation under subsection (4)(a) or (b) if the owner is a mortgagee under section 118D(2).

(6) Also, the administering authority must not require an investigation to be conducted or commissioned if the land is subject to a site management plan for the contamination and the conditions of the plan are being complied with.

(7) The recipient of a notice to conduct or commission a site investigation must comply with the requirement unless the administering authority

waives the requirement.<sup>64</sup>

Maximum penalty—100 penalty units.

### **Notice to conduct or commission site investigation**

**118K.(1)** A requirement to conduct or commission a site investigation must be made by written notice to the person (the “**recipient**”) required to conduct or commission the site investigation.

**(2)** If the recipient is not the land’s owner, the administering authority must also give a copy of the notice to the owner.

**(3)** The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) state the matters relevant for the site investigation; and
- (d) state the day (at least a reasonable period after the notice is given) by which a report on the site investigation must be submitted to the administering authority; and
- (e) state that the recipient or the land’s owner may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.<sup>65</sup>

### **Waiver of requirement to conduct or commission site investigation**

**118L.(1)** A recipient may apply to the administering authority for it to waive the requirement for the recipient to conduct or commission a site investigation.

**(2)** The application must—

- (a) be made to the administering authority in the approved form; and

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<sup>64</sup> Under section 118L, the administering authority may, in certain circumstances, waive the requirement to conduct or commission a site investigation.

<sup>65</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require a site investigation.

(b) be supported by enough information to enable the authority to decide the application.

(3) The administering authority must decide the application within 28 days after receiving it.

(4) The administering authority may waive the requirement to conduct or commission a site investigation only if it is satisfied—

- (a) conducting or commissioning the investigation would cause the recipient financial hardship; or
- (b) if the recipient is the land's owner—the owner's rights in relation to the land do not include exercising control over environmental management of the land.

(5) The administering authority must, within 10 days after making a decision, give written notice of the decision to the recipient.

(6) The notice to the recipient must state—

- (a) the reasons for the decision; and
- (b) if the decision is to refuse the application—that the recipient may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.<sup>66</sup>

### **Failure to make decision on waiver of site investigation taken to be refusal**

**118M.** If the administering authority fails to make a decision about an application for it to waive the requirement for the recipient to conduct or commission a site investigation within the time it is required to make a decision on the application, the failure is taken to be a decision by the authority to refuse the application at the end of the time.

### **Procedure to be followed if recipient is not owner**

**118N.(1)** This section applies if the recipient of a notice to conduct or commission a site investigation of land is not the land's owner.

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<sup>66</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require a site investigation.

(2) The recipient, or person conducting the site investigation for the recipient (the “investigator”), may enter the land to conduct the investigation only—

- (a) with the consent of the owner and occupier of the land; or
- (b) if the recipient or investigator has given at least 7 days written notice to the owner and occupier.

(3) The notice must inform the owner and any occupier of—

- (a) the intention to enter the land; and
- (b) the purpose of the entry; and
- (c) the days and times when the entry is to be made.

(4) In conducting the site investigation, the recipient or investigator must take all reasonable steps to ensure the recipient or investigator causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

(5) Nothing in this section authorises the recipient or investigator to enter a structure, or part of a structure, used for residential purposes.

(6) If a person incurs loss or damage because of the site investigation conducted by the recipient or investigator, the person is entitled to be paid by the recipient or investigator the reasonable compensation because of the loss or damage that is agreed between the recipient or investigator and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(7) The court may make the order about costs it considers just.

### **Who must conduct site investigation**

**118O.** A site investigation must be conducted by a person who—

- (a) is a member of an organisation prescribed under a regulation for this section; and
- (b) has qualifications and experience relevant to the site investigation.

**Fee for consideration of report about site investigation**

**118P.** A person who submits a report about a site investigation to the administering authority for consideration must pay the authority the fee prescribed under a regulation.

**Declarations to accompany report**

**118Q.(1)** A site investigation report submitted to the administering authority must be accompanied by a statutory declaration by—

- (a) if the report—
  - (i) is submitted to comply with a notice given to a person by the administering authority—the recipient; or
  - (ii) is voluntarily submitted by a person—the person; and
- (b) the investigator.

**(2)** The recipient's or other person's declaration must be made—

- (a) if the recipient or other person is an individual—by the recipient or other person; or
- (b) if the recipient or other person is a corporation—by an executive officer of the corporation.

**(3)** The recipient's or other person's declaration must state that the recipient or other person—

- (a) has not knowingly given any false or misleading information to the investigator; and
- (b) has given all relevant information to the investigator.

**(4)** A declaration by the investigator must—

- (a) state his or her qualifications and experience relevant to the investigation; and
- (b) state that he or she has not knowingly included any false, misleading or incomplete information in the report; and
- (c) state that he or she has not knowingly failed to reveal any relevant information or document to the administering authority; and
- (d) certify that—

- (i) the report addresses the relevant matters for the investigation and is factually correct; and
- (ii) the opinions expressed in it are honestly and reasonably held.

### **Administering authority to consider and act on site investigation report**

**118R.(1)** The administering authority must, within 28 days after being given the site investigation report, consider the report and decide whether the land is contaminated land.

**(2)** After making its decision, the administering authority may—

- (a) if the administering authority is satisfied the land is not contaminated land—remove particulars of the land from the environmental management register; or
- (b) if the administering authority is satisfied the land is contaminated land but can be used for stated uses with further management—leave particulars of the land on the environmental management register and prepare, or require another person to prepare, a site management plan for the land; or
- (c) if the administering authority is satisfied the land is contaminated land and action needs to be taken to remediate the land to prevent serious environmental harm to a person, animal or another part of the environment—record particulars of the land in the contaminated land register; or
- (d) in any other case—leave particulars of the land on the environmental management register.

**(3)** The administering authority must, within 10 days after making its decision, give written notice of the decision to—

- (a) the land's owner; and
- (b) if a person other than the land's owner submitted the report—the other person; and
- (c) if the decision is to remove particulars of the land from the environmental management register—the local government for



the area in which the land is located; and

(d) if the decision is to record particulars of the land in the contaminated land register—

(i) the local government for the area in which the land is located; and

(ii) any registered mortgagee of the land.

(4) The notice must state—

(a) the reasons for the decision; and

(b) for a notice to the land's owner about a decision under subsection (2)(b) to (d)—that the owner may apply for a review of, and appeal against the decision, within 30 days after receipt of the notice.<sup>67</sup>

(5) Also, if the administering authority removes particulars of the land from the environmental management register, the notice to the following persons must be accompanied by a suitability statement for the land—

(a) the land's owner;

(b) if a person other than the land's owner submitted the report—the other person.

### **Administering authority may require another report or additional information**

**118S.(1)** If the administering authority is satisfied the site investigation report does not adequately address the relevant matters for the site investigation to which the report relates, it may require the recipient or other person who submitted the report to conduct or commission another site investigation and submit a report on the investigation to it.

(2) If the administering authority is satisfied additional relevant information is required about a site investigation report, it may require further information to be given to it by—

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<sup>67</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to record, or continue to record, particulars of land on the environmental management register or contaminated land register.

- (a) if the report is submitted to comply with a notice given to a person by the administering authority—the recipient; or
- (b) if the report is voluntarily submitted by a person—the person.

(3) A requirement under subsection (2) must be made by written notice given to the recipient or other person.

(4) The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) state the relevant matters for the information required; and
- (d) state the day (at least a reasonable period after the notice is given) by which the information must be given to the administering authority; and
- (e) state that the recipient or other person may apply for a review of, and appeal against, the requirement within 14 days after receipt of the notice.<sup>68</sup>

### **Owner of land to be given copy of report**

**118T.** If the person who submitted the report is not the land's owner, the person must, within 10 days after giving the administering authority a site investigation report or relevant additional information, give a copy of the report or information to the owner.

Maximum penalty—10 penalty units.

### **Cost of site investigation and report**

**118U.** The recipient or other person who submitted the report must meet the following costs—

- (a) the costs of conducting or commissioning the site investigation and report; and

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<sup>68</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require additional information.

- (b) the costs of giving additional relevant information about the report required by the administering authority.

### **Extensions of time for decisions on submission of site investigation report**

**118V.(1)** The administering authority may decide to extend the time it is required to consider and make a decision about a site investigation report if—

- (a) it has required additional relevant information about the report; or
- (b) it is satisfied there are special circumstances for extending the time.

**(2)** If the administering authority extends the time, it must give written notice of the extension to the recipient or other person who submitted the report.

**(3)** The notice must—

- (a) state that the recipient or other person may apply for a review of, and appeal against, the requirement within 14 days after receipt of the notice; and
- (b) be given before the extension starts.<sup>69</sup>

### **Failure to make decision on site investigation report taken to be refusal**

**118W.** If the administering authority fails to make a decision about a site investigation report within the time it is required to make a decision on the report, the failure is taken to be a decision by the authority to leave particulars of the land to which the report relates in the environmental management register.

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<sup>69</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to extend the time for considering and making a decision about a site investigation report.

***Division 4—Remediation of land*****Voluntary remediation of contaminated land**

**118X.(1)** A person may, after submitting a site investigation report, conduct or commission work to remediate land for which particulars are recorded in the environmental management register or contaminated land register and submit a report (a “**validation report**”) about the work to the administering authority.

**(2)** However, if the person intending to carry out the work and submit the validation report is not the land’s owner, the person must obtain the owner’s consent before beginning the work.

**Administering authority may require remediation of contaminated land**

**118Y.(1)** The administering authority may require the following persons to conduct or commission work to remediate land for which particulars are recorded in the contaminated land register and submit a validation report about the work to the administering authority—

- (a) if the person who released the hazardous contaminant contaminating the land is known and can be located—the person;
- (b) the local government for the area in which the land is located;
- (c) the owner of the land.

**(2)** However, the administering authority may require the local government to conduct or commission work to remediate the land only if subsection (1)(a) does not apply and—

- (a) the administering authority reasonably believes—
  - (i) the land has been contaminated because the local government gave approval for the use of, or an activity to be carried out on, the land; and
  - (ii) in giving the approval the local government failed to comply with the requirements under any Act in relation to the approval; and
  - (iii) the local government should have known the approval

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would result in the land being contaminated; or

- (b) under the repealed Act, particulars of the land were recorded in the contaminated sites register as a restricted site and, after the recording, the local government gave approval for the use of, or an activity on, the land contrary to the restriction; or
- (c) under the repealed Act, particulars of the land were recorded in the contaminated sites register or, under this Act, particulars of the land are recorded in the environmental management register or contaminated land register, and—
  - (i) after the recording, the local government permitted the land to be used for a use or activity that was inconsistent with the particulars of the land being recorded in the register; and
  - (ii) the use or activity has caused environmental harm to human health or another part of the environment.

(3) Also, the administering authority may require the owner of the land to conduct or commission work to remediate the land only if subsection (1)(a) and (2) do not apply and—

- (a) the land was affected by the hazardous contaminant before the commencement of the repealed Act; or
- (b) when the land was acquired by the owner, particulars of the land were recorded—
  - (i) under the repealed Act, in the contaminated sites register as a confirmed site, restricted site or probable site; or
  - (ii) under this Act, in the environmental management register or the contaminated land register; or
- (c) the contamination happened after the owner acquired the land.

(4) However, the administering authority must not require the owner of the land to conduct or commission work to remediate the land under subsection (3)(a) or (b) if the owner is a mortgagee under section 118D(2).

(5) A requirement to conduct or commission work to remediate land must—

- (a) be in the form of a written notice (a “**remediation notice**”); and
- (b) state the person (the “**recipient**”) to whom it is issued; and

- (c) state the work to be conducted or commissioned by the recipient to remediate the land; and
- (d) give the recipient approval to remove and dispose of soil from the land and state any conditions applicable to the removal and disposal; and
- (e) state that the recipient must give a validation report to the administering authority within the time (not less than 30 days after completing the work to be carried out) stated in the notice; and
- (f) state that the recipient or the land's owner may apply for a review of, or appeal against, the decision to issue the notice within 14 days after receipt of the notice; and<sup>70</sup>
- (g) be served on the recipient and the land's owner.

(6) Also, the remediation notice may include a requirement to prepare and submit to the administering authority for approval a site management plan for the land.

(7) The recipient must comply with the notice unless the recipient is granted a waiver under section 118Z.<sup>71</sup>

Maximum penalty—1 000 penalty units.

### **Waiver of requirement to remediate land**

**118Z.(1)** A recipient may apply to the administering authority for it to waive the requirement for the recipient to conduct or commission work to remediate contaminated land.

**(2)** The application must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the authority to decide the application.

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<sup>70</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require work to be conducted or commissioned to remediate contaminated land.

<sup>71</sup> Section 118Z (Waiver of requirement to remediate land)

(3) The administering authority must decide the application within 28 days after receiving it.

(4) The administering authority may waive the requirement for the recipient to conduct or commission work to remediate the land only if it is satisfied—

- (a) conducting or commissioning the remediation would cause the recipient financial hardship; or
- (b) the contamination happened while the recipient was carrying out an activity that is lawful apart from this Act and the recipient complied with the general environmental duty; or
- (c) the contamination happened before the commencement of the repealed Act and it would not be reasonable in the circumstances for the recipient to conduct or commission the work to remediate the land; or
- (d) if the recipient is the land's owner—the owner's rights in relation to the land do not include exercising control over environmental management of the land.

(5) The administering authority must, within 10 days after making a decision, give written notice of the decision to the recipient

(6) The notice to the recipient must state—

- (a) the reasons for the decision; and
- (c) if the decision is to refuse the application—that the recipient may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.<sup>72</sup>

### **Failure to make decision on remediation taken to be refusal**

**118ZA.** If the administering authority fails to make a decision about an application for it to waive, wholly or partially, the requirement for the recipient to conduct or commission work to remediate contaminated land within the time it is required to make a decision on the application, the

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<sup>72</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse an application to waive the requirement to conduct or commission work to remediate contaminated land.

failure is taken to be a decision by the authority to refuse the application at the end of the time.

### **Procedure to be followed if recipient is not owner**

**118ZB.(1)** This section applies if the recipient of a notice to conduct or commission work to remediate contaminated land is not the land's owner.

(2) The recipient, or person conducting the work for the recipient (the “**contractor**”), may enter the land to conduct the work only—

- (a) with the consent of the owner and occupier of the land; or
- (b) if the recipient or contractor has given at least 7 days written notice to the owner and occupier.

(3) The notice must inform the owner and occupier of—

- (a) the intention to enter the land; and
- (b) the purpose of the entry; and
- (c) the days and times when the entry is to be made.

(4) In conducting the work, the recipient or contractor must take all reasonable steps to ensure the recipient or contractor causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

(5) Nothing in this section authorises the recipient or contractor to enter a structure, or part of a structure, used for residential purposes.

(6) If a person incurs loss or damage because of the work conducted by the recipient or contractor, the person is entitled to be paid by the recipient or contractor the reasonable compensation because of the loss or damage that is agreed between the recipient or contractor and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(7) The court may make the order about costs it considers just.

### **Who must prepare validation report**

**118ZC.(1)** The validation report must be prepared by a person who—



- (a) is a member of an organisation prescribed under a regulation for this section; and
- (b) has qualifications and experience relevant to the preparation of the validation report.

(2) The validation report given to the administering authority must be accompanied by—

- (a) the prescribed fee; and
- (b) a statutory declaration by the person who prepared the report.

(3) The declaration must—

- (a) state the person's qualifications and experience relevant to the validation report; and
- (b) state that the person has not knowingly included any false, misleading or incomplete information in the report; and
- (c) state that the person has not failed to reveal any relevant information or document to the administering authority; and
- (d) certify that—
  - (i) the report addresses the relevant matters for the report and is factually correct; and
  - (ii) the opinions expressed in it are honestly and reasonably held.

### **Administering authority to consider and act on validation report**

**118ZD.(1)** The administering authority must, within 28 days after being given the validation report, consider the report and decide whether the land is still contaminated land.

(2) After making its decision, the administering authority may, for land for which particulars are recorded in the environmental management register—

- (a) if the administering authority is satisfied the land is no longer contaminated land—remove particulars of the land from the environmental management register; or
- (b) if the administering authority is satisfied the land has been

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partially remediated but is still contaminated land that requires further management—leave particulars of the land in the environmental management register and prepare, or require another person to prepare, a site management plan for the land; or

- (c) in any other case—leave particulars of the land on the environmental management register.

**(3)** Also, the administering authority may, for land for which particulars are recorded in the contaminated land register—

- (a) if the administering authority is satisfied the land is no longer contaminated land—remove particulars of the land from the contaminated land register; or
- (b) if the administering authority is satisfied the land has been partially remediated but it is still contaminated land that requires further management—record particulars of the land in the environmental management register and prepare, or require another person to prepare, a site management plan for the land; or
- (c) in any other case—leave particulars of the land on the contaminated land register.

**Notice to be given of decision made about validation report**

**118ZE.(1)** The administering authority must, within 10 days after making its decision give written notice of the decision to—

- (a) the land's owner; and
- (b) if a person other than the land's owner submitted the report—the other person; and
- (c) if the decision is to record particulars of the land in, or remove particulars of the land from, the environmental management register or contaminated land register—the local government for the area in which the land is located; and
- (d) if the decision is about land for which particulars are recorded in the contaminated land register—any registered mortgagee of the land.

**(2)** The notice must state—

- (a) the reasons for the decision; and
- (b) if the decision is to record, or to continue to record, particulars of the land in the environmental management register or contaminated land register—that the land’s owner may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.<sup>73</sup>

(3) Also, if the administering authority removes particulars of the land from the environmental management register or contaminated land register, the notice to the following persons must be accompanied by a suitability statement—

- (a) the land’s owner;
- (b) if a person other than the land’s owner submitted the report—the other person.

### **Administering authority may require another report or additional information**

**118ZF.(1)** If the administering authority is satisfied the validation report does not adequately address the relevant matters for the remediation works to which it relates, it may require the recipient or other person who submitted the report to carry out or commission additional remediation works and submit a validation report about the additional work to it.

(2) If the administering authority is satisfied additional relevant information is required about the validation report, it may require the person who submitted the report to give it the information.

(3) A requirement for further information must be made by written notice given to the person.

(4) The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and

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<sup>73</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to record, or to continue to record, particulars of contaminated land in the register.

- (c) state the relevant matters for the information required; and
- (d) state the day (at least a reasonable period after the notice is given) by which the information must be given to the administering authority; and
- (e) state that the person may apply for a review of, and appeal against, the requirement within 14 days after receipt of the notice.<sup>74</sup>

### **Extensions of time for consideration of validation report**

**118ZG.(1)** The administering authority may decide to extend the time in which it is required to consider and make a decision about a validation report if—

- (a) it has required additional information about the report; or
- (b) it is satisfied there are special circumstances for extending the time.

**(2)** If the administering authority extends the time, it must give written notice of the extension and the reasons for the extension to the person who submitted the report and, if the person is not the land's owner, the owner.

**(3)** The notice must—

- (a) state that the person who submitted the report or the land's owner may apply for a review of, and appeal against, the requirement within 14 days after receipt of the notice; and<sup>75</sup>
- (b) be given before the extension starts.

### **Failure to make decision on validation report taken to be refusal**

**118ZH.** If the administering authority fails to make a decision about a validation report within the time it is required to make a decision about the

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<sup>74</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require additional information.

<sup>75</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to extend the time for deciding whether to approve the report.

report the failure is taken to be a decision by the authority to leave the particulars on the environmental management register or the contaminated land register at the end of the time.

### *Division 5—Site management plans*

#### *Subdivision 1—Preliminary*

#### **What is a site management plan**

**118ZI.(1)** A site management plan is a plan used to manage land for which particulars are recorded in the environmental management register because the land is contaminated land.

**(2)** A site management plan is used to manage the environmental harm that may be caused by the hazardous contaminant contaminating the land by applying conditions to the use or development of, or activities carried out on, the land.

#### **Content of site management plan**

**118ZJ.** A site management plan must—

- (a) state the objectives to be achieved and maintained under the plan; and
- (b) state how the objectives are to be achieved and maintained; and
- (c) make provision for monitoring and reporting compliance with the plan.

#### *Subdivision 2—Procedure for approval of site management plan*

#### **Voluntary submission of draft site management plan**

**118ZK.(1)** A person may, after submitting a site investigation report, submit to the administering authority for approval a draft site management plan for land for which particulars are recorded in the environmental management register.

(2) However, if the person intending to submit the draft plan for approval is not the land's owner, the person must obtain the owner's consent before submitting it.

### **Application for approval of site management plan**

**118ZL.** An application for the approval of a site management plan must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the administering authority to decide the application, including, for example—
  - (i) a report on the scientific investigation of the contamination of the land; and
  - (ii) relevant information about the likely risks to the environment from the hazardous contaminant contaminating the land; and
  - (iii) details of the measures proposed to be taken to manage the risk of serious environmental harm being caused to persons, animals or another part of the environment by the hazardous contaminant; and
- (c) if the application is made by a person other than the land's owner—be accompanied by a statement from the owner agreeing to the draft plan; and
- (d) be accompanied by the prescribed fee.

### **Administering authority may prepare or require site management plan**

**118ZM.(1)** This section applies if—

- (a) particulars of land are recorded in the environmental management register or contaminated land register; and
- (b) the land is contaminated land; and
- (c) a site investigation of the land has been conducted; and
- (d) the contamination may be managed by applying conditions to the

use or development of, or activities carried out on, the land.

(2) The administering authority may—

- (a) prepare a site management plan for the land; or
- (b) require a draft site management plan to be prepared or commissioned, and submitted to it for approval, by—
  - (i) if the person who released the contaminant is known and can be located—the person; or
  - (ii) the local government for the area in which the land is located; or
  - (iii) the owner of the land.

(3) However, the administering authority may require the local government to prepare or commission the plan only if subsection (2)(b)(i) does not apply and—

- (a) the administering authority reasonably believes—
  - (i) the land has been contaminated because the local government gave approval for the use of, or an activity to be carried out on the land; and
  - (ii) in giving the approval the local government did not comply with the requirements under any Act in relation to the approval; and
  - (iii) the local government should have known the land would be contaminated because of the approval; or
- (b) under the repealed Act, particulars of the land were recorded in the contaminated sites register as a restricted site and, after the recording, the local government gave approval for the use of, or an activity to be carried out on, the land contrary to the restriction; or
- (c) under the repealed Act, particulars of the land were recorded in the contaminated sites register or, under this Act, particulars are recorded in the environmental management register, and—
  - (i) after the recording, the local government approved the land be used for a use or activity that was or is inconsistent with particulars of the land being recorded in the register; and

- (ii) the use or activity has caused environmental harm to human health or another part of the environment.

(4) Also, the administering authority may require the owner of the land to prepare or commission the plan only if subsections (2)(b)(i) and (3) do not apply and—

- (a) the administering authority reasonably believes the land was contaminated before the commencement of the repealed Act; or
- (b) when the land was acquired by the owner, particulars of the land were recorded—
  - (i) under the repealed Act, in the register as a confirmed site, restricted site or probable site; or
  - (ii) under this Act, in the environmental management register; or
- (c) the contamination happened after the owner acquired the land.

(5) However, the administering authority must not require the owner of the land to prepare or commission a plan under subsection (4)(a) or (b) if the owner is a mortgagee mentioned in section 118D(2).

(6) The recipient of a notice to prepare or commission a site management plan must comply with the requirement.

Maximum penalty—100 penalty units.

### **Requirement to prepare draft site management plan**

**118ZN.(1)** A requirement to prepare or commission a draft site management plan for contaminated land must be made by written notice given to the person required to prepare or commission the plan (the “**recipient**”).

(2) If the person is not the owner of the land, the administering authority must also give a copy of the notice to the owner.

(3) The notice must state—

- (a) the grounds on which the requirement is made; and
- (b) the matters to be addressed by the plan; and
- (c) for a notice to the recipient—the day (at least a reasonable period after the notice is given) by which the plan must be prepared and



submitted to the administering authority; and

- (d) that the recipient or land's owner may apply for a review of, and appeal against, the decision within 14 days of receipt of the notice.<sup>76</sup>

### **Waiver of requirement to prepare or commission site management plan**

**118ZO.(1)** A recipient may apply to the administering authority for it to waive the requirement for the recipient to prepare or commission a site management plan for contaminated land.

**(2)** The application must—

- (a) be made to the administering authority in the approved form; and  
(b) be supported by enough information to enable the authority to decide the application.

**(3)** The administering authority must decide the application within 28 days after receiving it.

**(4)** The administering authority may waive the requirement to prepare or commission a site management plan only if it is satisfied—

- (a) preparing or commissioning the plan would cause the recipient financial hardship; or  
(b) if the recipient is the land's owner—the owner's rights in relation to the land do not include exercising control over environmental management of the land.

**(5)** The administering authority must, within 10 days after making a decision, give written notice of the decision to the recipient.

**(6)** The notice to the recipient must state—

- (a) the reasons for the decision; and  
(b) if the decision is to refuse the application—that the recipient may

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<sup>76</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require a site management plan to be prepared.

apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.<sup>77</sup>

### **Failure to make decision on waiver of site management plan taken to be refusal**

**118ZP.** If the administering authority fails to make a decision about an application for it to waive the requirement for the recipient to prepare or commission a site management plan within the time it is required to make a decision on the application, the failure is taken to be a decision by the authority to refuse the application at the end of the time.

### **Procedure to be followed if recipient is not owner**

**118ZQ.(1)** This section applies if the recipient of a notice to prepare or commission a draft site management plan for land is not the land's owner.

**(2)** The recipient, or person preparing the plan for the recipient (the “consultant”), may enter the land to prepare the site management plan only—

- (a) with the consent of the owner and occupier of the land; or
- (b) if the recipient or consultant has given at least 7 days written notice to the owner and occupier.

**(3)** The notice must inform the owner and occupier of—

- (a) the intention to enter the land; and
- (b) the purpose of the entry; and
- (c) the days and times when the entry is to be made.

**(4)** In preparing the plan, the recipient or consultant must take all reasonable steps to ensure the recipient or consultant causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

**(5)** Nothing in this section authorises the recipient or consultant to enter a

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<sup>77</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse an application for waiver of the requirement to prepare a site management plan.

structure, or part of a structure, used for residential purposes.

(6) If a person incurs loss or damage because of the entry of the land by the recipient or consultant to prepare a site management plan, the person is entitled to be paid by the recipient or consultant the reasonable compensation because of the loss or damage that is agreed between the recipient or consultant and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(7) The court may make the order about costs it considers just.

### **Who must prepare draft site management plan**

**118ZR.** A site management plan must be prepared by a person who—

- (a) is a member of an organisation prescribed under a regulation for this section; and
- (b) has qualifications and experience relevant to the preparation of the site management plan.

### **Administering authority may require another site management plan or additional information**

**118ZS.(1)** If the administering authority is satisfied the draft site management plan does not adequately address the relevant matters for the plan, it may require the recipient or other person who submitted the plan to prepare or commission another site management plan.

(2) Also, the administering authority may require—

- (a) a recipient or other person who submits a draft site management plan to it to give it additional information about the plan; or<sup>78</sup>
- (b) any information included in the draft plan, or any additional information required under paragraph (a), to be verified by statutory declaration.

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<sup>78</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to require additional information.

**Administering authority to consider draft site management plan**

**118ZT.** The administering authority must decide whether to approve a draft site management plan submitted to it within 28 days after the day it is given the plan.

**Approval of draft site management plan**

**118ZU.(1)** This section applies if the administering authority—

- (a) approves a draft site management plan for contaminated land as amended at the request of, or with the agreement of, the administering authority; or
- (b) approves a draft site management plan for contaminated land as submitted; or
- (c) prepares a site management plan for contaminated land.

**(2)** The administering authority must, within 10 days after the approval or preparation—

- (a) record the details of the plan in the environmental management register; and
- (b) for a plan approved by the administering authority—give to the person who submitted the plan and, if the plan is submitted by a person other than the land's owner, the owner—
  - (i) a certificate of approval for the plan; and
  - (ii) written notice of the approval; and
  - (iii) a suitability statement for the land; and
- (c) for a plan prepared by the administering authority—
  - (i) give to the owner written notice of the preparation of the plan; and
  - (ii) a suitability statement for the land.

**(3)** A notice given under subsection (2)(c) must—

- (a) state the reasons for the imposition of the site management plan; and
- (b) be accompanied by a copy of the site management plan; and

- (c) state that the owner may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.<sup>79</sup>

(4) Also, if the administering authority approves or prepares a site management plan for land, the administering authority must, within 10 days of the approval or preparation, give a copy of the plan to the local government for the area in which the land is located.

### **Refusal to approve draft site management plan**

**118ZV.(1)** If the administering authority refuses to approve a draft site management plan, the authority must, within 10 days after its decision, give written notice to—

- (a) the person who submitted the plan; and  
(b) if the person who submitted the plan is not the land's owner—the land's owner.

(2) The notice must state—

- (a) the reason for the decision; and  
(b) that the person or owner may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice.<sup>80</sup>

### **Extensions of time for decisions on submission of draft site management plans**

**118ZW.(1)** The administering authority may decide to extend the time in which it is required to decide whether or not to approve a draft site management plan if—

- (a) it has required additional information about the draft plan; or  
(b) it is satisfied there are special circumstances for extending the time.

(2) If the administering authority extends the time, it must give written

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<sup>79</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to prepare a site management plan.

<sup>80</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a refusal to approve a draft site management plan.

notice of the extension and the reasons for the extension to the person who submitted the draft plan and, if the person is not the land's owner, the owner.

(3) The notice must—

- (a) state that the person or owner may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice; and<sup>81</sup>
- (b) be given before the extension starts.

### **Failure to approve draft site management plan taken to be refusal**

**118ZX.** If the administering authority fails to decide whether to approve or refuse a draft site management plan within the time it is required to make a decision on the plan, the failure is taken to be a decision by the authority to refuse to approve the plan at the end of the time.

### *Subdivision 3—Compliance with site management plan*

#### **Offence to contravene site management plan**

**118ZY.(1)** A person must not wilfully contravene a site management plan.

Maximum penalty—1 665 penalty units or 2 years imprisonment.

(2) A person must not contravene a site management plan.

Maximum penalty—835 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

(4) A local government must not, under an approval or other authority

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<sup>81</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to extend the time for deciding whether to approve the plan.

under any Act, allow the use or development of, or an activity to be carried out on, land in a way that contravenes a site management plan for the land.

#### *Subdivision 4—Amendment of site management plan*

### **Voluntary amendment of site management plans**

**118ZZ.** Subdivision 2 (other than sections 118ZM to 118ZO and 118ZQ)<sup>82</sup> applies, with all necessary changes, to the submission by a person of a draft amendment of a site management plan.

### **Administering authority may amend or require amendment of site management plan**

**118ZZA.(1)** The administering authority may amend a site management plan for land with the agreement of—

- (a) the land's owner; and
- (b) if the owner is not the occupier of the land—the occupier.

**(2)** Also, if the administering authority considers it necessary or desirable, the administering authority may—

- (a) prepare an amendment of a site management plan; or
- (b) require a draft amendment of a site management plan to be prepared and submitted to it for approval by—
  - (i) if the person who released the contaminant is known and can be located—the person; or
  - (ii) the local government for the area in which the land is located; or
  - (iii) the owner of the land.

**(3)** If the administering authority prepares an amendment to a site

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<sup>82</sup> Sections 118ZM (Administering authority may prepare or require site management plan), 118ZN (Requirement to prepare draft site management plan), 118ZO (Waiver of requirement to prepare or commission site management plan) and 118ZQ (Procedure to be followed if recipient is not owner)

management plan, or requires an amendment to be prepared, subdivision 2 (other than sections 118ZK, 118ZL and 118ZM(1))<sup>83</sup> applies, with all necessary changes, to the preparation of the draft amendment.

*Division 6—Notices to be given about land recorded in registers*

**Notice to be given about recording of land in contaminated land register**

**118ZZB.(1)** This section applies if—

- (a) particulars of land are recorded in the contaminated land register; and
- (b) the owner of the land has entered into, or proposes to enter into, an agreement with another person about occupancy of the land.

**(2)** The owner must—

- (a) if, at the time the particulars are recorded, the owner has entered into an agreement with another person about occupancy of the land—give the person notice that particulars of the land have been recorded in the register; or
- (b) if, after the particulars are recorded, the owner proposes to enter into an agreement with another person about occupancy of the land—give notice about the recording of the particulars to the person before entering into the agreement.

Maximum penalty—50 penalty units.

**(3)** If the owner does not give notice as required under subsection (2), the other person who has entered into the occupancy agreement may terminate the agreement by written notice given to the owner within 10 days after the person becomes aware of the recording.

**(4)** Subsection (3) applies despite anything to the contrary in the agreement.

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<sup>83</sup> Sections 118ZK (Voluntary submission of draft site management plan), 118ZL (Application for approval of site management plan) and 118ZM (Administering authority may prepare or require site management plan)



**Notice to be given to proposed purchaser of land**

**118ZZC.(1)** This section applies to the owner of land if—

- (a) particulars of the land are recorded in the environmental management register or contaminated land register; or
- (b) the land is the subject of—
  - (i) a notice under section 118G<sup>84</sup> informing the owner that the administering authority believes the land has been, or is being, used for a notifiable activity or is contaminated land; or
  - (ii) a notice to conduct or commission a site investigation; or
  - (iii) a remediation notice; or
  - (iv) a notice that the administering authority is preparing, or requiring someone else to prepare, a site management plan for the land; or
- (c) the land is the subject of an order under section 138A.<sup>85</sup>

**(2)** If the owner proposes to dispose of the land to someone else (the “**buyer**”), the owner must, before agreeing to dispose of the land, give written notice to the buyer—

- (a) if particulars of the land are recorded in the environmental management register or contaminated land register—that the particulars have been recorded in the register and, if the land is subject to a site management plan, details of the plan; or
- (b) if the owner has been given a notice under this part—that the owner has been given a notice under this part and particulars about the notice; or
- (c) if the land is the subject of an order under section 138A—that the land is the subject of the order and particulars about the order.

Maximum penalty—50 penalty units.

**(3)** If the owner does not comply with subsection (2), the buyer may

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<sup>84</sup> Section 118G (Notice to be given to owner of land)

<sup>85</sup> Section 138A (Order to enter land to conduct investigation or conduct work)

rescind the agreement by written notice given to the owner before the completion of the agreement or possession under the agreement, whichever is the earlier.

(4) On rescission of the agreement under subsection (3)—

- (a) a person who was paid amounts by the buyer under the agreement must refund the amounts to the buyer; and
- (b) the buyer must return to the owner any documents about the disposal (other than the buyer's copy of the agreement).

(5) Subsections (3) and (4) apply despite anything to the contrary in the agreement.

### *Division 7—Miscellaneous*

#### **Registrar to maintain records about contaminated land**

**118ZZD.(1)** The administering authority must, within 10 days after recording particulars of land in the contaminated land register, give the registrar written notice the record has been made.

(2) The registrar must maintain records that show the land stated in the notice is recorded in the contaminated land register.

(3) The registrar must maintain the records in a way that a search of the register maintained by the registrar under any Act relating to the land will show particulars of the land are recorded in the contaminated land register.

(4) The administering authority must, within 10 days after removing particulars of land from the contaminated land register or making another change to the record about the land, give the registrar written notice about the removal or change.

(5) The registrar must, on receipt of a notice under subsection (4)—

- (a) for a notice about the removal of land from the contaminated land register—remove the particulars of the land from the registrar's records; or
- (b) for a notice about a change to a record about land in the contaminated land register—make the appropriate change to the registrar's record.

**Offence to destroy etc. signs**

**118ZZE.(1)** The administering authority may erect, on contaminated land, a sign regulating access to the land.

(2) However, if the contaminated land is not land for which particulars are recorded on the environmental management register or contaminated land register, the administering authority must, before erecting the sign, give written notice to the owner of the land.

(3) The notice must—

- (a) state the reasons for the decision to erect a sign on the land; and
- (b) that the owner may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.<sup>86</sup>

(4) A sign erected on contaminated land must be erected—

- (a) at a place where persons might reasonably be expected to enter the land; and
- (b) in a way that makes the sign visible to persons intending to enter the land.

(5) A person must not enter the land in contravention of the sign unless the person has a reasonable excuse for the entry.

Maximum penalty—10 penalty units.

(6) A person must not destroy, damage, mark, deface or in any other way interfere with the sign unless the person has a reasonable excuse for the destruction, damage, marking, defacement or other interference.

Maximum penalty—10 penalty units.

**Removal and disposal of contaminated soil**

**118ZZF.(1)** A person must not remove and dispose of contaminated soil from land for which particulars are recorded in the environmental management register or contaminated land register without a disposal permit.

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<sup>86</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to erect a sign on contaminated land.

Maximum penalty—100 penalty units.

(2) An application for a disposal permit must—

- (a) be in the approved form; and
- (b) be supported by enough information to enable the administering authority to decide the application, including, for example, relevant information about the likely risks to the environment and how it is intended to dispose of the contaminated soil; and
- (c) be accompanied by the application fee prescribed under a regulation.

(3) The administering authority must decide the application within 14 days after receiving it.

(4) In making its decision whether to grant or refuse an application for a disposal permit, or the conditions of the permit, the administering authority must consider the standard criteria.

(5) The administering authority must within 10 days after making its decision—

- (a) if the decision is to grant the application—give the applicant the permit; and
- (b) if the decision is to grant the application but impose conditions on the permit—give the applicant the permit and written notice stating—
  - (i) the reasons for the decision; and
  - (ii) that the applicant may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice; and<sup>87</sup>
- (c) if the decision is to refuse the application—give the applicant written notice stating—
  - (i) the reasons for the decision; and
  - (ii) that the applicant may apply for a review of, or appeal

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<sup>87</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to impose conditions on a disposal permit.

against, the decision within 14 days after receipt of the notice.<sup>88</sup>

(6) If the administering authority fails to make a decision about an application for a disposal permit within the time it is required to make a decision on the application, the failure is taken to be a decision by the authority to refuse the application at the end of the time.

(7) A disposal permit takes effect from the day of its issue, or a later day stated in it, and continues in force for the term stated in it.

(8) This section does not apply if the person is removing and disposing of the soil under a remediation notice.

## **PART 10—ENVIRONMENTAL OFFENCES**

### **Unlawful environmental harm**

**119.(1)** An act or omission that causes serious or material environmental harm or an environmental nuisance is unlawful (“**unlawful environmental harm**”) unless it is authorised to be done or omitted to be done under—

- (a) an environmental protection policy; or
- (b) an environmental management program; or
- (c) an environmental protection order; or
- (d) an environmental authority; or
- (e) a development condition of a development approval; or
- (f) an emergency direction.

(2) However, it is a defence to a charge of unlawfully causing environmental harm to prove—

- (a) the harm happened while an activity (that is lawful apart from this

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<sup>88</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse an application for a disposal permit.

Act) was being carried out; and

- (b) the defendant complied with the general environmental duty either by complying with the relevant code of practice (if any) or in some other way.

### **Offences of causing serious environmental harm**

**120.(1)** A person must not wilfully and unlawfully cause serious environmental harm.

Maximum penalty—4 165 penalty units or 5 years imprisonment.

- (2) A person must not unlawfully cause serious environmental harm.

Maximum penalty—1 665 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

### **Offences of causing material environmental harm**

**121.(1)** A person must not wilfully and unlawfully cause material environmental harm.

Maximum penalty—1 665 penalty units or 2 years imprisonment.

- (2) A person must not unlawfully cause material environmental harm.

Maximum penalty—835 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

### **Court may find defendant guilty of causing material environmental harm if charged with causing serious environmental harm**

**122.** In a proceeding for an offence against section 120, if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the

defendant is guilty of an offence against section 121(1) or (2), the court may find the defendant guilty of the offence against section 121(1) or (2).

### **Offence of causing environmental nuisance**

**123.(1)** A person must not wilfully and unlawfully cause an environmental nuisance.

Maximum penalty—835 penalty units.

**(2)** A person must not unlawfully cause an environmental nuisance.

Maximum penalty—165 penalty units.

**(3)** In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

### **Offences of contravention of environmental protection policies**

**124.(1)** A person must not wilfully contravene an environmental protection policy.

Maximum penalty—

(a) for a class 1 environmental offence—1 665 penalty units or imprisonment for 2 years;

(b) for a class 2 environmental offence—835 penalty units;

(c) for a class 3 environmental offence—85 penalty units.

**(2)** A person must not contravene an environmental protection policy.

Maximum penalty—

(a) for a class 1 environmental offence—835 penalty units;

(b) for a class 2 environmental offence—165 penalty units;

(c) for a class 3 environmental offence—50 penalty units.

**(3)** For subsections (1) and (2), an offence of contravening an environmental protection policy is a class 1, 2 or 3 environmental offence if the policy declares the offence to be an offence of that class.

(4) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

### **Offence of releasing prescribed contaminant**

**125.(1)** In this section—

“**prescribed contaminant**” means a contaminant prescribed by an environmental protection policy for this section.

(2) A person must not release, or cause to be released, a prescribed contaminant into the environment other than under an authorised person’s emergency direction.

Maximum penalty—165 penalty units.

### **Offence to place contaminant where environmental harm or nuisance may be caused**

**126.** A person must not cause or allow a contaminant to be placed in a position where it could reasonably be expected to cause serious or material environmental harm or environmental nuisance.

Maximum penalty—165 penalty units.

### **Offence of interfering with monitoring equipment**

**127.** A person must not interfere with any monitoring equipment used under this Act or a development condition of a development approval.

Maximum penalty—165 penalty units.



## **CHAPTER 4—INVESTIGATION AND ENFORCEMENT**

### **PART 1—ADMINISTRATION GENERALLY**

#### **Appointment of authorised persons**

**128.(1)** The chief executive may appoint any of the following persons to be an authorised person—

- (a) an officer of the public service;
- (b) an employee of the department;
- (c) a person included in a class of persons declared by regulation to be an approved class of persons for this section.

**(2)** If the administration and enforcement of a matter is devolved to a local government, the local government's chief executive officer may appoint an employee of the local government to be an authorised person.

**(3)** A person may be appointed to be an authorised person only if, in the opinion of the chief executive or local government's chief executive officer, the person has the necessary expertise or experience to be an authorised person.

#### **Terms of appointment of authorised persons**

**129.(1)** An authorised person holds office on the conditions stated in the instrument of appointment.

**(2)** An authorised person appointed under section 128(1)(c)—

- (a) is appointed for the term stated in the instrument of appointment; and
- (b) may resign by signed notice given to the chief executive.

**(3)** An authorised person ceases to hold office—

- (a) if the authorised person was appointed under section 128(1)(a)—if the authorised person ceases to be an officer of the public service; or

- (b) if the authorised person was appointed under section 128(1)(b)—if the authorised person ceases to be an employee of the department; or
- (c) if the authorised person was appointed under section 128(1)(c)—if the authorised person ceases to be a member of the relevant class of persons; or
- (d) if the authorised person was appointed under section 128(2)—if the authorised person ceases to be an employee of the local government.

### **Powers of authorised persons**

**130.(1)** An authorised person has the powers given under this or another Act.

**(2)** Subsection (1) has effect subject to any limitations—

- (a) stated in the authorised person's instrument of appointment; or
- (b) prescribed by regulation.

**(3)** An authorised person appointed under section 128(2) may exercise powers only for the administration and enforcement of the matter the subject of a devolution to the local government of which the authorised person is an employee.

### **Issue of identity cards**

**131.(1)** The administering executive must issue an identity card to each authorised person.

**(2)** The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the authorised person; and
- (c) identify the person as an authorised person; and
- (d) include an expiry date.

**(3)** Nothing in this section prevents the issue of a single identity card to a person for this Act and other Acts.

**Production of identity card**

**132.(1)** An authorised person may exercise a power in relation to someone else only if the authorised person—

- (a) first produces his or her identity card for the person’s inspection; or
- (b) has his or her identity card displayed so that it is clearly visible to the person.

**(2)** Subsection (1) does not apply to a uniformed police officer exercising powers under part 4.<sup>89</sup>

**(3)** If, for any reason, it is not practicable to comply with subsection (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

**Protection from liability**

**133.(1)** In this section—

“**official**” means—

- (a) an authorised person; or
- (b) a person acting under the direction of an authorised person.

**(2)** An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

**(3)** If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to—

- (a) if the official is, or is acting under the direction of, an authorised person appointed by the chief executive officer of a local government—the local government; or
- (b) if paragraph (a) does not apply—the State.

**Administering authority may require relevant information**

**134.(1)** The administering authority may give a notice under this section

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<sup>89</sup> Part 4 (Special environmental protection provisions for certain noise)

to a person requiring the person to give it information relevant to the administration or enforcement of this Act.

(2) The notice may only be given to a person the authority suspects on reasonable grounds has knowledge of a matter, or has possession or control of a document dealing with a matter, for which the information is required.

(3) The notice must—

- (a) be in the approved form; and
- (b) state the person to whom it is issued; and
- (c) state the information required; and
- (d) state the time within which the information is to be given to the authority; and
- (e) state why the information is required; and
- (f) state that the person may apply for a review of, or appeal against, the decision to issue the notice within 14 days;<sup>90</sup> and
- (g) be given to the person.<sup>91</sup>

## **PART 2—POWERS OF AUTHORISED PERSONS FOR PLACES AND VEHICLES**

### **Entry of place**

**135.(1)** An authorised person may enter a place if—

- (a) its occupier consents to the entry and, if the entry is for exercising a power under chapter 3, part 9B, its owner consents; or
- (b) it is a public place and the entry is made when the place is open to the public; or

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<sup>90</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to issue a notice.

<sup>91</sup> It is an offence against section 159 to fail to comply with the notice unless the person has a reasonable excuse for not complying with it.

- (c) it is a licensed place and the entry is made when—
  - (i) the environmentally relevant activity to which the licence or approval relates is being carried out; or
  - (ii) the place is open for conduct of business; or
  - (iii) is otherwise open for entry; or
- (d) it is a place where an industry is conducted and the entry is made when—
  - (i) the place is open for conduct of business; or
  - (ii) is otherwise open for entry; or
- (e) the entry is authorised by a warrant; or
- (f) for land mentioned in chapter 3, part 9B—the entry is authorised by an order under section 138A.<sup>92</sup>

(2) Unless the entry is made under the authority of a warrant or order, the entry must be made at a reasonable time.

(3) In this section—

“**licensed place**” includes—

- (a) a place to which an approval relates; and
- (b) a place to which a development approval subject to a development condition relates.

### **Entry of land—search, test, sample etc. for release of contaminant**

**136.(1)** In this section—

“**land**” means a parcel of land other than the part on which a building or structure of any kind is erected.

(2) This section applies if unlawful environmental harm has been caused by the release of a contaminant into the environment.

(3) An authorised person may enter land for the purpose of finding out or confirming the source of the release of the contaminant.

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<sup>92</sup> Section 138A (Order to enter land to conduct investigation or conduct work)

(4) The authorised person may exercise powers under subsection (3), at the time, with the help, and using the force, that is necessary and reasonable in the circumstances.

### **Entry of land—preliminary investigation**

**136A.(1)** This section applies if the administering authority believes on reasonable grounds land is contaminated land.

*Example—*

The administering authority may, as a result of investigations conducted in an area, become aware contaminated fill has been used in the area. In the circumstances, the administering authority may believe on reasonable grounds individual lots of land in the area are contaminated land.

(2) An authorised person may, under this section, enter the land to conduct an investigation (a “**preliminary investigation**”) of the land to find out whether the land is contaminated land.

(3) A power under subsection (2) may be exercised only—

- (a) with the agreement of the owner and occupier of the land; or
- (b) if the administering authority has given at least 7 days written notice to the owner and occupier.

(4) The notice must inform the owner and occupier—

- (a) the administering authority reasonably believes the land is contaminated land; and
- (b) an authorised person intends to enter the land; and
- (c) the purpose of the entry; and
- (d) the days and times when the entry is to be made.

(5) In exercising a power under subsection (2), the authorised person must take all reasonable steps to ensure the person causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

(6) Nothing in this section authorises the authorised person to enter a structure, or part of a structure, used for residential purposes.

## **Warrants**

**137.(1)** An authorised person may apply to a magistrate for a warrant for a place.

(2) An application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of the commission of an offence against this Act; and
- (b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

- (a) that the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person’s powers under this Act; and
- (b) the evidence for which the warrant is issued; and
- (c) the hours of the day when entry may be made; and
- (d) the day (within 14 days after the warrant’s issue) when the warrant ends.

(6) The magistrate must record the reasons for issuing the warrant.

## **Warrants—applications made otherwise than in person**

**138.(1)** An authorised person may apply for a warrant by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—

- (a) urgent circumstances; or

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(b) other special circumstances, including, for example, the authorised person's remote location.

(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the authorised person—

(a) the magistrate must—

(i) tell the authorised person what the terms of the warrant are; and

(ii) tell the authorised person the date and time the warrant was signed; and

(iii) record on the warrant the reasons for issuing the warrant; and

(b) the authorised person must write on a form of warrant (“**warrant form**”)—

(i) the magistrate's name; and

(ii) the date and time the magistrate signed the warrant; and

(iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers authorised by the warrant issued by the magistrate.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if a warrant form was completed by the authorised person—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.



(9) Unless the contrary is proved, a court must presume that a power exercised by an authorised person was not authorised by a warrant issued under this section if—

- (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and
- (b) the warrant is not produced in evidence.

### **Order to enter land to conduct investigation or conduct work**

**138A.(1)** An authorised person may apply to a magistrate for an order to enter contaminated land—

- (a) to conduct a site investigation of the land; or
- (b) for land particulars of which are recorded in the contaminated land register—to conduct work to remediate the land.

(2) The administering authority must give written notice of the application to—

- (a) the owner of the land; and
- (b) if the owner is not the occupier of the land—the occupier.

(3) The application for the order must be sworn and state the grounds on which it is made.

(4) The magistrate may refuse to consider the application until the person gives the magistrate all information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

(5) The magistrate may make an order under this section only if the magistrate is satisfied—

- (a) for an order to enter the land and carry out a site investigation—
  - (i) the land is listed in the environmental management register because it is contaminated land; and
  - (ii) the hazardous contaminant contaminating the land is in a concentration that has the potential to cause serious

environmental harm; and

- (iii) a person, animal or another part of the environment may be exposed to the hazardous contaminant; and
  - (iv) the entry sought is reasonable and necessary to conduct a site investigation of the land; or
- (b) for an order to enter and conduct work to remediate the land—the magistrate is satisfied the land is contaminated and the entry sought is reasonable and necessary to conduct work to remediate the land.
- (6) The order must state—
- (a) that an authorised person may, with necessary and reasonable help and force, enter the land and conduct the investigation or work to remediate the land; and
  - (b) the hours of the day when the entry may be made; and
  - (c) the day when the order ends.
- (7) The magistrate must record the reasons for making the order.

### **Entry or boarding of vehicles**

**139.(1)** An authorised person may enter or board a vehicle if the authorised person has reasonable grounds for suspecting—

- (a) the vehicle is being, or has been, used in the commission of an offence against this Act; or
  - (b) the vehicle, or a thing in or on the vehicle, may provide evidence of the commission of an offence against this Act; or
  - (c) the vehicle is of a type prescribed by regulation and is being used to transport waste of a type prescribed by regulation; or
  - (d) if the vehicle is a train—the train is being used to transport waste of a type prescribed by regulation.
- (2) If the vehicle is moving or about to move, the authorised person may signal the person in control of the vehicle to stop the vehicle or not to move

it.<sup>93</sup>

(3) To enable the vehicle to be entered or boarded, the authorised person may—

- (a) act with necessary and reasonable help and force; and
- (b) require the person in control of the vehicle to give reasonable help to the authorised person.<sup>94</sup>

### **General powers for places and vehicles**

**140.(1)** An authorised person who enters a place, or enters or boards a vehicle, under this chapter may—

- (a) search any part of the place or vehicle; or
- (b) inspect, examine, test, measure, photograph or film the place or vehicle or anything in or on the place or vehicle; or
- (c) take samples of any contaminant, substance or thing in or on the place or vehicle; or
- (d) record, measure, test or analyse the release of contaminants into the environment from the place or vehicle; or
- (e) take extracts from, or make copies of, any documents in or on the place or vehicle; or
- (f) take into or onto the place or vehicle any persons, equipment and materials the authorised person reasonably requires for the purpose of exercising any powers in relation to the place or vehicle; or
- (g) install or maintain any equipment and materials in or on the place or vehicle the authorised person reasonably requires for the purpose of conducting a monitoring program for the release of contaminants into the environment from the place or vehicle; or
- (h) require the occupier of the place, or any person in or on the place

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<sup>93</sup> It is an offence against section 160(1) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

<sup>94</sup> It is an offence against section 161(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

or vehicle, to give to the authorised person reasonable help for the exercise of the powers mentioned in paragraphs (a) to (g);<sup>95</sup> or

- (i) if the authorised person enters or boards a vehicle—by written notice given to the person in control of the vehicle, require the person—
  - (i) to take the vehicle to a stated reasonable place by a stated reasonable time; and
  - (ii) if necessary, to remain in control of the vehicle at the place for a reasonable time;

to enable the authorised person to exercise the powers mentioned in paragraphs (a) to (g).<sup>96</sup>

**(1A)** However, subsection (1)(e) does not apply to an authorised person who enters land to conduct a preliminary investigation or site investigation.

**(2)** If, for any reason, it is not practicable to make a requirement under subsection (1)(i) by written notice, the requirement may be made orally and confirmed by written notice as soon as practicable.

**(3)** Nothing in this section prevents an authorised person making a further requirement under subsection (1)(i) of the same person or another person in relation to the same vehicle if it is necessary and reasonable to make the further requirement.

**(4)** An authorised person may not enter a part of a vehicle used only as a living area, or exercise a power under subsection (1)(a) to (g) in relation to that part, unless the authorised person is accompanied by the person in control of the vehicle.

**(5)** Subsection (4) does not apply if the person in control of the vehicle is unavailable or unwilling to accompany the authorised person or the authorised person is unable for another reason to comply with the subsection.

**(6)** This section does not apply to an authorised person who enters a

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<sup>95</sup> It is an offence against section 162(2) or 163(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

<sup>96</sup> It is an offence against section 161(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

place to get the occupier's consent unless the consent is given or the entry is otherwise authorised.

(7) This section does not limit any power that an authorised person has apart from this section.

### **Power to seize evidence**

**141.(1)** An authorised person who enters a place under this chapter with a warrant may seize the evidence for which the warrant was issued.

(2) An authorised person who enters a place under this chapter with the occupier's consent may seize the particular thing for which the entry was made if the authorised person believes on reasonable grounds that the thing is evidence of an offence against this Act.

(3) An authorised person who enters a place under this chapter with a warrant or with the occupier's consent may also seize another thing if the authorised person believes on reasonable grounds—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
  - (i) concealed, lost or destroyed; or
  - (ii) used to commit, continue or repeat the offence.

(4) An authorised person who enters a place under this chapter other than with a warrant or with the occupier's consent, or who enters or boards a vehicle, may seize a thing if the authorised person believes on reasonable grounds—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
  - (i) concealed, lost or destroyed; or
  - (ii) used to commit, continue or repeat the offence.

### **Procedure after seizure of evidence**

**142.(1)** As soon as practicable after a thing is seized by an authorised person under this chapter, the authorised person must give a receipt for it to

the person from whom it was seized.

(2) The receipt must describe generally each thing seized and its condition.

(3) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must—

- (a) leave the receipt at the place of seizure; and
- (b) ensure the receipt is left in a reasonably secure way and in a conspicuous position.

(4) The authorised person must allow a person who would be entitled to the seized thing if it were not in the authorised person's possession to inspect it and, if it is a document, to take extracts from it or make copies of it.

(5) The authorised person must return the seized thing to its owner at the end of—

- (a) 6 months; or
- (b) if a prosecution for an offence involving it is started within the 6 months—the prosecution for the offence and any appeal from the prosecution.

(6) Despite subsection (4), the authorised person must return the seized thing to its owner immediately the authorised person stops being satisfied its retention as evidence is necessary.

(7) However, the authorised person may keep the seized thing if the authorised person believes, on reasonable grounds, it is necessary to continue to keep it to prevent its use in committing an offence.

### **Forfeiture of seized thing on conviction**

**143.(1)** Despite section 142, if the owner of the seized thing is convicted of an offence for which the thing was retained as evidence, the court may order its forfeiture to—

- (a) if the authorised person exercised the power of seizure in the enforcement of a matter devolved to a local government—the local government; or
- (b) if paragraph (a) does not apply—the State.

(2) The forfeited thing becomes the property of the local government or State and may be destroyed or disposed of as directed by the administering executive.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

### **PART 3—OTHER ENFORCEMENT POWERS OF AUTHORISED PERSONS AND POLICE OFFICERS**

#### **Power to require name and address**

**144.(1)** An authorised person may require a person to state the person's name and address if the authorised person—

- (a) finds the person committing an offence against this Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the authorised person to suspect on reasonable grounds that the person has committed an offence against this Act<sup>97</sup>; or
- (c) is about to give, is giving, or has given someone a noise abatement direction.

(2) When making the requirement, the authorised person must warn the person that it is an offence against this Act to fail to state the person's name and address, unless the person has a reasonable excuse.

(3) The authorised person may require the person to give evidence of the correctness of the person's name or address if the authorised person suspects on reasonable grounds that the name or address given is false.<sup>98</sup>

(4) If a police officer exercising powers under part 4<sup>99</sup> believes on reasonable grounds that—

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<sup>97</sup> It is an offence against section 164(1) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

<sup>98</sup> It is an offence against section 164(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

<sup>99</sup> Part 4 (Special environmental protection provisions for certain noise)

- (a) a person has not complied with the officer's requirement under subsection (1) or (3); and
- (b) proceedings by way of complaint and summons against the person would be ineffective;

the officer may arrest the person without warrant.

### **Power to require answers to questions**

**145.(1)** This section applies if an authorised person suspects, on reasonable grounds, that—

- (a) an offence against this Act has happened; and
- (b) a person may be able to give information about the offence.

**(2)** The authorised person may require the person to answer a question about the offence.<sup>100</sup>

**(3)** When making the requirement, the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

### **Power to require production of documents**

**146.(1)** An authorised person may require a person to produce to the authorised person for inspection a document required to be held or kept under this Act or a development condition of a development approval.

**(2)** The authorised person may keep a produced document to take an extract from, or make a copy of, the document.

**(3)** The authorised person must return the document to the person as soon as practicable after taking the extract or making the copy.

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<sup>100</sup> It is an offence against section 165(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.



## **PART 4—SPECIAL ENVIRONMENTAL PROTECTION PROVISIONS FOR CERTAIN NOISE**

### **Definitions**

**147.** In this part—

**“Aboriginal police officer”** means an Aboriginal police officer under the Community Services (Aborigines) Act 1984.

**“Island police officer”** means an Island police officer under the Community Services (Torres Strait) Act 1984.

**“place”** includes—

- (a) land or premises; and
- (b) a vehicle.

**“police officer”** includes an Aboriginal or Island police officer.

### **Application of part**

**148.(1)** This part applies to the abatement of environmental nuisance caused by excessive noise that—

- (a) is emitted from a place by—
  - (i) a musical instrument; or
  - (ii) an appliance for electrically producing or amplifying music or other sounds; or
  - (iii) a motor vehicle other than a motor vehicle on a road; or
  - (iv) a gathering of people for a meeting, party, celebration or similar occasion; and
- (b) is audible in any residential or commercial premises.

**(2)** However, this part does not apply to the abatement of excessive noise emitted from a place—

- (a) while being used for an open-air concert or commercial entertainment; or
- (b) by a public meeting under a permit under any Act or law

authorising the amplification or reproduction of sound by—

- (i) any electrical or mechanical appliance, apparatus or device; or
- (ii) another way.

### **Complaint to police about noise**

**149.(1)** If a person reasonably believes noise emitted from any place is excessive noise, the person may make a complaint to a police officer about the noise.

**(2)** As soon as practicable after the complaint is made, the police officer must investigate the complaint, or cause the complaint to be investigated, unless the officer believes the complaint is frivolous or vexatious.

### **Powers of police officers on investigation of complaint**

**150.(1)** This section applies if a police officer is reasonably satisfied—

- (a) the noise complained of is clearly audible at or near the complainant's residential or commercial premises; and
- (b) the noise is excessive noise in the circumstances.

**(2)** In deciding whether noise is excessive noise in the circumstances, a police officer may have regard to—

- (a) the degree of interference that the noise is causing or is likely to cause to the conduct of activities ordinarily carried out in the neighbourhood of the place from which the noise is being emitted; and
- (b) the nature of the lawful uses permitted for premises in the neighbourhood of the place from which the noise is being emitted.

**(3)** A police officer may—

- (a) without a warrant, enter the place from which the noise is being emitted; and
- (b) direct the occupier of the place, and the other persons who appear to the officer to be responsible for causing the noise or permitting

the noise to be caused, to immediately abate the excessive noise (a “**noise abatement direction**”).<sup>101</sup>

(4) The police officer may exercise the powers mentioned in subsection (3) at the time, with the help and using the force that is necessary and reasonable in the circumstances.

(5) A noise abatement direction may be given orally or by written notice.

### **Additional powers of police officers on later investigation**

**151.(1)** This section applies if—

- (a) a noise abatement direction has been given about a place; and
- (b) within 12 hours after the direction is given, a police officer is satisfied on further investigation the officer is entitled to exercise the powers mentioned in section 150 about the same place.

(2) A police officer may—

- (a) without a warrant, enter the place from which the noise is being emitted; and
- (b) in relation to the property that is or was being used to produce or contribute to the production of the noise—
  - (i) locking, sealing or otherwise dealing with it in a way to prevent its further use;<sup>102</sup> or
  - (ii) seizing and removing it from the place; or
  - (iii) making it inoperable by removing any part or parts and seizing and removing the part or parts from the place.

(3) If the police officer seizes property under subsection (2)(b), the officer must take the property to a police station to be held in safe custody.

(4) The police officer may exercise the powers mentioned in subsection (2) at the time, with the help and using the force that is necessary and reasonable in the circumstances.

(5) However, in exercising or attempting to exercise the powers, the

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<sup>101</sup> It is an offence against section 167 to fail to comply with the direction.

<sup>102</sup> It is an offence against section 168 to unlock, unseal or use the property.

police officer must take all reasonable steps to ensure the officer does as little damage as is practicable in the circumstances.

### **Police officer to give notice of damage**

**152.(1)** If a police officer damages anything in the exercise of a power under this part, the officer must immediately advise the person who appears to the officer to be the owner of the thing of the particulars of the damage, unless the officer is reasonably satisfied the person knows of the damage.

(2) The advice may be given orally or by written notice.

(3) If—

- (a) the advice is given orally; or
- (b) advice is not given because the officer is reasonably satisfied the person knew of the damage;

the police officer must, as soon as practicable, give written notice of the particulars of the damage to the person.

### **Recovery of seized property**

**153.(1)** Property seized by a police officer may be claimed by the—

- (a) owner of the property or a person acting for the owner; or
- (b) the person from whose possession the property was seized or someone else acting for the person.

(2) The claim may only be made during office hours on a business day not earlier than 24 hours after the seizure of the property.

(3) A police officer must not give seized property to a person claiming it unless the officer is satisfied the claimant is—

- (a) the owner of the property or the person from whose possession the property was seized; or
- (b) a person acting for a person mentioned in paragraph (a).<sup>103</sup>

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<sup>103</sup> Unclaimed property may be disposed of under the *Policy Service Administration Act 1990*, section 10.15 (Property in possession).

**Recovery of costs of seizure etc.**

**154.** The State may recover as a debt owing to it the reasonable costs incurred by a police officer exercising powers under section 151.<sup>104</sup>

**General powers and role of police officers**

**155.(1)** For this part, a police officer has the powers of an authorised person under the following sections—

- section 144 (Power to require name and address)
- section 145 (Power to require answers to questions).

**(2)** While exercising powers, a police officer is taken to be an authorised person under the following sections—

- section 164 (Failure to give name and address etc.)
- section 165 (Failure to answer questions)
- section 181 (Special evidentiary provision—environmental nuisance).

**(3)** However, an Aboriginal or Island police officer may exercise powers only in the Aboriginal or Torres Strait Islander local government area for which the officer is appointed.

**PART 5—EMERGENCY POWERS OF AUTHORISED PERSONS****Emergency powers**

**156.(1)** This section applies if an authorised person is satisfied on reasonable grounds—

- (a) serious or material environmental harm has been, or is likely to be, caused; and

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<sup>104</sup> Section 151 (Additional powers of police officers on later investigation)

- (b) urgent action is necessary to—
  - (i) prevent or minimise the harm being caused; or
  - (ii) rehabilitate or restore the environment because of the harm.

(2) The authorised person may—

- (a) direct any person to take specified reasonable action within a specified reasonable time;<sup>105</sup> or
- (b) take the action, or authorise another person to take the action.

(3) The direction may be given orally or by written notice.

(4) However, if the direction is given orally, the authorised person must, as soon as practicable, confirm the direction by written notice given to the person.

(5) If the authorised person decides to take the action, the authorised person may—

- (a) without a warrant, enter any place (other than premises, or the part of premises, used only for residential purposes) and take the action; and
- (b) in taking the action, exercise any of the powers under this chapter; and
- (c) if, in taking the action, the authorised person finds a thing that may provide evidence of the commission of an offence against this Act—sections 141(1) and 142<sup>106</sup> apply to the thing as if the thing were the evidence mentioned in the provisions and a warrant had been issued to the authorised person authorising the authorised person to seize it.

(6) The authorised person may exercise the powers mentioned in subsection (5) (“**emergency powers**”) at the time, with the help, and using the force, that is necessary and reasonable in the circumstances.

(7) If a person or thing is obstructing or preventing entry to, or action

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<sup>105</sup> It is an offence against section 169 to fail to comply with the direction unless the person has a reasonable excuse for not complying with it.

<sup>106</sup> Sections 141 (Power to seize evidence) and 142 (Procedure after seizure of evidence)

being taken at, any place by an authorised person while exercising or attempting to exercise emergency powers, a police officer may, if asked by the officer, using the force that is necessary and reasonable—

- (a) remove the person or thing from the place; and
- (b) take all reasonable measures to ensure the person or thing does not again obstruct or prevent the action being taken.

(8) In exercising or attempting to exercise emergency powers, an authorised person must take all reasonable steps to ensure the authorised person causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

(9) This section does not limit any power an authorised person has apart from this section.

(10) If an authorised person authorises a person to take action under subsection (2)(b)—

- (a) the person may exercise the powers mentioned in subsection (5)(a); and
- (b) the authorised person must inform the person—
  - (i) of the action the person is authorised to take; and
  - (ii) of the person's powers under this section; and
  - (iii) in general terms, of the provisions of section 177;<sup>107</sup> and
- (c) subsections (6), (7) and (8) (so far as they relate to the power mentioned in subsection (5)(a)) apply to the person as if the person were the authorised person.

### **Authorised person may direct emergency release of contaminant**

**157.(1)** An authorised person may give a written direction (an “**emergency direction**”) to a person to release a contaminant into the environment if the authorised person is satisfied—

- (a) it is necessary and reasonable to release the contaminant because of an emergency; and

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<sup>107</sup> Section 177 (Authorised person to give notice of seizure or damage)

(b) there is no other practicable alternative to the release.<sup>108</sup>

(2) The authorised person may impose reasonable conditions on the direction.

## **PART 6—OFFENCES**

### **Failure of authorised person to return identity card**

**158.** A person who ceases to be an authorised person must return the person's identity card to the administering executive who issued it as soon as practicable after ceasing to be an authorised person, unless the person has a reasonable excuse for not returning it.

Maximum penalty—50 penalty units.

### **Failure to give information to administering authority**

**159.(1)** This section applies if a person is given a notice under section 134.<sup>109</sup>

(2) The person must comply with the notice unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(3) It is a reasonable excuse for the person to fail to comply with the notice if complying with it might tend to incriminate the person.

(4) The person does not commit an offence against this section if the information sought by the administering authority is not in fact relevant to the administration or enforcement of this Act.

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<sup>108</sup> It is an offence against section 170 to fail to comply with the direction unless the person has a reasonable excuse for not complying with it.

<sup>109</sup> Section 134 (Administering authority may require relevant information)



**Failure to comply with signal**

**160.(1)** A person must obey a signal under section 139(2)<sup>110</sup> to stop or not to move a vehicle, unless the person has a reasonable excuse for not obeying the signal.

Maximum penalty—50 penalty units.

**(2)** It is a reasonable excuse for the person to fail to stop or to move the vehicle if—

- (a) to obey immediately the signal would have endangered the person or another person; and
- (b) the person obeys the signal as soon as it is practicable to obey the signal.

**Failure to comply with requirements about vehicles**

**161.(1)** In this section—

**“required action”** for a vehicle, means—

- (a) to bring the vehicle to a place; and
- (b) to remain in control of the vehicle at a place for a reasonable time.

**(2)** A person who is required by an authorised person under section 139(3)(b) to give reasonable help to the authorised person to enable the entering or boarding of a vehicle must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

**(3)** A person who is required by an authorised person under section 140(1)(i)<sup>111</sup> to take required action in relation to a vehicle must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

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<sup>110</sup> Section 139 (Entry or boarding of vehicles)

<sup>111</sup> Section 140 (General powers for places and vehicles)

**Failure to help authorised person—emergency**

**162.(1)** This section applies if—

- (a) in an emergency, an authorised person is exercising or attempting to exercise emergency powers; and
- (b) for dealing with the emergency, the authorised person requires a person under section 140(1)(h) to give reasonable help to the authorised person in relation to the exercise of a power.

(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—100 penalty units.

(3) If the help required is the answering of a question or producing of a document (other than a document required to be held or kept by the person under this Act or a development condition of a development approval), it is not a reasonable excuse for the person to fail to answer the question, or produce the document, on the ground that complying with the requirement might tend to incriminate the person.

(4) When making a requirement mentioned in subsection (3), the authorised person must inform the person of the following—

- (a) the person is obliged to answer the question or produce the document despite the rule of law relating to privilege against self-incrimination;
- (b) the person may answer the question or produce the document subject to the objection that complying with the requirement might tend to incriminate the person;
- (c) if the person makes an objection—the answer or the producing of the document may not be admitted in evidence against the person in a prosecution for an offence against this Act, other than an offence (constituted by the giving of the answer or producing of the document) against either of the following sections—
  - section 171 (False, misleading or incomplete documents)
  - section 172 (False or misleading information).

(5) If, before giving the answer or producing the document, the person makes an objection, the answer or producing of the document is not

admissible in evidence against the person in a prosecution for an offence against this Act, other than an offence (constituted by the giving of the answer or producing of the document) against either of the following sections—

- section 171 (False, misleading or incomplete documents)
- section 172 (False or misleading information).

### **Failure to help authorised person—other cases**

**163.(1)** This section applies if—

- (a) an authorised person requires a person under section 140(1)(h) to give reasonable help to the authorised person in relation to the exercise of a power; but
- (b) section 162 does not apply.

(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(3) If the help required is the answering of a question or producing of a document (other than a document required to be held or kept by the person under this Act or a development condition of a development approval), it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

### **Failure to give name and address etc.**

**164.(1)** A person who is required by an authorised person under section 144(1) to state the person's name or address must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(2) A person who is required by an authorised person under section 144(3) to give evidence of the correctness of a name or address must give the evidence, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

- (3) The person does not commit an offence against this section if—
- (a) the authorised person required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence.

### **Failure to answer questions**

**165.(1)** This section applies if—

- (a) an authorised person requires a person under section 145(1) to answer a question; but
- (b) section 162 does not apply.

(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(3) It is a reasonable excuse for the person to fail to answer the question if complying with the requirement might tend to incriminate the person.

(4) The person does not commit an offence against this section if the information sought by the authorised person is not in fact relevant to the offence.

### **Failure to produce document**

**166.** A person who is required under section 146 to produce a document must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

### **Compliance with noise abatement direction**

**167.(1)** A person to whom a noise abatement direction is given must—

- (a) immediately comply with the direction; and

- (b) refrain from the emission, or contributing to the emission, of excessive noise from the place to which the direction relates for a period of 12 hours from the giving of the direction.

Maximum penalty—10 penalty units.

(2) A person who knows that a noise abatement direction has been given must refrain from the emission, or contributing to the emission, of excessive noise from the place to which the direction relates for a period of 12 hours from the giving of the direction.

Maximum penalty—10 penalty units.

(3) For the purpose of applying subsection (1) or (2), it is immaterial that noise emitted from a place in contravention of the subsections is not of the same level or nature of the excessive noise for which the noise abatement direction was given.

### **Offence to interfere with locked etc. property**

**168.** If a police officer locks, seals or otherwise deals with property under section 151(2)(b)(i),<sup>112</sup> a person must not unlock, unseal or use the property within 24 hours after the noise abatement notice was given about the place where the property is found.

Maximum penalty—100 penalty units.

### **Failure to comply with authorised person's direction in emergency**

**169.** A person to whom a notice is given under section 156(2)(a) must comply with the notice, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—100 penalty units.

### **Offences in relation to release of contaminant in emergency**

**170.** A person to whom an emergency direction is given must—

- (a) comply with the direction (including a condition of the direction),

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<sup>112</sup> Section 151 (Additional powers of police officers on later investigation)

unless the person has a reasonable excuse for not complying with it; and

- (b) take all reasonable and practicable precautions to prevent or minimise—
  - (i) environmental harm being caused; and
  - (ii) the risk of death or injury to humans and animals; and
  - (iii) loss or damage to property.

Maximum penalty—100 penalty units.

### **False, misleading or incomplete documents**

**171.(1)** A person must not give to the administering authority or an authorised person a document containing information that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—165 penalty units.

**(2)** Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the authorised person of the extent to which the document is false, misleading or incomplete; and
- (b) gives the correct information to the authorised person if the person has, or can reasonably obtain, the correct information.

**(3)** A complaint against a person for an offence against subsection (1) is sufficient if it states that the document was false, misleading or incomplete to the person's knowledge.

### **False or misleading information**

**172.(1)** A person must not—

- (a) state anything to an authorised person that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised person anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—165 penalty units.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the statement made was false or misleading to the person's knowledge.

### **Obstruction of authorised persons**

**173.(1)** In this section—

“**authorised person**” includes a person who is authorised by an authorised person to take action under section 156(2)(b).<sup>113</sup>

(2) A person must not obstruct an authorised person in the exercise of a power under this chapter, unless the person has a reasonable excuse for obstructing the authorised person.

Maximum penalty—100 penalty units.

### **Impersonation of authorised person**

**174.** A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

### **Attempts to commit offences**

**175.(1)** A person who attempts to commit an offence against this Act commits an offence.

Maximum penalty—half the maximum penalty for committing the offence.

(2) The Criminal Code, section 4,<sup>114</sup> applies to subsection (1).

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<sup>113</sup> Section 156 (Emergency powers)

<sup>114</sup> Section 4 (Attempts to commit offences)

## **PART 7—GENERAL**

### **Consent to entry**

**176.(1)** This section applies if an authorised person intends to seek the consent of an occupier of a place to an authorised person entering the place under this chapter.

**(2)** Before seeking the consent, the authorised person must inform the occupier—

- (a) of the purpose of the entry; and
- (b) that anything found and seized may be used in evidence in court; and
- (c) that the occupier is not required to consent.

**(3)** If the consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent.

**(4)** The acknowledgment must—

- (a) state the occupier was informed—
  - (i) of the purpose of the entry; and
  - (ii) that anything found and seized may be used in evidence in court; and
  - (iii) that the occupier was not required to consent; and
- (b) state the occupier gave the authorised person consent under this chapter to enter the place and exercise powers under this chapter.

**(5)** If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.

### **Authorised person to give notice of seizure or damage**

**177.(1)** This section applies if—

- (a) an authorised person seizes or damages anything in the exercise of a power under this chapter; or
- (b) a person who is authorised by an authorised person under



section 156(2)(b)<sup>115</sup> to take action damages anything in the exercise of a power under section 156.

(2) The authorised person must immediately give written notice of the particulars of the seizure or damage.

(3) The notice must be given to—

- (a) if anything is seized—the person from whom the thing was seized; or
- (b) if anything is damaged—the person who appears to the authorised person to be the owner of the thing.

(4) If, for any reason, it is not practicable to comply with subsection (2), the authorised person must—

- (a) leave the notice at the place where the seizure or damage happened; and
- (b) ensure it is left—
  - (i) in a reasonably secure way; and
  - (ii) in a conspicuous position.

## **Compensation**

**178.(1)** A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under this chapter, including, for example, in complying with a requirement made of the person under this chapter.

(2) The compensation must be claimed from—

- (a) if the power or requirement that gives rise to the claim was exercised or made by an authorised person appointed by the chief executive officer of a local government, or a person authorised by such an authorised person under section 156(2)(b)<sup>116</sup> to take action—the local government; or
- (b) if paragraph (a) does not apply—the State.

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<sup>115</sup> Section 156 (Emergency powers)

<sup>116</sup> Section 156 (Emergency powers)

(3) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

(4) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

### **Administering authority to reimburse costs and expenses incurred**

**179.(1)** If a person incurs costs and expenses in complying with a direction under section 156(2)(a), the administering authority must reimburse the person's reasonable costs and expenses.

(2) Subsection (1) does not apply to the person who caused or allowed the relevant situation mentioned in section 156(1) to happen.

### **Costs of investigation or remediation to be paid by recipient**

**179A.(1)** The amount properly and reasonably incurred by the administering authority in conducting a site investigation, or remediating land, is a debt payable to the administering authority by the recipient of the notice to conduct or commission the investigation or remediate the land.

(2) If more than 1 person failed to perform the work, the amount incurred is payable by the persons jointly and severally.

(3) However, subsection (1) does not apply if the requirement for the recipient to conduct or commission the investigation, or carry out the remediation has been waived by the administering authority.

## CHAPTER 5—LEGAL PROCEEDINGS

### PART 1—EVIDENCE

#### **Evidentiary provisions**

**180.(1)** This section applies to a proceeding under or in relation to this Act.

**(2)** Unless a party, by reasonable notice, requires proof of—

- (a) the appointment of an authorised person under this Act; or
- (b) the authority of an authorised person to do an act under this Act;

the appointment or authority must be presumed.

**(3)** A signature purporting to be the signature of the administering executive or an authorised person is evidence of the signature it purports to be.

**(4)** A certificate purporting to be signed by the Minister stating that a stated person is or was the administering authority or administering executive at a time, or during a stated period, is evidence of the matter stated in the certificate.

**(5)** A certificate purporting to be signed by the administering executive stating any of the following matters is evidence of the matter—

- (a) a stated document is a copy of a notice, direction, decision, order, licence or other authority issued or given under this Act;
- (b) on a stated day, or during a stated period, a stated person was or was not the holder of a licence, permit or other authority issued or given under this Act;
- (c) a licence or other authority—
  - (i) was or was not issued or given for a stated term; or
  - (ii) was or was not in force on a stated day or during a stated period; or
  - (iii) was or was not subject to a stated condition;
- (d) on a stated day, a licence or level 1 approval was suspended for a

stated period or cancelled;

- (e) on a stated day, a stated person was given a stated notice, direction, or order under this Act;
- (f) a stated document is a copy of a part of, or an extract from, a register kept under this Act;
- (g) a stated amount is payable under this Act by a stated person and has not been paid;
- (h) that a stated substance is a contaminant or an ozone depleting substance;
- (i) that a stated method of storage, preservation, handling or transportation of a sample taken under this Act has not materially affected the attributes of the sample;
- (j) another matter prescribed by regulation.

(6) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

(7) The production by the prosecutor of a certificate purporting to be signed by an appropriately qualified person (the “**analyst**”) and stating—

- (a) the analyst received from a stated person the sample mentioned in the certificate; and
- (b) the analyst analysed the sample on a stated day and at a stated place; and
- (c) the results of the analysis;

is evidence of the matter stated in the certificate.

(8) Any instrument, equipment or installation prescribed by regulation that is used by an authorised person or analyst in accordance with the conditions (if any) prescribed by the regulation is taken to be accurate and precise in the absence of evidence to the contrary.

(9) In a proceeding in which the administering authority applies to recover the costs and expenses incurred by it, a certificate by the administering executive stating that stated costs and expenses were incurred and the way and purpose for which they were incurred is evidence of the matters stated.

**Special evidentiary provision—environmental nuisance**

**181.(1)** This section applies to a proceeding for an offence against section 123 in which it is claimed the defendant caused environmental nuisance by the emission of noise, smoke, dust, fumes or odour.

(2) An authorised person may give evidence (without any need to call further opinion evidence) that the authorised person formed the opinion based on the authorised person's own senses that—

- (a) noise, smoke, dust, fumes or odour was emitted from a place occupied by the defendant and travelled to a place occupied by someone else; and
- (b) the level, nature or extent of the noise, smoke, dust, fumes or odour within the place occupied by the other person was an unreasonable interference with the person's enjoyment of the place.

**Responsibility for acts or omissions of representatives**

**182.(1)** If, in a proceeding for an offence against this Act, it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act or omission was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(2) An act or omission done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been done or omitted to be done also by the person, unless the person proves the person took all reasonable steps to prevent the acts or omissions.

(3) If—

- (a) an individual is convicted of an offence against this Act; and
- (b) the individual would not have been convicted of the offence if

subsections (1) and (2) had not been enacted;  
the individual is not liable to be punished by imprisonment for the offence.

## **PART 2—EXECUTIVE OFFICER LIABILITY**

### **Executive officers must ensure corporation complies with Act**

**183.(1)** The executive officers of a corporation must ensure that the corporation complies with this Act.

**(2)** If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure the corporation complies with this Act.

Maximum penalty—the penalty for the contravention of the provision by an individual.

**(3)** Evidence that the corporation committed an offence against this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with this Act.

**(4)** However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

## PART 3—LEGAL PROCEEDINGS

### Indictable and summary offences

**184.(1)** An offence against this Act for which the maximum penalty of imprisonment is 2 years or more is an indictable offence.

**(2)** Any other offence against this Act is a summary offence.

### Proceedings for indictable offences

**185.(1)** A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

**(2)** A magistrate must not hear an indictable offence summarily if—

- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
- (b) the magistrate considers that the charge should be prosecuted on indictment.

**(3)** If subsection (2) applies—

- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).<sup>117</sup>

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<sup>117</sup> Section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

(4) The maximum penalty that may be summarily imposed for an indictable offence is 165 penalty units or 1 year's imprisonment.

### **Limitation on who may summarily hear indictable offence proceedings**

**186.(1)** A proceeding must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of a person on a charge for an indictable offence; or
- (b) for an examination of witnesses for a charge for an indictable offence.

(2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### **Limitation on time for starting summary proceedings**

**187.** A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **Notice of defence**

**188.** If a person intends to rely on the defence mentioned in section 119(2),<sup>118</sup> the person must give written notice of the intention to the prosecutor—

- (a) for a charge being prosecuted by way of summary proceeding under the *Justices Act 1886*—at least 14 days before the charge is heard; or

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<sup>118</sup> Section 119 (Unlawful environmental harm)



- (b) for a charge being prosecuted on indictment—at least 7 days before the charge is set down for hearing.

### **Proof of authority**

**189.** If a provision for an offence against this Act refers to a person unlawfully doing an act or making an omission, the *Justices Act 1886*, section 76,<sup>119</sup> applies as if the doing of the act or the making of the omission with an environmental authority were an exemption contained in the provision.

### **Fines payable to local government**

**190.(1)** This section applies if—

- (a) the administration and enforcement of a matter has been devolved to a local government; and
- (b) a proceeding for an offence about the matter is taken; and
- (c) a court imposes a fine for the offence.

**(2)** The fine must be paid to the local government.

**(3)** If a person other than the local government prosecutes the offence, subsection (2) does not apply to any part of the fine the court orders be paid to the party.

### **Recovery of costs of rehabilitation or restoration etc.**

**191.(1)** This section applies if, in a proceeding for an offence against this Act—

- (a) the court finds the defendant has caused environmental harm by a contravention of this Act that constitutes an offence; and
- (b) the court finds the administering authority has reasonably incurred costs and expenses—
  - (i) in taking action to prevent or minimise the harm or to rehabilitate or restore the environment because of the

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<sup>119</sup> Section 76 (Proof of negative etc.)

contravention; or

- (ii) reimbursing costs and expenses under section 179; and
- (c) the administering authority applies to the court for an order against the defendant for the payment of the costs and expenses.

(2) The court must order the defendant to pay the administering authority's reasonable costs and expenses to the authority unless it is satisfied it would not be just to make the order in the circumstances of the particular case.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

### **Court may order payment of compensation etc.**

**192.(1)** This section applies if, in a proceeding for an offence against this Act, the court finds the defendant has caused environmental harm by a contravention of this Act that constitutes an offence.

(2) The court may order the defendant to do either or both of the following—

- (a) pay to persons who, because of the contravention, have suffered loss of income, loss or damage to property or incurred costs or expenses in preventing or minimising, or attempting to prevent or minimise, loss or damage, an amount of compensation it considers appropriate for the loss or damage suffered or the costs and expenses incurred;
- (b) take stated action to rehabilitate or restore the environment because of the contravention.

(3) An order under subsection (2) is in addition to the imposition of a penalty and any other order under this Act.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

### **Recovery of costs of investigation**

**193.(1)** This section applies if—

- (a) a person is convicted of an offence against this Act; and
- (b) the court finds the administering authority has reasonably incurred costs and expenses in taking any sample or conducting any inspection, test, measurement or analysis during the investigation of the offence; and
- (c) the administering authority applies for an order against the person for the payment of the costs and expenses.

(2) The court may order the person to pay to the administering authority the reasonable costs and expenses incurred by the authority if it is satisfied it would be just to make the order in the circumstances of the particular case.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

## **PART 4—RESTRAINT ORDERS**

### **Application of pt 4**

**193A.** This part does not apply to a development offence.<sup>120</sup>

### **Restraint of contraventions of Act etc.**

**194.(1)** A proceeding may be brought in the Court for an order to remedy or restrain an offence against this Act, or a threatened or anticipated offence against this Act, by—

- (a) the Minister; or
- (b) the administering authority; or
- (c) someone whose interests are affected by the subject matter of the proceeding; or
- (d) someone else with the leave of the Court (even though the person does not have a proprietary, material, financial or special interest

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<sup>120</sup> Part 4A (Enforcement orders) applies to development offences.

*Environmental Protection Act 1994*

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in the subject matter of the proceeding).

(2) In deciding whether or not to grant leave to a person under subsection (1)(d), the Court—

- (a) must be satisfied—
  - (i) environmental harm has been or is likely to be caused; and
  - (ii) the proceeding would not be an abuse of the process of the Court; and
  - (iii) there is a real or significant likelihood that the requirements for the making of an order under this section would be satisfied; and
  - (iv) it is in the public interest that the proceeding should be brought; and
  - (v) the person has given written notice to the Minister<sup>121</sup> or, if the administering authority is a local government, the administering executive, asking the Minister or authority to bring a proceeding under this section and the Minister or executive has failed to act within a time that is a reasonable time in the circumstances; and
  - (vi) the person is able to adequately represent the public interest in the conduct of the proceeding; and
- (b) may have regard to other matters the Court considers relevant to the person's standing to bring and maintain the proceeding.

(3) However, the Court must not refuse to grant leave merely because the person's interest in the subject matter of the proceeding is no different from someone else's interest in the subject matter.

(4) The Court may grant leave subject to conditions, including, for example—

- (a) a condition requiring the person to give security for the payment of costs of the proceeding that may be awarded against the person; or

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<sup>121</sup> The reference to the Minister is a reference to the Minister administering the provision in relation to the relevant matter—see the *Acts Interpretation Act 1954*, section 33, and the Ministerial and Administrative Arrangements.

*Environmental Protection Act 1994*

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- (b) a condition requiring the person to give an undertaking about damages.

**(5)** If the Court is satisfied—

- (a) an offence against this Act has been committed (whether or not it has been prosecuted); or
- (b) an offence against this Act will be committed unless restrained;

the Court may make the orders it considers appropriate to remedy or restrain the offence.

**(6)** An order—

- (a) may direct the defendant—
  - (i) to stop an activity that is or will be a contravention of this Act; or
  - (ii) to do anything required to comply with, or to cease a contravention of, this Act; and
- (b) may be in the terms the Court considers appropriate to secure compliance with this Act; and
- (c) must specify the time by which the order is to be complied with.

**(7)** The Court's power to make an order to stop an activity may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
- (b) the person has previously engaged in an activity of that kind; or
- (c) there is danger of substantial damage to the environment if the person engages, or continues to engage, in the activity.

**(8)** The Court's power to make an order to do anything may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do a thing of that kind; or
- (c) there is danger of substantial damage to the environment if the person fails, or continues to fail, to do the thing.

(9) Without limiting the powers of the Court, the Court may make an order—

- (a) restraining the use of plant or equipment or a place; or
- (b) requiring the demolition or removal of plant or equipment, a structure or another thing; or
- (c) requiring the rehabilitation or restoration of the environment.

(10) The Court must order a plaintiff to pay costs if the Court is satisfied the proceeding was brought for obstruction or delay.

(11) The Court's power under this section is in addition to its other powers.

(12) A person who contravenes an order commits an offence against this Act.

Maximum penalty for subsection (12)—3 000 penalty units or 2 years imprisonment.

### **Power of Court to make order pending determination of proceeding**

**195.(1)** This section applies if a proceeding has been brought by a person in the Court under section 194 and the Court has not determined the proceeding.

(2) On the person's application, the Court may make an order of a kind mentioned in section 194 pending determination of the proceeding if it is satisfied it would be proper to make the order.

(3) The Court's power to make an order to stop an activity may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
- (b) the person has previously engaged in an activity of that kind; or
- (c) there is an imminent danger of substantial damage to the environment if the person engages, or continues to engage, in the activity.

(4) The Court's power to make an order to do anything may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do a thing of that kind; or
- (c) there is an imminent danger of substantial damage to the environment if the person fails, or continues to fail, to do the thing.

(5) The Court's power under this section is in addition to its other powers.

(6) A person who contravenes an order commits an offence against this Act.

Maximum penalty for subsection (6)—3 000 penalty units or 2 years imprisonment.

## **PART 4A—ENFORCEMENT ORDERS**

### **Proceeding for orders**

**195A.(1)** A person may bring a proceeding in the Court—

- (a) for an order to remedy or restrain the commission of a development offence (an **“enforcement order”**); or
- (b) if the person has brought a proceeding under paragraph (a) and the Court has not decided the proceeding—for an order under section 195C (an **“interim enforcement order”**); or
- (c) to cancel or change an enforcement order or interim enforcement order.

(2) The person may bring a proceeding under subsection (1)(a) whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.

### **Proceeding brought in a representative capacity**

**195B.(1)** The proceeding may be brought by the person on their own

behalf or in a representative capacity.

(2) However, if the proceeding is brought in a representative capacity, 1 of the following consents must be obtained—

- (a) if the proceeding is brought on behalf of a body of persons or a corporation—the members of the governing body;
- (b) if the proceeding is brought on behalf of an individual—the individual.

### **Making interim enforcement order**

**195C.(1)** The Court may make an interim enforcement order pending a decision of the proceeding if the Court is satisfied it would be appropriate to make the order.

(2) The Court may make the order subject to conditions, including a condition requiring the applicant for the order to give an undertaking to pay costs resulting from damage suffered by the respondent if the proceeding is unsuccessful.

### **Making enforcement order**

**195D.(1)** The Court may make an enforcement order if the Court is satisfied the offence—

- (a) has been committed; or
- (b) will be committed unless restrained.

(2) If the Court is satisfied the offence has been committed, the Court may make an enforcement order whether or not there has been a prosecution for the offence.

### **Effect of orders**

**195E.(1)** An enforcement order or an interim enforcement order may direct the respondent—

- (a) to stop an activity that constitutes, or will constitute, a development offence; or
- (b) not to start an activity that will constitute a development offence;



or

- (c) to do anything required to stop committing a development offence.

(2) Without limiting the Court's powers, the Court may make an order—

- (a) restraining the use of plant or equipment or a place; or
- (b) requiring the repairing, demolition or removal of plant or equipment, a structure or other thing; or
- (c) requiring the rehabilitation or restoration of the environment.

(3) An enforcement order or interim enforcement order—

- (a) may be in terms the Court considers appropriate to secure compliance with this Act; and
- (b) must state the time by which the order is to be complied with.

(4) A person who contravenes an enforcement order or interim enforcement commits an offence against this Act.

Maximum penalty for subsection (4)—3 000 penalty units or 2 years imprisonment.

### **Court's powers about orders**

**195F.(1)** The Court's power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
- (b) the person has previously engaged in an activity of the kind; or
- (c) there is danger of substantial damage to the environment if the person engages, or continues to engage, in the activity.

(2) The Court's power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do a thing of the kind; or

(c) there is danger of substantial damage to the environment if the person fails, or continues to fail, to do the thing.

(3) The Court may cancel or change an enforcement order or interim enforcement order.

(4) The Court's power under this section is in addition to its other powers.

### **Costs involved in bringing proceeding**

**195G.** If the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

## **CHAPTER 6—ADMINISTRATION**

### **PART 1—DEVOLUTIONS**

#### **Devolution of powers**

**196.(1)** The Governor in Council may, by regulation, devolve to a local government the administration and enforcement of—

- (a) the whole or part of an environmental protection policy; or
- (b) the issue of environmental authorities; or
- (c) another matter under this Act (other than chapter 2 or chapter 3, part 9B).

**(1A)** The administration and enforcement of this Act for an environmentally relevant activity carried out in an area below the high or low-watermark forming the boundary of a local government's area may be devolved to the local government.

**(2)** On the commencement of the regulation—

- (a) the local government becomes the administering authority for the

devolved matter; and

- (b) the local government's chief executive officer becomes the administering executive for the devolved matter; and
- (c) the administration and enforcement of the devolved matter is a function of local government to be performed by the local government for its area.

**(2A)** If the devolved matter relates to an environmentally relevant activity mentioned in subsection (1A), the local government's area is, for subsection (2)(c), taken to include the area in which the activity is carried out.

**(3)** To remove any doubt, the local government may—

- (a) make a resolution or local law (not inconsistent with this Act) about the fees payable to it for the devolved matter; and
- (b) make a local law (not inconsistent with this Act) about any matter for which it is necessary or convenient to make provision for carrying out or giving effect to the devolved matter.

**(4)** Despite subsection (3)(a), a local government may make a resolution or local law prescribing a lower, but not a higher, fee for something for which a fee is prescribed under a regulation.

**(5)** If the chief executive is satisfied the local government has failed to do anything in the administration or enforcement of the devolved matter—

- (a) the chief executive may do the thing; and
- (b) the reasonable costs and expenses incurred by the chief executive are a debt payable by the local government to the State.

## **PART 2—DELEGATIONS**

### **Delegation by Minister**

**197.** The Minister may delegate the Minister's powers under this Act to an officer of the public service.

**Delegation by chief executive**

**198.** The chief executive may delegate the chief executive's powers under this Act to an authorised person or officer of the public service.

**Delegation by administering authority**

**199.(1)** An administering authority may—

- (a) if the authority is a local government—by resolution, delegate the authority's powers under this Act to—
  - (i) the mayor; or
  - (ii) a standing committee or a chairperson of a standing committee; or
  - (iii) the chief executive officer; or
- (b) if the authority is the chief executive—delegate the authority's powers under this Act to—
  - (i) an authorised person or officer of the public service; or
  - (ii) a local government.

**(2)** A delegation of a power by the chief executive to a local government may permit the subdelegation of the power.

**PART 3—REVIEW OF DECISIONS AND APPEALS***Division 1—Interpretation***Dissatisfied person**

**200.(1)** A “**dissatisfied person**”, for an original or review decision, is—

- (a) if the decision is about an environmental authority—
  - (i) the applicant for the authority; or
  - (ii) the licensee under, or holder of, the authority; or

- (b) if the decision is about an environmental evaluation or protection order—the recipient; or
  - (c) if the decision is about an environmental management program—the holder of an approval for the program or person or public authority that is required to or submits the program; or
  - (d) if the decision is a decision of an authorised person under section 156(2)(a)<sup>122</sup> to direct a person to take action—the person directed to take the action; or
  - (e) if the decision is about an approval under section 118B—the applicant for, or holder of, the approval; or
  - (f) if the decision is about recording particulars of land in, or removing particulars of land from, the environmental management register or contaminated land register—the land’s owner; or
  - (g) if the decision is about a site investigation of land—the land’s owner, and if another person conducts or commissions the site investigation, the other person; or
  - (h) if the decision is about a site management plan for contaminated land—the land’s owner and, if another person prepares or commissions the plan, the other person; or
  - (i) if the decision is about the remediation of contaminated land—the land’s owner and, if another person conducts or commission work to remediate the land, the other person; or
  - (j) if the decision is about erecting signs on contaminated land—the land’s owner; or
  - (k) if the decision is about a disposal permit—the applicant for the permit; or
  - (l) if the decision is a decision under an environmental protection policy or a regulation that the policy or regulation declares to be a decision to which this part applies—the person declared under the Qpolicy or regulation to be a dissatisfied person for the decision.
- (2) An interested party is also a “**dissatisfied person**” if the decision is

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<sup>122</sup> Section 156 (Emergency powers)

about—

- (a) *an application for a licence; or*
- (b) *an application for the amendment of a licence under section 49 (Amendment of licence on application of licensee); or*<sup>123</sup>
- (c) the submission of an environmental management program to which section 85<sup>124</sup> applies.

### **Original decisions**

**201.(1)** A decision mentioned in schedule 1 is an “**original decision**”.

**(2)** A decision under an environmental protection policy or regulation that the policy or regulation declares to be a decision to which this part applies is also an “**original decision**”.

### *Division 2—Internal review of decisions*

#### **Procedure for review**

**202.(1)** A dissatisfied person may apply for a review of an original decision.

**(2)** The application must—

- (a) be made in the approved form to the administering authority within—
  - (i) 14 days after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the “**review date**”); or
  - (ii) the longer period the authority in special circumstances allows; and
- (b) be supported by enough information to enable the authority to decide the application.

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<sup>123</sup> These provisions had not commenced on or before the reprint date.

<sup>124</sup> Section 85 (Public notice of submission for approval of certain draft programs)

(3) On or before making the application, the applicant must send the following documents to the other persons who were given notice of the original decision—

- (a) notice of the application (the “**review notice**”);
- (b) a copy of the application and supporting documents.

(4) The review notice must inform the recipient that submissions on the application may be made to the administering authority within 7 days after the application is made to the authority.

(5) If the administering authority is satisfied the applicant has complied with subsections (2) and (3), the authority must, within 14 days after receiving the application—

- (a) review the original decision; and
- (b) consider any submissions properly made by a recipient of the review notice; and
- (c) make a decision (the “**review decision**”) to—
  - (i) confirm or revoke the original decision; or
  - (ii) vary the original decision in a way the administering authority considers appropriate.

(6) The application does not stay the original decision.

(7) The application must not be dealt with by—

- (a) the person who made the original decision; or
- (b) a person in a less senior office than the person who made the original decision.

(8) Within 14 days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice of the original decision.

(9) The notice must—

- (a) include the reasons for the review decision; and
- (b) inform the persons of their right of appeal against the decision.

(10) If the administering authority does not comply with subsection (5) or (8), the authority is taken to have made a decision confirming the original

decision.

(11) Subsection (7) applies despite the *Acts Interpretation Act 1954*, section 27A.<sup>125</sup>

(12) This section does not apply to an original decision made by—

- (a) for a matter, the administration and enforcement of which has been devolved to a local government—the local government itself or the chief executive officer of the local government personally; or
- (b) for another matter—the chief executive personally.

### **Stay of operation of original decisions**

**203.(1)** If an application is made for review of an original decision, the applicant may immediately apply for a stay of the decision to the Court.

(2) The Court may stay the decision to secure the effectiveness of the review and any later appeal to the Court.

(3) A stay may be given on conditions the Court considers appropriate and has effect for the period stated by the Court.

(4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the Court allows the applicant to enable the applicant to appeal against the review decision.

### ***Division 3—Appeals***

#### **Who may appeal**

**204.(1)** A dissatisfied person who is dissatisfied with a review decision may appeal against the decision to the Court.

(2) The chief executive may appeal against another administering authority's decision (whether an original or review decision) to the Court.

(3) A dissatisfied person who is dissatisfied with an original decision to

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<sup>125</sup> Section 27A (Delegation of powers)



which section 202 does not apply may appeal against the decision to the Court.

### **How to start appeal**

**205.(1)** An appeal is started by—

- (a) filing written notice of appeal with the registrar of the Court; and
- (b) complying with rules of court applicable to the appeal.

**(2)** The notice of appeal must be filed—

- (a) if the appellant is the chief executive—within 45 days after the decision is made or taken to have been made; or
- (b) if the appellant is not the chief executive—within 30 days after the day the appellant receives notice of the decision or the decision is taken to have been made.

**(3)** The Court may at any time extend the period for filing the notice of appeal.

**(4)** The notice of appeal must state fully the grounds of the appeal and the facts relied on.

### **Appellant to give notice of appeal to other parties**

**206.(1)** Within 10 days after filing the notice of appeal, the appellant must serve notice of the appeal on—

- (a) if the appellant is the chief executive—all persons who were given notice of the original decision; or
- (b) if the appellant is not the chief executive—the other persons who were given notice of the original decision.

**(2)** The notice must inform the persons that, within 14 days after service of the notice of appeal, they may elect to become a respondent to the appeal by filing in the Court a notice of election under rules of court.

**Persons may elect to become respondents to appeal**

**207.** A person who properly files in the Court a notice of election becomes a respondent to the appeal.

**Stay of operation of decisions**

**208.(1)** The Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

**(2)** A stay may be granted on conditions the Court considers appropriate and has effect for the period stated by the Court.

**(3)** The period of a stay must not extend past the time when the Court decides the appeal.

**(4)** An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

**Hearing procedures**

**209.(1)** The procedure for an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.

**(2)** An appeal is by way of rehearing, unaffected by the administering authority's decision.

**Assessors**

**210.** If the judge hearing an appeal is satisfied the appeal involves a question of special knowledge and skill, the judge may appoint 1 or more assessors to help the judge in deciding the appeal.

**Appeals may be heard with planning appeals**

**211.(1)** This section applies if—

- (a) a person appeals against an administering authority's decision (whether an original or review decision) to refuse to grant an environmental authority or to impose conditions on an environmental authority; and

- (b) a person appeals against a local government's decision under the *Local Government (Planning and Environment) Act 1990*<sup>126</sup> about a planning or development matter for the premises the subject of the environmental authority application or environmental authority.

(2) On the application of a party to either of the appeals, the Court may order—

- (a) the appeals to be heard together or 1 immediately after the other; or  
(b) 1 appeal to be stayed until the other has been decided.

(3) The application may be made—

- (a) by an appellant when starting an appeal or at any time before the appeals are decided; or  
(b) by another party at any time before the appeals are decided.

(4) This section applies even though the parties, or all of the parties, to the appeals are not the same.

### **Powers of Court on appeal**

**212.(1)** In deciding an appeal, the Court may—

- (a) confirm the decision appealed against; or  
(b) vary the decision appealed against; or  
(c) set aside the decision appealed against and make a decision in substitution for the decision set aside.

(2) If on appeal the Court acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the administering authority.

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<sup>126</sup> Now see *Integrated Planning Act 1997*.

## **PART 4—GENERAL**

### **Registers**

**213.(1)** The administering authority must, for its administration under this Act, keep a register of—

- (a) licences; and
- (b) approvals; and
- (c) development approvals for environmentally relevant activities; and
- (d) details of environmental reports; and
- (e) details of the results of monitoring programs carried out under this Act or a development condition of a development approval; and
- (f) details of environmental management programs; and
- (g) details of environmental protection orders; and
- (h) authorised persons; and
- (i) other information prescribed by regulation.

**(1A)** Also, the administering authority must, for its administration of matters about contaminated land under chapter 3, part 9B, keep—

- (a) an environmental management register; and
- (b) a contaminated land register.

**(2)** The administering authority may keep a register in the way it considers appropriate.

### **Inspection of register**

**214.(1)** The administering authority must, for a register mentioned in section 213(1)—

- (a) keep the register open for inspection by members of the public during office hours on business days at—
  - (i) the authority's head office; and

- (ii) other places that the authority considers appropriate; and
  - (b) permit a person to take extracts from the register or, on payment of the appropriate fee by a person, give the person a copy of the register, or part of it.
- (2) The fee for a copy of the register or part of it is the amount that—
- (a) the administering authority considers to be reasonable; and
  - (b) is not more than the reasonable cost of making the copy.
- (3) Also, the administering authority must, on payment of the fee prescribed under a regulation, permit members of the public to obtain extracts from the registers mentioned in section 213(1A).

### **Approved forms**

**215.** The administering executive may approve forms for use under this Act.

### **Advisory committees**

**216.(1)** The Minister may establish as many advisory committees as the Minister considers appropriate for the administration of this Act.

(2) An advisory committee has the functions the Minister decides.

(3) A member of an advisory committee is entitled to be paid the fees and allowances decided by the Governor in Council.

### **Annual reports**

**217.(1)** Within 2 months after the end of each financial year, each administering authority must give to the chief executive a report on its administration of this Act during the year.

(2) Subsection (1) does not apply if the chief executive is the administering authority.

(3) The report must—

- (a) be in the form approved by the chief executive; and
- (b) contain the following information—

- (i) the types and number of environmentally relevant activities administered by the authority;
- (ii) the action taken by the authority to enforce this Act;
- (iii) the number of complaints about contraventions of this Act received by the authority;
- (iv) the other information the chief executive requires by written notice given to the administering authority at least 2 months before the end of the financial year.

(4) Within 3 months after the end of each financial year, the chief executive must give to the Minister a report on the administration of this Act during the year.

(5) The chief executive's report must include a statement about requests received by the Minister to prepare environmental protection policies and a brief statement of the reasons for refusing any request.

(6) Each administering authority's report must be attached to the chief executive's report.

(7) The Minister must table a copy of the chief executive's report in the Legislative Assembly within 14 sitting days after receiving it.

### **State of environment report**

**218.(1)** At least every 4 years, the chief executive must prepare and publish a report on the state of Queensland's environment.

(2) The report must—

- (a) include an assessment of the condition of Queensland's major environmental resources; and
- (b) identify significant trends in environmental values; and
- (c) review significant programs, activities and achievements of persons and public authorities about the protection, restoration or enhancement of Queensland's environment; and
- (d) evaluate the efficiency and effectiveness of environmental strategies implemented to achieve the object of this Act.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

## CHAPTER 7—MISCELLANEOUS

### Codes of practice

**219.(1)** The Minister may, by gazette notice, approve codes of practice stating ways of achieving compliance with the general environmental duty for any activity that causes, or is likely to cause, environmental harm.

(2) The Minister must keep copies of approved codes of practice open for inspection by members of the public during office hours on business days at—

- (a) the department's head office; and
- (b) the other places the Minister considers appropriate.

### Regulation-making power

**220.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may be made about any of the following matters—

- (a) the matters for which fees are payable under this Act, the amounts of the fees, the persons who are liable to pay fees, when the fees are payable, the recovery of unpaid amount of fees, and the exemption from payment of fees or the waiver of fees;
- (b) the records to be kept and returns to be made by persons and the inspection of the records;
- (c) the types of tests and monitoring programs to be conducted by licensees;
- (d) the types of plant or equipment that may be used for environmentally relevant activities and the way in which the plant or equipment is to be installed, operated and maintained;
- (e) help, access and facilities to be provided to authorised persons by

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persons for inspections, examinations, tests and measurements for this Act;

- (f) the taking, preserving and transporting of samples and the making of inspections, examinations, tests, measurements and analyses for this Act, and the proof of them;
- (g) setting standards, controls or procedures for the manufacture, sale, use, transportation, storage, treatment or disposal of a contaminant, including waste;
- (h) the removal, collection, transport, deposit, storage or disposal of waste;
- (i) the qualifications or licence required by a person engaged in carrying out an environmentally relevant activity, and the approval of training courses to provide the qualifications or licence;
- (j) requiring environmental impact assessments, studies or reports for developments involving the release of contaminants;
- (k) litter;
- (l) the keeping of the environmental management register and contaminated land register, including, for example, the information to be included in the registers and made available to persons searching the registers.

**(3)** Without limiting subsection (2)(a), a regulation may prescribe fees by reference to—

- (a) factors related to the quantity or quality of contamination caused or likely to be caused by the persons liable to pay the fees; or
- (b) other factors.

**(3A)** Also, without limiting subsection (2)(a), a regulation may prescribe fees payable to the administering authority in relation to its functions under the Integrated Planning Act, as assessment manager or concurrence agency, including, for example—

- (a) application fees for development applications; and
- (b) fees for monitoring compliance with development conditions on a development approval.

**(4)** A regulation may be made—



- (a) creating offences against the regulation; and
- (b) fixing a maximum penalty of a fine of 165 penalty units for an offence against the regulation.

### **Integrated development approval system regulations and guidelines**

**221.(1)** This section applies if the administering authority delegates the authority's powers under this Act to a local government.

**(2)** A regulation may make provision about, or empower the administering authority to make guidelines about—

- (a) the policy objectives and criteria to which the local government must have regard; and
- (b) the way in which the local government must exercise a delegated power, including, for example, time limits for the making of decisions; and
- (c) appeals from the local government's decisions; and
- (d) the cases involving the exercise of a delegated power that must be referred to the administering authority or someone else for decision, including the criteria to be applied in deciding whether a particular case must be referred; and
- (e) the conditions to which an authority issued by the delegate must be subject; and
- (f) the consequences of contravention of the regulation or guidelines.

**(3)** This section does not limit the *Acts Interpretation Act 1954*, section 27A.<sup>127</sup>

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<sup>127</sup> Section 27A (Delegation of powers)

## **CHAPTER 8—REPEALS, SAVINGS, TRANSITIONAL, VALIDATIONS AND RELATED PROVISIONS**

### **PART 1—REPEALS**

#### **Acts repealed**

222. The Acts specified in schedule 2 are repealed.

### **PART 2—SAVINGS AND TRANSITIONAL**

#### *Division 6—Miscellaneous transitional provisions*

#### **Reconsideration of applications refused during relevant period**

235.(1) This section applies if—

- (a) during the relevant period, the administering authority was taken to have decided to refuse an application for, or for the amendment or transfer of, an environmental authority because of section 67;<sup>128</sup> and
- (b) under this Act, the applicant did not apply for a review of the decision.

(2) The administering authority must treat the application as if it were a fresh application properly made to it on 1 June 1997 and accompanied by the appropriate application fee.

(3) Despite section 35, the application date for the application is taken to be 1 June 1997.

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<sup>128</sup> Section 67 (Failure to decide applications taken to be refusal)

(4) In this section—

“**relevant period**” means 1 March 1996 to 31 May 1997.

### **Postponement of requirement for environmental authorities to carry out certain existing environmentally relevant activities**

**236.(1)** This section applies to a person if—

- (a) the person made application (the “**original application**”) for an environmental authority on or after 1 March 1996 but before 1 July 1996 to carry out an environmentally relevant activity; and
- (b) under section 235, the original application is to be treated as a fresh application.

(2) A provision of this Act that creates an offence for carrying out the activity without an environmental authority (the “**offence provision**”) does not apply to the person until the fresh application is decided.

(3) Subsection (2) has effect despite the offence provision.

(4) This section applies to a person even if a proceeding against the person under the offence provision was started, but not finished, before 1 June 1997.

### **Transfer of certain land on contaminated sites register to environmental management register**

**237.(1)** This section applies to land that, immediately before the commencement of this section, was recorded in the contaminated sites register under the *Contaminated Land Act 1991* as being classified as a probable site or restricted site.

(2) The administering authority must, on or before the commencement, record particulars of the land in the environmental management register.

(3) Any conditions on the use or management of the land recorded in the contaminated sites register continue to apply to the land as if the conditions were contained in a site management plan prepared for the land under this Act.

(4) To remove any doubt, it is declared that the owner of land to which this section applies does not have a right of review under section 202, or

appeal under section 204, in relation to the recording of particulars of the land in the environmental management register.

**Transfer of certain land on contaminated sites register to contaminated land register**

**238.(1)** This section applies to land that, immediately before the commencement of this section, was recorded in the contaminated sites register under the *Contaminated Land Act 1991* as being classified as a confirmed site.

(2) The administering authority must, on or before the commencement, record particulars of the land in the contaminated land register.

(3) To remove any doubt, it is declared that the owner of land to which this section applies does not have a right of review under section 202, or appeal under section 204, in relation to the recording of particulars of the land in the contaminated land register.

**SCHEDULE 1****ORIGINAL DECISIONS**

section 201

<b>Section</b>	<b>Description of decision</b>
45	Grant of an application for an environmental authority
46	Imposition of conditions of an environmental authority
48	Refusal of an application for an environmental authority
49(10)	Grant of an application to amend a licence
49(11)	Refusal of an application to amend licence
50	Amendment of licence
58	Refusal of application for transfer of licence
60(5)	Suspension or cancellation of licence
60A	Refusal of application to amend level 1 approval
60C(2)	Amendment of level 1 approval
60E(5)(b)	Suspension or cancellation of level 1 approval
60K	Imposition of conditions of a licence
60L	Refusal of an application for a licence
60M	Suspension or cancellation of a licence
60S	Imposition of conditions of a level 1 approval
60T	Refusal of an application for a level 1 approval
60U	Suspension or cancellation of a level 1 approval
62	Requirement for additional information about an application for, or amendment or transfer of, an environmental authority

## SCHEDULE 1 (continued)

65	Extension of time for decision on an application for, or amendment or transfer of, an environmental authority
72	Requirement for environmental audit
73	Requirement for environmental investigation
76(4)	Requirement for additional information about an environmental evaluation
78	Extension of time for decision on submission of environmental report
82	Requirement for environmental management program
86	Requirement for additional information about a draft environmental management program
86 and 94A	Requirement for additional information about an application for an amendment of an approval for an environmental management program
90(1)	Approval of a draft environmental management program
90(1) and 94A	Approval of an application for an amendment of an approval for an environmental management program
90(3)	Imposition of conditions on an environmental management program approval
90(3) and 94A	Imposition of conditions on an approval of an amendment of an approval for an environmental management program
91	Refusal to approve draft environmental management program
91 and 94A	Refusal to approve an application for an amendment of an approval for an environmental management program
92	Extension of time for decision on submission of draft environmental management program
92 and 94A	Extension of time for decision on submission of an amendment of approval for environmental management program

## SCHEDULE 1 (continued)

- 104(3)(a) Removal of immunity from prosecution for a person under a refusal to approve a draft environmental management program
- 109 Issue of environmental protection order
- 117 Refusal to amend or discharge a financial assurance
- 118(7) Claim on, or realisation of, financial assurance
- 118B(3) Refusal to grant an application for an approval
- 118B(5) and (6) Imposition of conditions on an approval
- 118B(6) Revocation, or varying conditions, of an approval
- 118H(7) Recording particulars of land in the environmental management register
- 118K(3) Requirement for site investigation
- 118L(6) Refusal of application for waiver of requirement to conduct or commission site investigation and report
- 118R(4) Leaving particulars of land on environmental management register
- 118R(4) Recording particulars of land in contaminated land register
- 118S(4) Requirement for additional information about site investigation and report
- 118V(3) Extension of time to make decision about site investigation report
- 118Y(5) Requirement to conduct or commission work to remediate contaminated land
- 118Z(6) Refusal of application for waiver of requirement to conduct or commission work to remediate contaminated land
- 118ZE(2) Leaving particulars of land on environmental management register or contaminated land register or recording particulars of land in environmental management register

## SCHEDULE 1 (continued)

- 118ZF(4) Requirement for additional information about validation report
- 118ZG(3) Extension of time for consideration of validation report
- 118ZN(3) Requirement to prepare or commission site management plan
- 118ZO(6) Refusal of application for waiver of requirement to prepare or commission site management plan
- 118ZS(2) Requirement for additional information about site management plan
- 118ZU(3) Preparation of site management plan by administering authority
- 118ZV(2) Refusal to approve draft site management plan
- 118ZW(3) Extension of time for decision about approval of draft site management plan
- 118ZZE(3) Erection of sign on contaminated land for which particulars are not recorded on the environmental management register or contaminated land register
- 118ZZF(5) Imposition of conditions on disposal permit
- 118ZZF(5) Refusal of application for disposal permit
- 134 Requirement for information relevant to the administration or enforcement of this Act
- 156(2)(a) Direction to a person to take action in an emergency



**SCHEDULE 2****ACTS REPEALED**

section 222

**PART B**

Fig Tree Pocket Noise Emission Act 1984 No. 38

*Litter Act 1971 No. 28*

*Litter Act Amendment Act 1978 No. 44* <sup>129</sup>

Noise Abatement Act 1978 No. 51

Noise Abatement Act Amendment Act 1982 No. 24

Noise Abatement Act Amendment Act 1983 No. 3

Noise Abatement Act Amendment Act 1984 No. 100

Noise Abatement Act Amendment Act 1985 No. 16

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<sup>129</sup> Section 222 sch 2 pt B so far as it relates to the *Litter Act 1971* and *Litter Act Amendment Act 1978* had not commenced on or before the reprint date.

## SCHEDULE 3

### NOTIFIABLE ACTIVITIES

schedule 4, dictionary, definition “**notifiable activity**”

1. Abrasive blasting—carrying out abrasive blast cleaning (other than cleaning carried out in fully enclosed booths) or disposing of abrasive blasting material.
2. Aerial spraying—operating premises used for—
  - (a) filling and washing out tanks used for aerial spraying; or
  - (b) washing aircraft used for aerial spraying.
3. Asbestos manufacture or disposal—
  - (a) manufacturing asbestos products; or
  - (b) disposing of unbonded asbestos; or
  - (c) disposing of more than 5 t of bonded asbestos.
4. Asphalt or bitumen manufacture—manufacturing asphalt or bitumen, other than at a single-use site used by a mobile asphalt plant.
5. Battery manufacture or recycling—assembling, disassembling, manufacturing or recycling batteries (other than storing batteries for retail sale).
6. Chemical manufacture or formulation—manufacturing, blending, mixing or formulating chemicals if—
  - (a) the chemicals are designated dangerous goods under the dangerous goods code; and
  - (b) the facility used to manufacture, blend, mix or formulate the chemicals has a design production capacity of more than 1 t per week.
7. Chemical storage (other than petroleum products or oil under item 29)—storing more than 10 t of chemicals (other than compressed or liquefied gases) that are dangerous goods under the dangerous

## SCHEDULE 3 (continued)

goods code.

8. Coal fired power station—operating a coal fired power station.
9. Coal gas works—operating a coal gas works.
10. Defence establishments or training areas—operating a defence establishment or a training area used for handling ammunition in way that may have caused, or may cause, remnant unexploded ordnance.
11. Drum reconditioning or recycling—reconditioning or recycling of metal or plastic drums including storage drums.
12. Dry cleaning—operating a dry cleaning business where—
  - (a) solvents are stored in underground tanks; or
  - (b) more than 500 L of halogenated hydrocarbon are stored.
13. Electrical transformers—manufacturing, repairing or disposing of electrical transformers.
14. Engine reconditioning works—carrying out engine reconditioning work at a place where more than 500 L of the following are stored—
  - (a) halogenated and non-halogenated hydrocarbon solvents;
  - (b) dangerous goods in class 6.1 under the dangerous goods code;
  - (c) industrial degreasing solutions.
15. Explosives production or storage—operating a factory under the *Explosives Act 1952*.
16. Fertiliser manufacture—manufacturing agriculture fertiliser (other than the blending, formulation or mixing of fertiliser).
17. Foundry operations—commercial production of metal products by injecting or pouring molten metal into moulds and associated activities in works having a design capacity of more than 10 t per year.
18. Gun, pistol or rifle range—operating a gun, pistol or rifle range.
19. Herbicide or pesticide manufacture—commercially manufacturing, blending, mixing or formulating herbicides or pesticides.
20. Landfill—disposing of waste (excluding inert construction and

## SCHEDULE 3 (continued)

demolition waste).

21. Lime burner—manufacturing cement or lime from limestone material using a kiln and storing wastes from the manufacturing process.
22. Livestock dip or spray race operations—operating a livestock dip or spray race facility.
23. Metal treatment or coating—treating or coating metal including, for example, anodising, galvanising, pickling, electroplating, heat treatment using cyanide compounds and spray painting using more than 5 L of paint per week (other than spray painting within a fully enclosed booth).
24. Mine wastes—
  - (a) storing hazardous mine or exploration wastes, including, for example, tailings dams, overburden or waste rock dumps containing hazardous contaminants; or
  - (b) exploring for, or mining or processing, minerals in a way that exposes faces, or releases groundwater, containing hazardous contaminants.
25. Mineral processing—chemically or physically extracting or processing metalliferous ores.
26. Paint manufacture or formulation—manufacturing or formulating paint where the design capacity of the plant used to manufacture or formulate the paint is more than 10 t per year.
27. Pest control—commercially operating premises where—
  - (a) more than 200 L of pesticide are stored; and
  - (b) filling or washing of tanks used in pest control operations occurs.
28. Petroleum or petrochemical industries including—
  - (a) operating a petrol depot, terminal or refinery; or
  - (b) operating a facility for the recovery, reprocessing or recycling of petroleum-based materials.
29. Petroleum product or oil storage—storing petroleum products or oil—

## SCHEDULE 3 (continued)

- (a) in underground tanks with more than 200 L capacity; or
- (b) in above ground tanks with—
  - (i) for petroleum products or oil in class 3 in packaging groups 1 and 2 of the dangerous goods code—more than 2 500 L capacity; or
  - (ii) for petroleum products or oil in class 3 in packaging groups 3 of the dangerous goods code—more than 5 000 L capacity; or
  - (iii) for petroleum products that are combustible liquids in class C1 or C2 in Australian Standard AS 1940, ‘The storage and handling of flammable and combustible liquids’ published by Standards Australia—more than 25 000 L capacity.
- 30.** Pharmaceutical manufacture—commercially manufacturing, blending, mixing or formulating pharmaceuticals.
- 31.** Printing—commercial printing using—
  - (a) type metal alloys; or
  - (b) printing inks or pigments or etching solutions containing metal; or
  - (c) cast lead drum plates; or
  - (d) a linotype machine with a gas-fired lead melting pot attached; or
  - (e) more than 500 L of halogenated and non-halogenated hydrocarbon solvents.
- 32.** Railway yards—operating a railway yard including goods-handling yards, workshops and maintenance areas.
- 33.** Scrap yards—operating a scrap yard including automotive dismantling or wrecking yard or scrap metal yard.
- 34.** Service stations—operating a commercial service station.
- 35.** Smelting or refining—fusing or melting metalliferous metal or refining the metal.
- 36.** Tannery, fellmongery or hide curing—operating a tannery or

## SCHEDULE 3 (continued)

fellmongery or hide curing works or commercially finishing leather.

37. Waste storage, treatment or disposal—storing, treating, reprocessing or disposing of regulated waste (other than at the place it is generated), including operating a nightsoil disposal site or sewage treatment plant where the site or plant has a design capacity that is more than the equivalent of 50 000 persons having sludge drying beds or on-site disposal facilities.
38. Wood treatment and preservation—treating timber for its preservation using chemicals, including, for example, arsenic, borax, chromium, copper or creosote.

**SCHEDULE 4****DICTIONARY**

section 7

**“abate”**, for noise, includes prevent, reduce, eliminate and control the noise.

**“administering authority”** means—

- (a) for a matter, the administration and enforcement of which has been devolved to a local government under section 196—the local government; or
- (b) for another matter—the chief executive.

**“administering executive”** means—

- (a) for a matter, the administration and enforcement of which has been devolved to a local government under section 196—the local government’s chief executive officer; or
- (b) for another matter—the chief executive.

**“advice agency”**, for a development application, has the meaning given by the Integrated Planning Act.<sup>130</sup>

**“application date”** see section 35.

**“approval”** means an approval under chapter 3, part 4 or 4A to carry out a level 1 or level 2 environmentally relevant activity.

**“approved code of practice”** means a code of practice approved by the Minister under section 219.

**“approved form”** means a form approved by the administering executive.

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<sup>130</sup> Under the Integrated Planning Act, the advice agency for a development application is the entity prescribed under a regulation under that Act as an advice agency for the application or, if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

## SCHEDULE 4 (continued)

**“assessment manager”** has the meaning given by 3.1.7 of the Integrated Planning Act.<sup>131</sup>

**“authorised person”** means a person holding office as an authorised person under an appointment under this Act by the chief executive or chief executive officer of a local government.

**“best practice environmental management”**, for an activity, see section 18.

**“boat”** means a boat, ship or other vessel of any size or kind, and includes a hovercraft.

**“business”**, of a licensee, means the business of carrying out the environmentally relevant activity the subject of the licence.

**“buyer”**, of a licensee’s business, see section 53.

**“class 1, 2 or 3 environmental offence”** see section 124(3).

**“concurrence agency”**, for a development application, has the meaning given by the Integrated Planning Act.<sup>132</sup>

**“contaminant”** see section 11.

**“contaminated land”** means land contaminated by a hazardous contaminant.

**“contaminated land register”** means the register kept by the administering authority under section 213(1A)(b)

**“contamination”** see section 10.

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<sup>131</sup> Under section 3.1.7 (Assessment manager) of the Integrated Planning Act, the “assessment manager”, for an application for a development approval is generally the local government for the area in which the development is to be carried out. However, in some circumstances, it may be another entity prescribed under a regulation under that Act or decided by the Minister administering that Act.

<sup>132</sup> Under the Integrated Planning Act, the concurrence agency for a development application is the entity prescribed under a regulation under that Act as a concurrence agency for the application or, if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.



## SCHEDULE 4 (continued)

“**continuation**”, for an original offence under a program notice, includes the happening again of the offence because of a relevant event of the same type stated in the notice.

“**conviction**” includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

“**Court**” means the Planning and Environment Court.

“**dangerous goods code**” means the Australian Code for the Transport of Dangerous Goods by Road and Rail prepared by the Office of Federal Road Safety and published by the Commonwealth.<sup>133</sup>

“**development**” has the meaning given by section 1.3.2 of the Integrated Planning Act.<sup>134</sup>

“**development application**” means an application for a development approval.

“**development approval**” means a development approval under the Integrated Planning Act.<sup>135</sup>

“**development condition**”, of a development approval, means a condition of the approval imposed by, or imposed because of a requirement of, the administering authority as assessment manager or concurrence agency for the application for the approval.

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<sup>133</sup> A copy of the code may be purchased at the Commonwealth Government Bookshop, Adelaide Street, Brisbane.

<sup>134</sup> Section 1.3.2 (Meaning of “development”)—  
**1.3.2. “Development”** is any of the following—

- (a) carrying out building work;
- (b) carrying out plumbing or drainage work;
- (c) carrying out operational work;
- (d) reconfiguring a lot;
- (e) making a material change of use of premises.

Chapter 1, part 3, division 3 of the Integrated Planning Act contains supporting definitions and explanations for the term “development”.

<sup>135</sup> Under the Integrated Planning Act, a development approval is required for certain development. A development approval may be in the form of a preliminary approval, a development permit or a combination of both of them.

## SCHEDULE 4 (continued)

- “development offence”** means an offence against section 60ZF.<sup>136</sup>
- “disposal permit”** means a permit under section 118ZZF to remove and dispose of contaminated soil from land for which particulars are recorded in the environmental management register or contaminated land register.
- “dissatisfied person”** see section 200.
- “ecologically sustainable development”** see section 3.
- “emergency direction”** see section 157.
- “emergency powers”** see section 156(6).
- “enforcement order”** see section 195A.
- “engaging”** in conduct includes failing to engage in conduct.
- “environment”** see section 8.
- “environmental audit”** see section 72.
- “environmental authority”** means a licence or approval.
- “environmental evaluation”** means an environmental audit or investigation.
- “environmental harm”** see section 14.
- “environmental investigation”** see section 73.
- “environmental management program”** means an environmental management program approved under chapter 3, part 6.
- “environmental management register”** means the register kept by the administering authority under section 213(1A)(a).
- “environmental nuisance”** see section 15.
- “environmental protection order”** see section 156.
- “environmental protection policy”** means an environmental protection policy approved under chapter 2.
- “environmental report”** means a report on an environmental evaluation.

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<sup>136</sup> Section 60ZF (Offence to contravene development condition)

## SCHEDULE 4 (continued)

**“environmental value”** see section 9.

**“environmentally relevant activity”** means an activity prescribed by regulation as an environmentally relevant activity.

**“executive officer”**, of a corporation, means—

- (a) if the corporation is the Commonwealth or a State—a chief executive of a department of government or a person who is concerned with, or takes part in, the management of a department of government, whatever the person’s position is called; or
- (b) if the corporation is a local government—
  - (i) the chief executive officer of the local government; or
  - (ii) a person who is concerned with, or takes part in, the local government’s management, whatever the person’s position is called; or
- (c) if paragraphs (a) and (b) do not apply—a person who is—
  - (i) a member of the governing body of the corporation; or
  - (ii) concerned with, or takes part in, the corporation’s management;

whatever the person’s position is called and whether or not the person is a director of the corporation.

**“fee”** includes tax.

**“general environmental duty”** see section 36.

**“hazardous contaminant”** means a contaminant that, if improperly treated, stored, disposed of or otherwise managed, is likely to cause serious or material environmental harm because of—

- (a) its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, explosiveness, radioactivity or flammability; or
- (b) its physical, chemical or infectious characteristics.

**“hovercraft”** means a vehicle designed to be supported on cushion of air.

**“identity card”**, of an authorised person, means the identity card issued to

## SCHEDULE 4 (continued)

the authorised person under section 131.

**“integrated environmental management system”**, for an environmentally relevant activity, means a system for the management of the environmental impacts of the carrying out of the activity.

**“Integrated Planning Act”** means the *Integrated Planning Act 1997*.

**“interested party”** means a party that properly makes a submission on—

- (a) *an application for, or the amendment of, a licence; or*<sup>137</sup>
- (b) the submission of an environmental management program to which section 85<sup>138</sup> applies.

**“interim enforcement order”** see section 195A.

**“interstate environmental authority”** see sections 48 and 58.

**“land”** includes—

- (a) the airspace above land; and
- (b) land that is, or is at any time, covered by waters; and
- (c) waters.

**“level 1 approval”** means an approval under chapter 3, part 4 or 4A to carry out a level 1 environmentally relevant activity.

**“level 2 approval”** means an approval under chapter 3, part 4 to carry out a level 2 environmentally relevant activity.

**“licence”** means a licence under chapter 3, part 4 or 4A to carry out a level 1 environmentally relevant activity, and includes a provisional licence.

**“licensed place”** means a place, or the part of a place, to which a licence relates, but does not include premises, or the part of premises, used only for residential purposes.

**“material environmental harm”** see section 16.

**“mining authority”** means—

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<sup>137</sup> This provision had not commenced on or before the reprint date.

<sup>138</sup> Section 85 (Public notice of submission for approval of certain draft programs)

## SCHEDULE 4 (continued)

- (a) a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease granted under the *Mineral Resources Act 1989*; or
- (b) a prospecting petroleum permit, authority to prospect, petroleum lease or pipeline licence granted under the *Petroleum Act 1923*; or
- (c) a licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the *Petroleum (Submerged Lands) Act 1982*.

**“national environmental protection measure”** means a national environmental protection measure made under the national scheme laws.

**“national scheme laws”** means—

- (a) the *National Environmental Protection Council Act 1994* (Cwlth); and
- (b) the *National Environmental Protection Council (Queensland) Act 1994*.

**“National Strategy for Ecologically Sustainable Development”** means the National Strategy for Ecologically Sustainable Development endorsed by the Council of Australian Governments on 7 December 1992.

**“noise”** see section 12.

**“noise abatement direction”** see section 150(3)(b).

**“notifiable activity”** means an activity in schedule 3.

**“obstruct”** includes hinder, resist and attempt to obstruct.

**“occupier”**, of a place, includes the person apparently in charge of the place.

**“original decision”** see section 201.

**“original offence”**, for a program notice, see section 102.

**“ozone depleting substance”** means—

- (a) any chlorofluorocarbon or halon; or

## SCHEDULE 4 (continued)

- (b) another substance prescribed by regulation to be an ozone depleting substance.

**“part 4 environmental authority”** means an environmental authority issued under part 4, and includes a single environmental authority issued under section 61 to the extent that it relates to the carrying out of an environmentally relevant activity under part 4.

**“part 4A environmental authority”** means an environmental authority issued under part 4A, and includes a single environmental authority issued under section 61 to the extent that it relates to the carrying out of an environmentally relevant activity under part 4A.

**“person in control”**, of a vehicle, includes—

- (a) the driver of the vehicle; and  
(b) the person in command of the vehicle; and  
(c) the person who appears to be in control or command of the vehicle.

**“preliminary investigation”** see section 136A.

**“premises”** includes—

- (a) a building or structure, or part of a building or structure, of any kind; and  
(b) the land on which a building or structure is situated.

**“program notice”** see section 101.

**“public authority”** includes an entity established under an Act and a government owned corporation under the *Government Owned Corporations Act 1993*.

**“public place”** means any place the public is entitled to use or is open to, or used by, the public (whether or not on payment of an admission fee).

**“recipient”** means—

- (a) for an environmental evaluation—the person on whom the requirement for the evaluation is made; or  
(b) for an environmental protection order—the person to whom the

## SCHEDULE 4 (continued)

order is issued; or

- (c) for a notice to conduct or commission a site investigation—the person to whom the notice is given; or
- (d) for a remediation notice—the person to whom the notice is given; or
- (e) for a notice to prepare or commission a site investigation report—the person to whom the notice is given.

**“referral agency”** means an advice agency or concurrence agency.

**“register”** means a register kept under section 213.

**“registrar”** means the registrar of titles or another person responsible for keeping a register in relation to dealings in land.

**“release”**, of a contaminant into the environment, includes—

- (a) to deposit, discharge, emit or disturb the contaminant; and
- (b) to cause or allow the contaminant to be deposited, discharged, emitted or disturbed; and
- (c) to fail to prevent the contaminant from being deposited, discharged, emitted or disturbed; and
- (d) to allow the contaminant to escape; and
- (e) to fail to prevent the contaminant from escaping.

**“relevant event”**, for a program notice, see section 101(1).

**“relevant matters”**, for an environmental evaluation, means the matters to be addressed by the evaluation.

**“remediate”**, contaminated land, means—

- (a) rehabilitate the land; or
- (b) restore the land; or
- (c) take other action to prevent or minimise serious environmental harm being caused by the hazardous contaminant contaminating the land.

**“remediation notice”** see section 118Z(5)(a).

## SCHEDULE 4 (continued)

**“representative”**, of a person, means—

- (a) if the person is a corporation—an executive officer, employee or agent of the corporation; or
- (b) if the person is an individual—an employee or agent of the individual.

**“review date”** see section 202(2)(a)(i).

**“review decision”** see section 202(5)(b).

**“sanitary convenience”** means a urinal, water-closet, earth closet, cesspit, cesspool or other receptacle for human waste.

**“serious environmental harm”** see section 17.

**“site investigation report”** means a report submitted to the administering authority about a site investigation of land for which particulars are recorded in the environmental management register.

**“site management plan”** means a site management plan approved under chapter 3, part 9B.

**“standard criteria”**, for an environmental authority, management program, protection order or removal permit, means—

- (a) the principles of ecologically sustainable development as set out in the National Strategy for Ecologically Sustainable Development; and
- (b) any applicable environmental protection policy; and
- (c) any applicable Commonwealth, State or local government plans, standards, agreements or requirements; and
- (d) any applicable environmental impact study, assessment or report; and
- (e) the character, resilience and values of the receiving environment; and
- (f) all submissions made by the applicant *and interested parties*;<sup>139</sup>

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<sup>139</sup> This provision so far as it relates to “interested parties for an environmental authority” had not commenced on or before the reprint date.



## SCHEDULE 4 (continued)

and

- (g) the best practice environmental management for the activity under the authority, program, order or permit; and
- (h) the financial implications of the requirements of the authority, program, order or permit as they would relate to the type of activity or industry carried on under the authority, program or order; and
- (i) the public interest; and
- (j) any applicable site management plan; and
- (k) any other matter prescribed under a regulation.

**“state of mind”**, of a person, includes—

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

**“suitability statement”** means—

- (a) for a decision made about contaminated land after considering site investigation report for the land—a statement issued by the administering authority under section 118S about the uses and activities for which the land is suitable; or
- (b) for a decision made about land after considering a validation report—a statement issued by the administering authority under section 118ZF about the uses and activities for which the land is suitable; or
- (c) for the approval of a draft site management plan—a statement issued by the administering authority under section 118ZU about the uses and activities for which the land is suitable under the plan.

**“unlawful environmental harm”** means environmental harm that is unlawful under section 119(1).

**“validation report”** see section 118X.

**“vehicle”** includes a train, boat and an aircraft.

## SCHEDULE 4 (continued)

**“waste”** see section 13.

**“waste management works”** see section 118A.

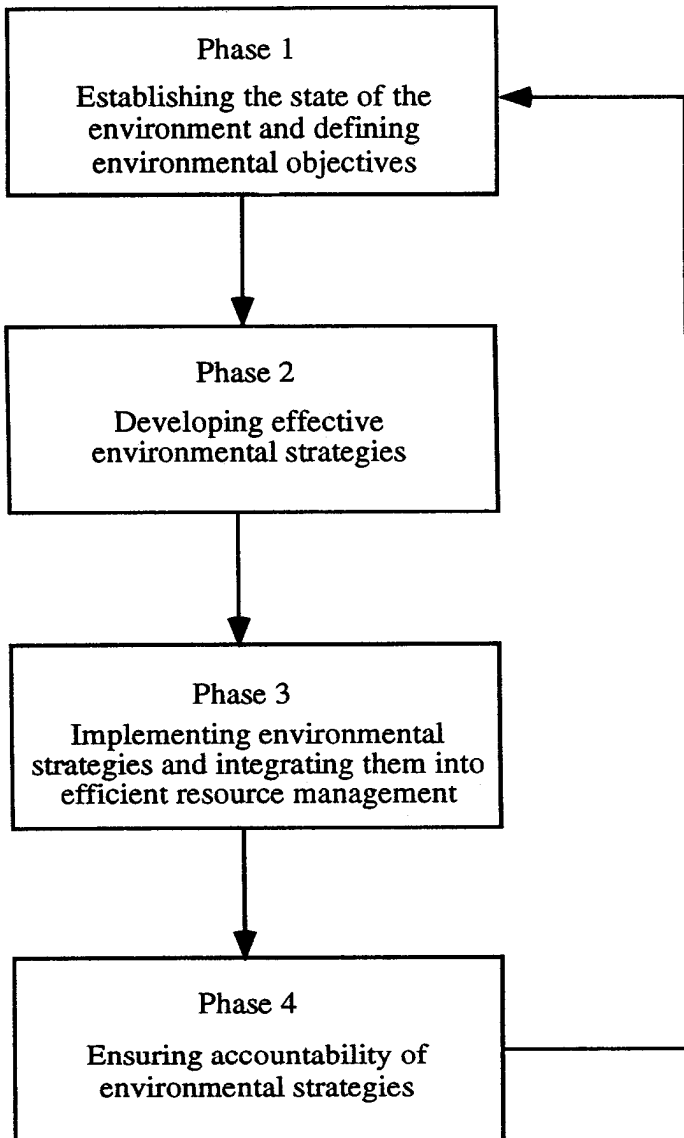
**“waters”** means Queensland waters.

**“wilfully”** means—

- (a) intentionally; or
- (b) recklessly; or
- (c) with gross negligence.

**FIGURE**

section 4(3)



**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 July 1998. Future amendments of the Environmental Protection Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	pres	=	present
amd	=	amended	prev	=	previous
amdt	=	amendment	(prev)	=	previously
ch	=	chapter	proc	=	proclamation
def	=	definition	prov	=	provision
div	=	division	pt	=	part
exp	=	expires/expired	pubd	=	published
gaz	=	gazette	R[X]	=	Reprint No.[X]
hdg	=	heading	RA	=	Reprints Act 1992
ins	=	inserted	reloc	=	relocated
lap	=	lapsed	renum	=	renumbered
notfd	=	notified	rep	=	repealed
o in c	=	order in council	s	=	section
om	=	omitted	sch	=	schedule
orig	=	original	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
			unnum	=	unnumbered

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	28 April 1995
2	Act No. 10 of 1996	6 June 1996
2A	Act No. 7 of 1997	28 July 1997

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	2
Obsolete and redundant provisions	2

## **6 List of legislation**

### **Environmental Protection Act 1994 No. 62**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

ss 42, 43(2), 45(1)(d), (2), 47(2)(d), 48(2) (so far as it relates to interested parties), 49(3)–(6), (8), (9)(b), (10)(b), (11) (so far as it relates to interested parties), 64, 65(2) (so far as it relates to interested parties), 66, 200(2)(a)–(b), s 222 sch 2 pt B (so far as it related to the Litter Act 1971 and the Litter Act Amendment Act 1978), sch 4 (paragraph (a) of definition “interested party”, paragraph (f) of definition “standard criteria” (so far as it relates to interested parties for an environmental authority)) not yet proclaimed into force

ch 4, pt 4 (ss 147–155), s 222 sch 2 pt B (except so far as it relates to the Litter Act 1971 and the Litter Act Amendment Act 1978) commenced 1 December 1997 (1997 SL No. 343)

s 223 sch 3 (so far as it amends the Wet Tropics World Heritage Protection and Management Act 1993) commenced 1 November 1994 (see s 2(2))

s 226(8) never proclaimed into force and exp 1 March 1996 (see ss 224, 228)

s 227(2) never proclaimed into force and exp 1 March 1996 (see ss 224, 228)

s 233(5) never proclaimed into force and exp 1 March 1996 (see ss 224, 234)

s 236(4) never proclaimed into force and exp 1 March 1996 (see s 236(6))  
remaining provisions commenced 1 March 1995 (1995 SL No. 47)

as amended by—

### **Environmental Legislation Amendment Act 1995 No. 40 pts 1–2**

date of assent 27 October 1995

commenced on date of assent

### **Environmental Legislation Amendment Act (No. 2) 1995 No. 52 pts 1–2**

date of assent 22 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 2 February 1996 (1996 SL No. 16)

### **Environmental Protection Amendment Act 1996 No. 10**

date of assent 23 May 1996

ss 13 and 24 commenced 1 June 1996 (see s 3)

remaining provisions commenced on date of assent

### **Environmental Protection Amendment Act 1997 No. 7**

date of assent 15 May 1997

s 13 commenced 1 June 1997 (see s 2)

remaining provisions commenced on date of assent

### **Environmental and Other Legislation Amendment Act 1997 No. 80 pts 1–2 (as amd 1998 No. 13 pt 5 commenced 1 July 1998 (see s 2(1) and 1998 SL No. 52)**

date of assent 5 December 1997

ss 1–2 commenced on date of assent

ss 3–4, 29(2)–(3), 34, 39(2) (so far as it relates to the definition “approved code of practice”) commenced 12 December 1997 (1997 SL No. 432)

ss 5–11, 14–15, 18, 28(1), 37 (so far as it relates to the entry for ss 60A, 60C(2) and 60E(5)(b)), 39(1) and 39(2) (so far as it relates to the definitions “approval”, “level 1 approval” and “level 2 approval”) commenced 1 July 1998 (1998 SL No. 52)

ss 12–13, 26, 31, 35 (so far as it relates to the om of s 220(2)(k) and the ins of new s 220(1)(k), commenced 30 March 1998 (1998 SL No. 52)

s 20 not yet proclaimed into force

remaining provisions commenced 6 July 1998 (1998 SL No. 52)

**Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3) pt 4**

date of assent 23 March 1998

ss 1–2 commenced on date of assent

ss 35, 38–41, 61 commenced 30 March 1998 (1998 SL No. 55)

remaining provisions commenced 1 July 1998 (1998 SL No. 55)

**Police and Other Legislation (Miscellaneous Provisions) Act 1998 No. 19 ss 1–2 pt 5**

date of assent 26 March 1998

commenced on date of assent

## 7 List of annotations

**Waste**

s 13 sub 1995 No. 52 s 4

**Environmental harm**

s 14 amd 1996 No. 10 s 4

**Effect of Act on other Acts**

s 20 amd 1997 No. 80 s 4

**Preparation of draft policies**

s 23 amd 1996 No. 10 s 5

**Application date**

s 35 amd 1996 No. 10 s 6

sub 1997 No. 7 s 4

amd 1997 No. 80 s 5

**Duty to notify environmental harm**

s 37 amd 1998 No. 13 s 36

**Licence on approval required to carry out level 1 environmentally relevant activities**

s 39 amd 1996 No. 10 s 7

sub 1997 No. 80 s 6

**Approvals required to carry out certain level 2 environmentally relevant activities**

s 40 amd 1997 No. 80 s 7

**PART 4—ENVIRONMENTAL AUTHORITIES FOR ENVIRONMENTALLY RELEVANT ACTIVITIES WITHOUT DEVELOPMENT APPROVALS****pt hdg** sub 1998 No. 13 s 37**Division 1A—Preliminary****div hdg** ins 1998 No. 13 s 37**Application of pt 4****s 40A** ins 1998 No. 13 s 37**Application for environmental authority****s 41** amd 1997 No. 80 s 8; 1998 No. 13 s 38**Public notice of applications for licences****s 42** amd 1995 No. 40 s 3**Criteria for deciding application****s 44** sub 1996 No. 10 s 8  
amd 1997 No. 80 s 9**Grant of application for environmental authority****s 45** amd 1997 No. 80 s 10; 1998 No. 13 s 39**Conditions of environmental authority****s 46** amd 1996 No. 10 s 9; 1997 No. 80 s 11**Provisional licensee may apply for new licence****s 47A** ins 1996 No. 10 s 10**Refusal of application for environmental authority****s 48** amd 1995 No. 40 s 4(3)–(4)  
def “**environmental authority**” om 1995 No. 40 s 4(1)  
def “**interstate environmental authority**” ins 1995 No. 40 s 4(2)**Amendment of licence on application of licensee****s 49** amd 1996 No. 10 s 11, 1998 No. 13 s 40**Amendment of licence by administering authority****s 50** amd 1997 No. 80 s 12**Procedure for amending licence****s 51** amd 1998 No. 13 s 41**Refusal of application for transfer of licence****s 58** amd 1995 No. 40 s 5(3)  
def “**environmental authority**” om 1995 No. 40 s 5(1)  
def “**interstate environmental authority**” ins 1995 No. 40 s 5(2)**Procedure for suspension or cancellation****s 60** amd 1997 No. 80 s 13**Division 4A—Amendment, suspension and cancellation of level 1 approvals****div hdg** ins 1997 No. 80 s 14**Subdivision 1—Amendment of level 1 approvals****sdiv 1 (ss 60A–60C)** ins 1997 No. 80 s 14



**Subdivision 2—Suspension and cancellation of level 1 approvals****sdiv 2 (ss 60D–60E)** ins 1997 No. 80 s 14**PART 4A—ENVIRONMENTAL AUTHORITIES FOR LEVEL 1  
ENVIRONMENTALLY RELEVANT ACTIVITIES WITH  
DEVELOPMENT APPROVALS****pt hdg** ins 1998 No. 13 s 42**Division 1—Preliminary****div hdg** ins 1998 No. 13 s 42**Application of pt 4A****s 60F** ins 1998 No. 13 s 42**Division 2—Licences****div hdg** ins 1998 No. 13 s 42**Subdivision 1—Application for, and grant of, licences****sdiv 1 (ss 60G–60L)** ins 1998 No. 13 s 42**Subdivision 2—Suspension and cancellation of licences****sdiv 2 (ss 60M–60N)** ins 1998 No. 13 s 42**Division 3—Level 1 approvals****div hdg** ins 1998 No. 13 s 42**Subdivision 1—Applications for, and grant of, level 1 approvals****sdiv 1 (ss 60O–60T)** ins 1998 No. 13 s 42**Subdivision 2—Suspension and cancellation of level 1 approvals****sdiv 2 (ss 60U–60V)** ins 1998 No. 13 s 42**Division 4—Dealings with environmental authorities****div 4 (ss 60W–60Y)** ins 1998 No. 13 s 42**PART 4B—DEVELOPMENT APPROVALS FOR CERTAIN  
ENVIRONMENTALLY RELEVANT ACTIVITIES****pt hdg** ins 1998 No. 13 s 42**Division 1—Preliminary****div hdg** ins 1998 No. 13 s 42**Application of pt 4B****s 60Z** ins 1998 No. 13 s 42**Division 2—Assessing development applications****div 2 (ss 60ZA–60ZB)** ins 1998 No. 13 s 42**Division 3—Effect of issue of certain development approvals****div 3 (ss 60ZC–60ZE)** ins 1998 No. 13 s 42**Division 4—Offences****div hdg** ins 1998 No. 13 s 42**Offence to contravene development condition****s 60ZF** ins 1998 No. 13 s 42

**PART 4C—GENERAL PROVISIONS ABOUT ENVIRONMENTALLY RELEVANT ACTIVITIES****pt hdg** sub 1998 No. 13 s 43**Single applications and environmental authorities****s 61** amd 1998 No. 13 s 44**Special provisions for environmental authorities to carry out new environmentally relevant activities****s 61A** ins 1996 No. 10 s 12**Extensions of time for decision on applications****s 65** amd 1997 No. 7 s 5**Annual licence fee and return****s 68** amd 1996 No. 10 s 13, 1998 No. 13 s 45**Offence to contravene condition of environmental authority****s 70** sub 1997 No. 7 s 6  
amd 1997 No. 80 s 15**Material change of use for Integrated Planning Act****s 70A** ins 1998 No. 13 s 46**When environmental audit required****s 72** amd 1998 No. 13 s 47**Administering authority to consider and act on environmental reports****s 76** amd 1998 No. 13 s 48**Division 1—Preliminary****div hdg** ins 1997 No. 7 s 7**Content of program****s 81** amd 1997 No. 7 s 8**Administering authority may require draft program****s 82** amd 1998 No. 13 s 49**Division 2—Submission and approval of environmental management programs****div hdg** ins 1997 No. 7 s 9**Administering authority to consider draft programs****s 88** amd 1996 No. 10 s 14**Criteria for deciding draft program****s 89** sub 1996 No. 10 s 15  
amd 1998 No. 13 s 50**Extensions of time for decisions on submission of draft programs****s 92** amd 1996 No. 10 s 16**Division 3—Amendment of approval for environmental management programs****div hdg** ins 1997 No. 7 s 10**Application****s 94A** ins 1997 No. 7 s 10

**Division 4—Miscellaneous****div hdg** ins 1997 No. 7 s 11**Effect of compliance with program****s 97** amd 1998 No. 13 s 51**When order may be issued****s 109** amd 1998 No. 13 s 52**Unlawful environmental harm****s 119** amd 1998 No. 13 s 53**Authority may apply to court for order setting aside immunity from prosecution****s 106** amd 1995 No. 40 s 6**When financial assurance may be required****s 115** amd 1997 No. 80 s 16**Person may show cause why financial assurance should not be required****s 116** amd 1997 No. 80 s 17**Application for amendment or discharge of financial assurance****s 117** amd 1997 No. 80 s 18**Claims on financial assurance****s 118** sub 1997 No. 80 s 19**PART 9A—SPECIAL PROVISIONS ABOUT WASTE MANAGEMENT****pt hdg** ins 1995 No. 52 s 5**Chief executive may require local government to remove waste etc.****s 118A** ins 1995 No. 52 s 5**Waste removal etc. by private contractors****s 118B** ins 1995 No. 52 s 5  
amd 1997 No. 80 s 20**PART 9B—CONTAMINATED LAND****pt hdg** ins 1997 No. 80 s 21**Division 1—Interpretation****div 1 (ss 118C–118D)** ins 1997 No. 80 s 21**Division 2—Inclusion of land on environmental management register****div 2 (ss 118E–118H)** ins 1997 No. 80 s 21**Division 3—Investigation of land on environmental management register****div 3 (ss 118I–118W)** ins 1997 No. 80 s 21**Division 4—Remediation of land****div 4 (ss 118X–118ZH)** ins 1997 No. 80 s 21**Division 5—Site management plans****div hdg** ins 1997 No. 80 s 21**Subdivision 1—Preliminary****sdiv 1 (ss 118ZI–118ZJ)** ins 1997 No. 80 s 21

**Subdivision 2—Procedure for approval of site management plan**  
sdiv 2 (ss 118ZK–118ZX) ins 1997 No. 80 s 21

**Subdivision 3—Compliance with site management plan**  
sdiv 3 (s 118ZY) ins 1997 No. 80 s 21

**Subdivision 4—Amendment of site management plan**  
sdiv 4 (ss 118ZZ–118ZZA) ins 1997 No. 80 s 21

**Division 6—Notices to be given about land recorded in registers**  
div 6 (ss 118ZZB–118ZZC) ins 1997 No. 80 s 21

**Division 7—Miscellaneous**  
div 7 (ss 118ZZD–118ZZF) ins 1997 No. 80 s 21

**PART 3—OTHER ENFORCEMENT POWERS OF AUTHORISED PERSONS  
AND POLICE OFFICERS**

pt hdg sub 1995 No. 40 s 7

**Offence of interfering with monitoring equipment**  
s 127 amd 1998 No. 13 s 54

**Entry of place**  
s 135 amd 1997 No. 80 s 22; 1998 No. 13 s 55

**Entry of land—preliminary investigation**  
s 136A ins 1997 No. 80 s 23

**Order to enter land to conduct investigation or conduct work**  
s 138A ins 1997 No. 80 s 24

**General powers for places and vehicles**  
s 140 amd 1997 No. 80 s 25

**Power to require name and address**  
s 144 amd 1995 No. 40 s 8; 1998 No. 19 s 25

**Power to require production of documents**  
s 146 amd 1998 No. 13 s 56

**Application of part**  
s 148 prov hdg amd 1997 No. 80 s 26

**Failure to help authorised person—emergency**  
s 162 amd 1998 No. 13 s 57

**Failure to help authorised person—other cases**  
s 163 amd 1998 No. 13 s 58

**Costs of investigation or remediation to be paid by recipient**  
s 179A ins 1997 No. 80 s 27

**Evidentiary provisions**  
s 180 amd 1997 No. 80 s 28

**Application of pt 4**  
s 193A ins 1998 No. 13 s 59

**PART 4A—ENFORCEMENT ORDERS****pt 4A (ss 195A–195G)** ins 1998 No. 13 s 60**Devolution of powers****s 196** amd 1996 No. 10 s 17; 1997 No. 80 s 29; 1998 No. 13 s 61**Dissatisfied person****s 200** amd 1995 No. 52 s 6; 1996 No. 10 s 18; 1997 No. 80 s 30**Procedure for review****s 202** amd 1996 No. 10 s 19**Appeals to be heard with planning appeals****s 211** amd 1997 No. 80 s 31**Registers****prov hdg** sub 1997 No. 80 s 32(1)**s 213** amd 1997 No. 80 s 32(2); 1998 No. 13 s 62**Inspection of register****s 214** amd 1997 No. 80 s 33**Codes of practice****s 219** amd 1997 No. 80 s 34**Regulation-making power****prov hdg** sub 1996 No. 10 s 20(1)**s 220** amd 1995 No. 52 s 7; 1996 No. 10 s 20(2); 1997 No. 80 s 35, 1997 No. 80 s 35; 1998 No. 13 s 63**CHAPTER 8—REPEALS, SAVINGS, TRANSITIONAL, VALIDATIONS AND RELATED PROVISIONS****ch hdg** amd R1 (see RA s 7(1)(k)); 1996 No. 10 s 21**PART 1—REPEALS****pt hdg** amd R1 (see RA s 7(1)(k))**Acts amended****s 223** om R1 (see RA s 40)**Division 1—Preliminary****div hdg** exp 1 March 1997 (see ss 224, 225)**Definitions****s 224** amd 1996 No. 10 s 22  
exp 1 March 1997 (see ss 224, 225)**Expiry of division****s 225** exp 1 March 1997 (see ss 224, 225)**Division 2—Savings and transitional provisions (Clean Air Act 1963 and Clean Waters Act 1971)****div 2 (ss 226–228)** exp 1 March 1996 (see ss 224, 228)**Division 3—Transitional Provisions (State Environment Act 1988)****div 3 (ss 229–230)** exp 1 March 1995 (see ss 224, 230)

**Division 4—Transitional Provisions (Noise Abatement Act 1978)****div 4 (ss 231–232)** exp 1 March 1996 (see ss 224, 232)**Division 5—Savings and transitional provisions (Health Act 1937)****div hdg** exp 1 March 1996 (see ss 224, 234)**Agreements under s 10A Health Act****s 233** exp 1 March 1996 (see ss 224, 234)**Orders and approvals under Health Act****s 233A** ins 1995 No. 52 s 8  
exp 2 February 1996 (see s 233A(3))**Expiry of division****s 234** amd 1995 No. 52 s 9  
exp 1 March 1996 (see ss 224, 234)**Reconsideration of applications refused during relevant period****s 235** prev s 235 exp 1 March 1997 (see ss 224, 241)  
pres s 235 ins 1997 No. 7 s 12**Postponement of requirement for environmental authorities to carry out certain existing environmentally relevant activities****s 236** prev s 236 exp 1 March 1996 (see ss 224, 236(6))  
prev s 236 ins 1996 No. 10 s 23  
exp 1 March 1997 (see ss 224, 241)  
pres s 236 ins 1997 No. 7 s 12**Postponement of requirement for environmental authorities to carry out certain existing environmentally relevant activities****s 236A** ins 1996 No. 10 s 23  
exp 1 March 1997 (see ss 224, 241)**Transfer of certain land on contaminated sites register to environmental management register****s 237** orig s 237 exp 1 March 1996 (see ss 224, 237(2))  
prev s 237 ins 1996 No. 10 s 23  
exp 1 March 1997 (see s 241)  
pres s 237 ins 1997 No. 80 s 36**Transfer of certain land on contaminated sites register to contaminated land register****s 238** prev s 238 amd 1996 No. 10 s 25  
exp 1 September 1997 (see s 241(2))  
pres s 238 ins 1997 No. 80 s 36**Special transitional provision for mining industry****s 239** exp 1 March 1997 (see ss 224, 241)**Transitional provision for change in anniversary days****s 240** prev s 240 exp 1 March 1996 (see ss 224, 240(3))  
pres s 240 ins 1996 No. 10 s 24  
exp 1 March 1997 (see ss 224, 241)

**Expiry of division**

- s 241** sub 1996 No. 10 s 26  
exp 1 March 1997 (see ss 224, 241)

**PART 3—VALIDATIONS AND RELATED PROVISIONS**

- pt hdg** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Division 1—Interpretation**

- div hdg** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Definitions for pt 3**

- s 242** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Division 2—Validations**

- div hdg** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Validation of fees**

- s 243** ins 1996 No. 10 s 27  
exp 23 May 1996 (see s 243)

**Validation of amending regulations**

- s 244** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Validations for invalid past acts**

- s 245** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Validation of certain notices**

- s 246** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Division 3—Miscellaneous**

- div hdg** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Unlawful past acts authorised**

- s 247** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Applications made during suspension period**

- s 248** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Reconsideration of applications refused during suspension period**

- s 249** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Anniversary day for environmental authorities taking effect during suspension period**

**s 250** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Special regulation-making power**

**s 251** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**Expiry of part**

**s 252** ins 1996 No. 10 s 27  
exp 1 March 1997 (see s 252)

**SCHEDULE 1—ORIGINAL DECISIONS**

amd 1995 No. 52 s 10; 1997 No. 7 s 13; 1997 No. 80 s 37; 1998 No. 13 s 64

**SCHEDULE 2—ACTS REPEALED**

amd R1 (see RA s 40)

**SCHEDULE 3—NOTIFIABLE ACTIVITIES**

prev sch 3 om R1 (see RA s 40)  
pres sch 3 ins 1997 No. 80 s 38

**SCHEDULE 4—DICTIONARY**

def “**advice agency**” ins 1998 No. 13 s 65(2)  
def “**approval**” sub 1995 No. 40 s 9(1); 1997 No. 80 s 39 (om by 1998 No. 13 s 67)  
ins 1998 No. 13 s 65(2)  
def “**approved code of practice**” ins 1997 No. 80 s 39(2)  
def “**assessment manager**” ins 1998 No. 13 s 65(2)  
def “**concurrence agency**” ins 1998 No. 13 s 65(2)  
def “**contaminated land**” ins 1997 No. 80 s 39(2)  
def “**contaminated land register**” ins 1997 No. 80 s 39(2)  
def “**chief executive officer**” om R2 (see RA s 39)  
def “**dangerous goods code**” ins 1997 No. 80 s 39(2)  
def “**development**” ins 1998 No. 13 s 65(2)  
def “**development application**” ins 1998 No. 13 s 65(2)  
def “**development approval**” ins 1998 No. 13 s 65(2)  
def “**development condition**” ins 1998 No. 13 s 65(2)  
def “**development offence**” ins 1998 No. 13 s 65(2)  
def “**disposal permit**” ins 1997 No. 80 s 39(2)  
def “**engaging**” ins 1995 No. 40 s 9(3)  
def “**enforcement order**” ins 1998 No. 13 s 65(2)  
def “**environmental management register**” ins 1997 No. 80 s 39(2)  
def “**hazardous contaminant**” ins 1997 No. 80 s 39(2)  
def “**integrated environmental management system**” ins 1998 No. 13 s 65(2)  
def “**Integrated Planning Act**” ins 1998 No. 13 s 65(2)  
def “**interim enforcement order**” ins 1998 No. 13 s 65(2)  
def “**interstate environmental authority**” ins 1995 No. 40 s 9(3)



- def “**level 1 approval**” ins 1997 No. 80 s 39(2) (om by 1998 No. 13 s 67)  
ins 1998 No. 13 s 65(2)
- def “**level 2 approval**” ins 1997 No. 80 s 39(2)
- def “**licence**” amd 1998 No. 13 s 65(1)
- def “**mining authority**” ins 1997 No. 80 s 39(2)
- def “**noise abatement direction**” sub 1995 No. 40 s 9(2)
- def “**notifiable activity**” ins 1997 No. 80 s 39(2)
- def “**part 4 environmental authority**” ins 1998 No. 13 s 65(2)
- def “**part 4A environmental authority**” ins 1998 No. 13 s 65(2)
- def “**preliminary investigation**” ins 1997 No. 80 s 39(2)
- def “**recipient**” amd 1997 No. 80 s 39(3)
- def “**referral agency**” ins 1998 No. 13 s 65(2)
- def “**registrar**” ins 1997 No. 80 s 39(2)
- def “**remediate**” ins 1997 No. 80 s 39(2)
- def “**remediation notice**” ins 1997 No. 80 s 39(2)
- def “**sanitary convenience**” ins 1995 No. 52 s 11
- def “**site investigation report**” ins 1997 No. 80 s 39(2)
- def “**site management plan**” ins 1997 No. 80 s 39(2)
- def “**standard criteria**” amd 1997 No. 80 s 39 (4)–(6)
- def “**suitability statement**” ins 1997 No. 80 s 39(2)
- def “**validation report**” ins 1997 No. 80 s 39(2)
- def “**waste management works**” ins 1995 No. 52 s 11

## **8 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Environmental and Other Legislation Amendment Act 1997 No. 80 s 20** reads as follows—

### **Amendment of s 118B (Waste removal etc. by private contractors)**

**20.(1)** Section 118B—

*insert—*

‘**(2A)** The fee charged by a local government for an approval must not be more than the maximum fee prescribed under a regulation for the approval.

‘**(2B)** Also, a local government must not charge a fee if waste management works to be performed under the approval consist only of transporting waste through its area.’

**(2)** Section 118B—

*insert—*

‘**(5A)** However, the local government must not impose conditions on the approval if the approval is for waste management works that are an environmentally relevant activity.’.

**(3)** Section 118B—

*insert—*

‘**(9)** This section does not apply to waste management works carried out under a mining authority for the exclusive purpose of dealing with waste generated by activities carried out under the authority.’.