

Queensland



# ENVIRONMENTAL PROTECTION ACT 1994

**Reprinted as in force on 28 April 1995  
(Act not amended up to this date)**

**Reprint No. 1**

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# Information about this reprint

This Act is reprinted as at 28 April 1995.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- insert references to schedule, appendix or body of law (s 33B)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A).

**See Endnotes for information about when provisions commenced.**

Queensland



**ENVIRONMENTAL PROTECTION ACT  
1994**

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# ENVIRONMENTAL PROTECTION ACT 1994

[reprinted as in force on 12 April 1995]

## 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).

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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.

**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
- (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. “Waste”** includes any gas, liquid, solid or energy (or a combination

of wastes) that is surplus to, or unwanted from, any industrial, commercial, domestic or other activity, whether or not 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.

**(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*
- *Pollution of Waters by Oil Act 1973*
- *Radioactive Substances Act 1958*
- *State Counter-Disaster Organization Act 1975*.

**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.

## CHAPTER 2—ENVIRONMENTAL PROTECTION POLICIES

### Preparation of draft policies

**23.** The Minister may prepare a draft environmental protection policy to protect Queensland's environment.<sup>2</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>3</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>2</sup> An environmental protection policy may be prepared on the Minister's own initiative or if asked by someone else.

<sup>3</sup> Under section 24 of the *Statutory Instruments Act 1992*, 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) The “**application date**”, for an application for, or transfer of, a licence, or the approval of a draft environmental management program, is—

- (a) if, within 10 days after the application is made to, or the approval is sought from, the administering authority, the authority requires additional information about the licence, transfer or program—the date the authority specifies as the application date in a written notice given by the authority to the applicant; or
- (b) if paragraph (a) does not apply—the date that is 14 days after the application is made to the administering authority.

(2) However, the “**application date**” specified in a notice under subsection (1)(a) must not be a date that is earlier than 2 days after the applicant'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>4</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 (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

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<sup>4</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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(e) 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.

### **Level 1 environmentally relevant activities to be licensed**

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

Maximum penalty—400 penalty units.

### **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 an approval.

## **PART 4—ENVIRONMENTAL AUTHORITIES**

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

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

**41.** 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.

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

**42.5(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*

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<sup>5</sup> This section had not commenced on or before the reprint date.

(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,<sup>6</sup> 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 paragraph (a) 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.*

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

**43.7(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.*

### **Criteria for deciding application**

**44.** In deciding whether to grant or refuse an application for an

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<sup>6</sup> See section 202(2)(a)(i) for review date.

<sup>7</sup> The italicised provision of this section had not commenced on or before the reprint date.

environmental authority or what should be the conditions of the authority, the administering authority must consider the following—

- (a) the standard criteria;
- (b) additional information given in relation to the application;
- (c) any report about the applicant's suitability to hold, or continue to hold, an environmental authority;
- (d) the views expressed at a conference held in relation to the application.

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

**45.8(1)** If the administering authority decides to grant an application for an environmental authority, the authority must, within 10 days after making the decision—

- (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.*

**(2)** *The notice must state—*

- (a) *the reasons for its issue; and*
- (b) *that the parties may apply for a review of, or appeal against, the decision within 14 days.*<sup>9</sup>

**(3)** An 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.

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

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<sup>8</sup> The italicised provisions of this section had not commenced on or before the reprint date.

<sup>9</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to grant an application for a licence.

**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>10</sup>

**(2)** Without limiting subsection (1), 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;
  - (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.

**(3)** Without limiting subsection (1), conditions of an approval may require the approval holder to take stated measures to minimise the likelihood of environmental harm being caused.

**Provisional licence**

**47.<sup>11</sup>(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

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<sup>10</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to impose conditions on a licence.

<sup>11</sup> The italicised provision of this section had not commenced on or before the reprint date.

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>12</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.

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

**48.(1)** In this section—

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

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

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<sup>12</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to issue an environmental authorisation.

**“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* 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>13</sup>

(4) Without limiting subsection (2), the administering authority may refuse an application for an environmental authority if the authority 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 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 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 that has been cancelled or suspended under this Act or an interstate law.

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<sup>13</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to refuse an application for an environmental authorisation.

***Division 2—Amendment of licences*****Amendment of licence on application of licensee**

**49.14(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, 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.*

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<sup>14</sup> The italicised provisions of this section had not commenced on or before the reprint date.

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(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.*

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

(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.*

(9) In deciding whether to grant or refuse the application, the administering authority must consider the following—

- (a) the standard criteria;
- (b) *the views expressed at a conference held in relation to the application.*

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

- (a) grant the application;<sup>15</sup> and
- (b) *give written notice to interested parties of its decision and the reasons for the decision.*

(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* of its decision and the reasons for the decision.<sup>16</sup>

(12) Notice under subsection (10)(b) or (11) must be given within

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<sup>15</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to grant an application to amend the licence.

<sup>16</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to refuse an application to amend a licence.

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 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 holder) 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>17</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.

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

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

### ***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—

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<sup>17</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to amend a licence.

- (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—

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

- (a) is issued under an interstate law; and
- (b) is prescribed by 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>18</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 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 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 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).

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<sup>18</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to refuse the transfer of a licence.

**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>19</sup>

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<sup>19</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to suspend or cancel a licence.

(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 holder; or
- (b) the day of effect stated in the notice.

(8) However, if the licence is suspended or cancelled because of the conviction of a person 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 5—General*

#### **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 grant a single environmental authority, or 2 or more environmental authorities, for the applicant's activities.

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

#### **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>20</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 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***

**64.21(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*

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<sup>20</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to require additional information.

<sup>21</sup> This section had not commenced on or before the reprint date.

*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.*

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

**65.(1)** The administering authority may extend the time for deciding an application under this part if it is satisfied there are special circumstances for extending the time.

**(2)** If the administering authority extends the time, it must give written notice to the applicant *and interested parties* of the extension and the reasons for the extension before the extension starts.<sup>22</sup>

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

**66.<sup>23</sup>(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.*

### **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.

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<sup>22</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to extend the time for deciding an application.

<sup>23</sup> This section had not commenced on or before the reprint date.

**Annual licence fee and return**

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

- (a) pay the appropriate annual licence fee to the authority; and
- (b) give to the authority an annual return in the approved form.

**(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.

**(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 (at least 14 days from the giving of the reminder notice) (the “**due day**”) by which the licensee must—
  - (i) pay the annual licence fee and a late payment fee prescribed by regulation to the administering authority; and
  - (ii) give to the authority an annual return in the approved form; and
- (c) inform the licensee that the licence will be cancelled unless the licensee complies with the reminder notice.

**(4)** If the licensee does not comply with the reminder notice, 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 licence**

**70.(1)** A licensee must not wilfully contravene a condition of the licence.

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

**(2)** A licensee must not contravene a condition of the licence.

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 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 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>24</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 investigation (an “**environmental investigation**”) and submit a report on the investigation to it.

(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)

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<sup>24</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to require an evaluation.

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—

- (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) amend conditions of the recipient's licence; or
- (c) serve an environmental protection order on the recipient; or
- (d) 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>25</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;

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<sup>25</sup> Sections 202 and 204 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 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>26</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**

### **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>26</sup> Sections 202 and 204 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 objects 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.

### **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.

**(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>27</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.

### **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.

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<sup>27</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to require a program.

**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>28</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 the administering authority requires public notice 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.** In deciding whether to approve or refuse to approve the draft program or the conditions (if any) of the approval, the administering authority must consider the following—

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<sup>28</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to require additional information.

- (a) the standard criteria;
- (b) additional information given in relation to the draft program;
- (c) the views expressed at a conference held in relation to the draft program.

### **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>29</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.

**(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>30</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

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<sup>29</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to approve a draft program.

<sup>30</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to impose conditions on approval of a program.

- (b) that the person or public authority may apply for a review of, or appeal against, the decision within 14 days.<sup>31</sup>

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

**92.(1)** The administering authority may decide to extend the time 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>32</sup>

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

### **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.

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<sup>31</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to refuse to approve a draft program.

<sup>32</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to extend the time for deciding whether to approve the draft program.

**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 imprisonment for 2 years.

**(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 licence held by the holder or 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 (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; or
- (b) the person receives from the administering authority a notice of refusal to approve a draft environmental management program for the activity; or
- (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) (Authority to act on notice)—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>33</sup> or
- (b) subsection (2)(c).

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

### **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) (Effect of program notice) 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 103(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

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<sup>33</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision that section 104(1) not apply to the person.

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) (Effect of program notice).

(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 (Authority may apply to Court for order setting aside immunity from prosecution) 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) (Effect of program notice) 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) (Effect of program notice) 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 (Authority may apply to Court for order setting aside immunity from prosecution) 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.

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

## **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 a licence.

### **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>34</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

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<sup>34</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to issue an order.

- (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 imprisonment for 2 years.

- (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).

### **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, 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>35</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—

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<sup>35</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to impose conditions on a licence or approval of a program.

- (a) 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
- (b) the likelihood of action being required to rehabilitate or restore the environment because of environmental harm being caused by the activity; and
- (c) the environmental record of the licensee or 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 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 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)** The holder of a licence or an environmental management program approval subject to the condition that financial assurance be given 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 decide the application within 28 days after receiving it and give written notice to the applicant of its decision and, if it refuses the application, the reasons for the decision.<sup>36</sup>

### **Claims on financial assurances**

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

(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

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<sup>36</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to refuse to amend or discharge a financial assurance.

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.

(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 approval of its decision and the reasons for the decision.<sup>37</sup>

## **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

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<sup>37</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to claim, use or realise a financial assurance or part of a financial assurance.

- (c) an environmental protection order; or
- (d) an environmental authority; or
- (e) 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 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 imprisonment for 5 years.

(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 imprisonment for 2 years.

(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.

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) (Appointment of authorised persons)—

- (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) (Appointment of authorised persons) 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 (Special environmental protection provisions for certain noises).

(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 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>38</sup> and
- (g) be given to the person.<sup>39</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; or
- (b) it is a public place and the entry is made when the place is open to

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<sup>38</sup> Sections 202 and 204 provide for a review of, and appeal against, a decision to issue a notice.

<sup>39</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.

- the public; or
- (c) it is a licensed place or a place to which an approval relates 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.

(2) Unless the entry is made under the authority of a warrant, the entry must be made at a reasonable time.

### **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.

(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.

### **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
- (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.

### **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>40</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>41</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

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<sup>40</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>41</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.

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- (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 or vehicle, to give to the authorised person reasonable help for the exercise of the powers mentioned in paragraphs (a) to (g);<sup>42</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>43</sup>

**(2)** If, for any reason, it is not practicable to make a requirement under

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<sup>42</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>43</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.

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 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 (Procedure after seizure of evidence), 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**

### **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>44</sup>

(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>45</sup>

(4) If an authorised person who is a police officer exercising powers under part 4 (Special environmental protection provisions for certain noise) believes on reasonable grounds that—

- (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>46</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.

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<sup>44</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>45</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>46</sup> It is an offence against section 166(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

**Power to require production of documents**

**146.(1)** An authorised person may require a person to produce a document required to be held or kept by the person under this Act to the authorised person for inspection.<sup>47</sup>

**(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.

## ***PART 4—SPECIAL ENVIRONMENTAL PROTECTION PROVISIONS FOR CERTAIN NOISE***

***Definitions***

**147.<sup>48</sup>** *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 division***

**148.<sup>48</sup>(1)** *This part applies to the abatement of environmental nuisance caused by excessive noise that—*

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<sup>47</sup> It is an offence against section 167 to fail to comply with the requirements unless the person has a reasonable excuse for not complying with it.

<sup>48</sup> This section had not commenced on or before the reprint date.

*Environmental Protection Act 1994*

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- (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***

**149.49(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***

**150.49(1)** *This section applies if a police officer is reasonably satisfied—*

- (a) *the noise complained of is clearly audible at or near the*

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<sup>49</sup> This section had not commenced on or before the reprint date.

*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>50</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***

***151.51(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 (Powers of police officers on investigation of complaint) about the same place.*

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<sup>50</sup> It is an offence against section 167 to fail to comply with the direction.

<sup>51</sup> This section had not commenced on or before the reprint date.

**(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>52</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 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.<sup>53</sup>(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;*

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<sup>52</sup> It is an offence against section 168 to unlock, unseal or use the property.

<sup>53</sup> This section had not commenced on or before the reprint date.

*the police officer must, as soon as practicable, give written notice of the particulars of the damage to the person.*

### ***Recovery of seized property***

*153.54(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>55</sup>*

### ***Recovery of costs of seizure etc.***

*154.54 The State may recover as a debt owing to it the reasonable costs incurred by a police officer exercising powers under section 151 (Additional powers of police officers on later investigation).*

### ***General powers and role of police officers***

*155.54(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*

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<sup>54</sup> This section had not commenced on or before the reprint date.

<sup>55</sup> Unclaimed property may be disposed of under section 10.15 of the *Police Service Administration Act 1990* (Property in police possession).

*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
- (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>56</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,

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<sup>56</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.

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) (Power to seize evidence) and 142 (Procedure after seizure of evidence) 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 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 (Authorised person to give notice of seizure or damage); 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
- (b) there is no other practicable alternative to the release.<sup>57</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

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<sup>57</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.

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 (Administering authority may require relevant information).

(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.

### **Failure to comply with signal**

**160.(1)** A person must obey a signal under section 139(2) (Entry or boarding of vehicles) 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) (Entry or boarding of vehicles) 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) (General powers for places and vehicles) 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.

### **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) (General powers for places and vehicles) 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), 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) (General powers for places and vehicles) to give reasonable help to the authorised person in relation to the exercise of a power; but
- (b) section 162 (Failure to help authorised person—emergency) 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), 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) (Power to require name and address) 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) (Power to require answers to questions) to answer a question; but
- (b) section 162 (Failure to help authorised person—emergency) 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 (Power to require production of documents) 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) (Additional powers of police officers on later investigation), 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) (Emergency powers) 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), 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) (Emergency powers).

(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)** Section 4 of the Criminal Code (Attempts to commit offences) applies to subsection (1).

**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) (Emergency powers) 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) (Emergency powers) to take action—the local government; or
  - (b) if paragraph (a) does not apply—the State.
- (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) (Emergency powers), 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.

## **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 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 the 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 (Offence of causing environmental nuisance) 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 section 104(2)(b) of the *Justices Act 1886*.

(4) The maximum penalty that may be summarily imposed for an indictable offence is 165 penalty units or imprisonment for 1 year.

### **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) (Unlawful environmental harm), 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
- (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, section 76 of the *Justices Act 1886* 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 contravention; or
  - (ii) reimbursing costs and expenses under section 179 (Administering authority to reimburse costs and expenses incurred); 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**

**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 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>58</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

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<sup>58</sup> The reference to the Minister is a reference to the Minister administering the provision in relation to the relevant matter—see section 33 of the *Acts Interpretation Act 1954* and the Ministerial and Administrative Arrangements.

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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
- (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 imprisonment for 2 years.

### **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 (Restraint of contraventions of Act etc.) 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 imprisonment for 2 years.

## **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 (Environmental protection policies)).

**(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.

**(3)** To remove any doubt, the local government may make a local law (not inconsistent with this Act) about—

- (a) the fees payable to it for the devolved matter; or
- (b) any matter necessary or convenient for carrying out or giving effect to the devolved matter.

**(4)** However, subsection (3)(a) does not authorise a local government to make a local law prescribing a fee for something for which a fee is prescribed by 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**

**200.59(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) (Emergency powers) to direct a person to take action—the person directed to take the action.

**(2)** An interested party is also a “**dissatisfied person**” if the decision is 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*
- (c) the submission of an environmental management program to which section 85 (Public notice of submission for approval of certain draft programs) 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**”.

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<sup>59</sup> The italicised provisions of this section had not commenced on or before the reprint date.

*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 not later than the review date; and
- (b) supported by enough information to enable the authority to decide the application.

**(3)** The applicant must give the following documents to the other persons who were given notice of the original decision—

- (a) notice of the application (the “**review notice**”); and
- (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—

- (a) review the original decision; and
- (b) 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—

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- (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 (8) within 14 days after receiving the application, the authority is taken to have made a decision at the end of the period confirming the original decision.

(11) Subsection (7) applies despite section 27A(7) of the *Acts Interpretation Act 1954*.

(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 which section 202 (Procedure for review) 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 a licence or to impose conditions on a licence; and
- (b) a person appeals against a local government's decision under the *Local Government (Planning and Environment) Act 1990* about a planning or development matter for the premises the subject of the licence application or licence.

**(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.

## **PART 4—GENERAL**

### **Register**

**213.(1)** The administering authority must, for its administration under this Act, keep a register of—

- (a) licences; and
- (b) approvals; and
- (c) details of environmental reports; and
- (d) details of the results of monitoring programs carried out under this Act; and
- (e) details of environmental management programs; and
- (f) details of environmental protection orders; and
- (g) authorised persons; and
- (h) other information prescribed by regulation.

**(2)** The administering authority may keep a register in the way it considers appropriate.

### **Inspection of register**

**214.(1)** The administering authority must—

- (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.

**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 written 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 notice is subordinate legislation.

(3) 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.

## **Regulations**

**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, and the recovery of any unpaid amount 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 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 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;
- (i) requiring environmental impact assessments, studies or reports for developments involving the release of contaminants;

(j) littering on public places.

(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.

(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 section 27A (Delegation of powers) of the *Acts Interpretation Act 1954*.

## CHAPTER 8—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONAL

### PART 2—SAVINGS AND TRANSITIONAL

#### *Division 1—Preliminary*

##### **Definitions**

224. In this part—

“**first applicable day**” means the day that is 1 year after the commencing day.

“**commencing day**” means the day on which this part commences.

“**second applicable day**” means the day that is 2 years after the commencing day.

##### **Expiry of division**

225. This division expires on the second applicable day.

#### *Division 2—Savings and transitional provisions (Clean Air Act 1963 and Clean Waters Act 1971)*

##### **Existing licences**

226.<sup>60</sup>(1) A licence issued under the *Clean Air Act 1963* or *Clean Waters Act 1971*, and in force immediately before the commencing day, continues in force as if it were issued under this Act until whichever is the earlier of the following—

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<sup>60</sup> The italicised provision of this section had not commenced on or before the reprint date.

- (a) the first applicable day;
- (b) it is cancelled by written notice given to the licensee by the administering authority.

(2) The notice must be given at least 60 days before the cancellation of the licence is to take effect.

(3) For subsection (1), the licence is taken to be a licence issued for the activity conducted by the licensee on the premises for which the licence was originally issued.

(4) The licence is subject to the same conditions that applied to it immediately before the commencing day.

(5) Subsection (4) applies despite the repeal of the *Clean Air Act 1963* or *Clean Waters Act 1971*.

(6) For section 68 (Annual licence fee and return), the anniversary day for the licence is 31 March 1995.

(7) Section 213(1)(a) (Register) does not apply to the licence.

(8) *Section 42 (Public notice of applications for licences) does not apply to an application for a licence by a licensee under a licence continued in force under subsection (1).*

### **Licence applications under repealed Acts**

**227.61(1)** An application for a licence under the *Clean Air Act 1963* or the *Clean Waters Act 1971* that is not decided immediately before the commencing day is taken to be an application to the administering authority for a licence under this Act for the environmentally relevant activity to be conducted by the applicant on the premises for which the application was made.

(2) *Section 42 (Public notice of applications for licences) does not apply to the application.*

(3) The application date for the application is the commencing day.

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<sup>61</sup> The italicised provision of this section had not commenced on or before the reprint date.

**Expiry of division**

**228.** This division expires on the first applicable day.

***Division 3—Transitional provisions (State Environment Act 1988)******State Environment Trust Fund***

**229.62** *The amount standing to the credit of the State Environment Trust Fund kept under the State Environment Act 1988 is to be paid to the Consolidated Fund on the commencing day.*

***Expiry of division***

**230.62** *This division expires on the commencing day.*

***Division 4—Transitional Provisions (Noise Abatement Act 1978)*****Noise is not environmental nuisance**

**231.** Despite section 15 (Environmental nuisance), noise is not an environmental nuisance.

**Expiry of division**

**232.** This division expires on the first applicable day or the repeal of the *Noise Abatement Act 1978*, whichever is the earlier.

***Division 5—Savings and transitional provisions (Health Act 1937)*****Agreements under s 10A Health Act**

<sup>62</sup> This provision has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

**233.<sup>63</sup>(1)** This section applies to an agreement that—

- (a) was made under section 10A of the *Health Act 1937* (Discharge of waste process water into watercourses) authorising a person (the “**authorised person**”) to discharge waste process water into a watercourse; and
- (b) is in force immediately before the commencing day.

(2) The agreement continues in force until it is cancelled by written notice given to the authorised person by the administering authority.

(3) The notice must be given at least 60 days before the cancellation of the agreement is to take effect.

(4) Compensation is not payable to the authorised person for the cancellation of the agreement.

(5) *Section 42 (Public notice of applications for licences) does not apply to an application for a licence by the authorised person for the environmentally relevant activity conducted by the person on the premises the subject of the agreement.*

### **Expiry of division**

**234.** This division expires on the first applicable day.

### *Division 6—Miscellaneous transitional provisions*

#### **Definitions**

**235.** In this division—

“**existing activity**” means an activity—

- (a) for which a licence is not required under the repealed Acts; and
- (b) that becomes an environmentally relevant activity on the commencing day.

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<sup>63</sup> The italicised provision of this section had not commenced on or before the reprint date.

**“existing mining authority”** means—

- (a) a mining authority granted before the commencing day; or
- (b) a renewal of an authority mentioned in paragraph (a) that is granted, and states it is granted, after consideration of the standard criteria.

**“mining authority”** means—

- (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 or petroleum lease granted under the *Petroleum Act 1923*.
- (c) a licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the *Petroleum (Submerged Lands) Act 1982*.

**“new mining authority”** means—

- (a) a mining authority that—
  - (i) is granted on or after the commencing day but before the second applicable day; and
  - (ii) is granted, and states it is granted, after consideration of the standard criteria; or
- (b) a renewal of an authority mentioned in paragraph (a) that is granted, and states it is granted, after consideration of the standard criteria.

**“repealed Acts”** means the Acts repealed by this Act.

### **Existing environmentally relevant activities to be licensed**

**236.64(1)** Section 39 (Level 1 environmentally relevant activities to be licensed) does not apply to a person who is carrying out an existing activity at the beginning of the commencing day until whichever is the later of the

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<sup>64</sup> The italicised provision of the section had not commenced on or before the reprint date.

following—

- (a) 1 year after the commencing day;
- (b) an application by the person for a licence to carry out the activity is decided.

(2) The administering authority may, by written notice given to the person, require the person to apply for a licence to carry out the activity within a stated time (not earlier than 30 days after the person's receipt of the notice).

(3) If the person does not apply for a licence within the time stated in the notice, subsection (1) ceases to apply to the person at the end of the time.

(4) *Section 42 (Public notice of applications for licences) does not apply to the person's licence application.*

(5) Section 43(1) (Administering authority to decide application for authority) applies to the person's licence application as if the time for deciding the application were 90 days after the application date.

(6) This section expires on the first applicable day.

### **Application of chapter 2**

**237.(1)** Sections 26 (Notice of proposal to prepare draft policy) and 27 (Preparation of draft policy) do not apply to a draft environmental protection policy—

- (a) the preparation of which was started by the Minister before the commencement of chapter 2; and
- (b) notice of the preparation of which—
  - (i) is given under section 28 (Notice of preparation of draft policy) before the first applicable day; and
  - (ii) states this section applies to it.

(2) This section expires on the first applicable day.

### **Special transitional provision for agricultural industry**

**238.** A person who carries out an agricultural activity complies with the

general environmental duty if the person carries out the activity in accordance with current and appropriate industry practices.

### **Special transitional provision for mining industry**

**239.** If, under an existing or new mining authority, the holder of the authority is authorised to carry out a level 2 environmentally relevant activity, a regulation may provide that the authority is taken to be an approval to carry out the activity.

### **Transitional regulations**

**240.(1)** The Governor in Council may make regulations about any matter for which—

- (a) it is necessary or convenient to facilitate the transition from the operation of the repealed Acts to the operation of this Act; and
- (b) this part does not make provision or enough provision.

**(2)** A regulation may be given retrospective operation to a date not earlier than the commencing day.

**(3)** This section expires on the first applicable day.

### **Expiry of division**

**241.** This division (other than the following sections) expires on the second applicable day—

- section 236 (Existing environmentally relevant activities to be licensed)
- section 237 (Application of chapter 2)
- section 240 (Transitional regulations).

**SCHEDULE 1****ORIGINAL DECISIONS**

section 201 of the Act

<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
62	Requirement for additional information about an application for, or amendment or transfer of, an environmental authority
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

## SCHEDULE 1 (continued)

- |           |   |
|-----------|---|
| 90(1)     | Approval of a draft environmental management program  |
| 90(3)     | Imposition of conditions on an environmental management program approval  |
| 91        | Refusal to approve draft environmental management program   |
| 92        | Extension of time for decision on submission of draft environmental management program                                |
| 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  |
| 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 4****DICTIONARY**

section 7 of the Act

**“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 (Devolution of powers)—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 (Devolution of powers)—the local government’s chief executive officer; or
- (b) for another matter—the chief executive.

**“application date”** see section 35.

**“approval”** means an approval under chapter 3 (Environmental management), part 3 (Environmental authorities) to carry out a level 2 environmentally relevant activity.

**“approved form”** means a form approved by the administering executive.

**“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

## SCHEDULE 4 (continued)

environmentally relevant activity the subject of the licence.

**“buyer”**, of a licensee’s business, see section 53.

**“chief executive officer”** of a local government includes the town clerk of the Brisbane City Council.

**“class 1, 2 or 3 environmental offence”** see section 124(3).

**“contaminant”** see section 11.

**“contamination”** see section 10.

**“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.

**“dissatisfied person”** see section 200.

**“ecologically sustainable development”** see section 3.

**“emergency direction”** see section 157.

**“emergency powers”** see section 156(6).

**“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.

**“environmentally relevant activity”** means an activity prescribed by regulation as an environmentally relevant activity.

**“environmental management program”** means an environmental management program approved under chapter 3 (Environmental

## SCHEDULE 4 (continued)

management), part 6 (Environmental management programs).

**“environmental nuisance”** see section 15.

**“environmental protection order”** see section 156.

**“environmental protection policy”** means an environmental protection policy approved under chapter 2 (Environmental protection policies).

**“environmental report”** means a report on an environmental evaluation.

**“environmental value”** see section 9.

**“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.

**“hovercraft”** means a vehicle designed to be supported on cushion of air.

**“identity card”** of an authorised person means the identity card issued to the authorised person under section 131 (Issue of identity cards).

## SCHEDULE 4 (continued)

**“interested party”**<sup>65</sup> means a party that properly makes a submission on—

- (a) *an application for, or the amendment of, a licence; or*
- (b) the submission of an environmental management program to which section 85 (Public notice of submission for approval of certain draft programs) applies.

**“land”** includes—

- (a) the airspace above land; and
- (b) land that is, or is at any time, covered by waters; and
- (c) waters.

**“licence”** means a licence under chapter 3 (Environmental management), part 4 (Environmental authorities) 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.

**“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

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<sup>65</sup> The italicised provision of this definition had not commenced on or before the reprint date.

## SCHEDULE 4 (continued)

1992.

**“noise”** see section 12.

**“noise abatement direction”** see section 150(2)(b).

**“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
- (b) another substance prescribed by regulation to be an ozone depleting substance.

**“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.

**“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—

## SCHEDULE 4 (continued)

- (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 order is issued.

**“register”** means a register kept under section 213 (Register).

**“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.

**“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).

**“serious environmental harm”** see section 17.

**“standard criteria”**, for an environmental authority, management program or protection order, means—

- (a) the principles of ecologically sustainable development as set out in the National Strategy for Ecologically Sustainable Development; and

## SCHEDULE 4 (continued)

- (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*; and
- (g) the best practice environmental management for the activity under the authority, program or order; and
- (h) the financial implications of the requirements of the authority, program or order 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 other matter prescribed by 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.

**“unlawful environmental harm”** means environmental harm that is unlawful under section 119(1) (Unlawful environmental harm).

**“vehicle”** includes a train, boat and an aircraft.

**“waste”** see section 13.

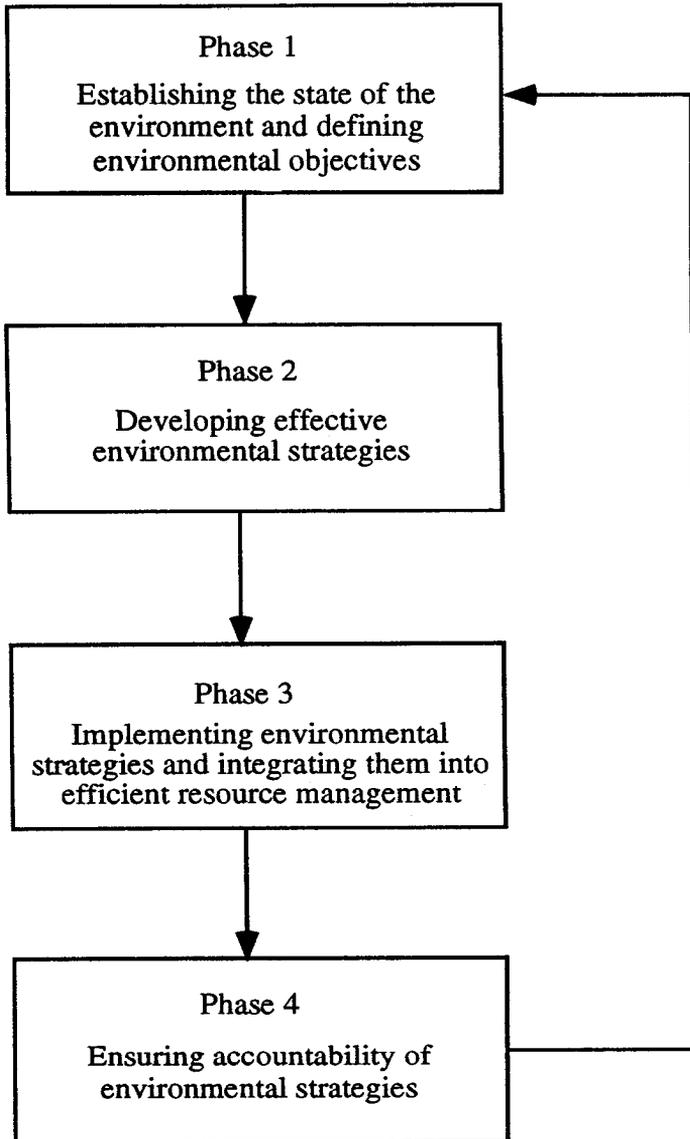
**“waters”** means Queensland waters.

**“wilfully”** means—

- (a) intentionally; or
- (b) recklessly; or
- (c) with gross negligence.

**FIGURE**

section 4(3) of the Act



**ENDNOTES****1 Index to Endnotes**

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2 Date to which amendments incorporated . . . . .	150
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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Environmental Protection Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

**3 List of legislation****Environmental Protection Act**

ss 42, 43(2), 49(3)–(6), (8), 66, 226(8), 227(2), 233(5), 236(4), 45(1)(d), 45(2), 47(2)(d), 48(2) (so far as it relates to interested parties), 49(9)(b), 49(10)(b), 49(11) (so far as it relates to interested parties), 64, 65(2) (so far as it relates to interested parties), ch 4 pt 4, 200(2)(a)–(b), sch 2 pt B, 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  
remaining provisions commenced 1 March 1995 (1995 SL No. 47)

## 4 List of annotations

### Key to abbreviations in list of annotations

amd	=	amended
ch	=	chapter
def	=	definition
div	=	division
exp	=	expires/expired
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
pt	=	part
RA	=	Reprints Act 1992
R1	=	Reprint No. 1
renum	=	renumbered
sdiv	=	subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

### **PART 1—REPEALS AND CONSEQUENTIAL AMENDMENTS**

**pt 1 (ss 222–223) om R1 (see RA s 40)**

#### **Division 1—Preliminary**

**div 1 (ss 224–225) exp 1 March 1997 (see s 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 s 228)**

#### **Division 3—Transitional Provisions (State Environment Act 1988)**

**div 3 (ss 229–230) exp 1 March 1995 (see s 230)**

#### **Division 4—Transitional Provisions (Noise Abatement Act 1978)**

**div 4 (ss 231–232) exp 1 March 1996 or on the repeal of the Noise Abatement Act 1978 whichever is the earlier (see s 232)**

#### **Division 5—Savings and transitional provisions (Health Act 1937)**

**div 5 (ss 233–234) exp 1 March 1996 (see s 234)**

#### **Definitions**

**s 235 exp 1 March 1997 (see s 241)**

#### **Existing environmentally relevant activities to be licensed**

**s 236 exp 1 March 1996 (see s 236(6))**

#### **Application of chapter 2**

**s 237 exp 1 March 1996 (see s 237(2))**

**Special transitional provision for agricultural industry****s 238**      exp 1 March 1997 (see s 241)**Special transitional provision for mining industry****s 239**      exp 1 March 1997 (see s 241)**Transitional regulations****s 240**      exp 1 March 1996 (see s 240(3))**Expiry of division****s 241**      exp 1 March 1997 (see s 241)**SCHEDULE 2—ACTS REPEALED****sch 1**      om R1 (see RA s 40)**SCHEDULE 3—ACTS AMENDED****sch 3**      om R1 (see RA s 40)