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Robyn Webb
Chief Parliamentary Counsel
Dated 16 November 2021



TASMANIA

ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL ACT 1994

No. 44 of 1994

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ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL ACT 1994

No. 44 of 1994

An Act to provide for the management of the environment and the control of pollution in the State, to repeal the *Environment Protection Act 1973* and the *Chlorofluorocarbons and other Ozone Depleting Substances Control Act 1988* and to amend the *Local Government (Building and Miscellaneous Provisions) Act 1993*

[Royal Assent 25 August 1994]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Environmental Management and Pollution Control Act 1994*.

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2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears

—

Agency has the same meaning as in the *State Service Act 2000*;

air includes any layer of the atmosphere;

Appeal Tribunal means the Tasmanian Civil and Administrative Tribunal;

article includes a system;

Authority means the Environment Protection Authority established under section 12;

authorized officer means an authorized officer under section 20;

best practice environmental management, in relation to an activity, means the management described in section 4;

Board means the Board of the Environment Protection Authority established under section 13;

business includes a business not carried on for profit or gain or any activity undertaken by government or a public authority;

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clean fill means fill, including soil, rock, concrete, bituminised pavement and similar non-putrescible and non-water-soluble material, that is not contaminated by other waste and that does not contain contaminant levels exceeding limits set by the Director;

coastal waters of the State means any part of the sea that is from time to time included in the coastal waters of the State by virtue of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;

Commissioner means the Commissioner of Police appointed under the *Police Service Act 2003*;

condition includes a limitation;

contaminated site has the meaning given by section 74A;

contravene includes fail to comply with;

controlled waste means –

- (a) a substance that is controlled waste within the meaning of –
 - (i) the National Environment Protection Measure entitled the Movement of Controlled Waste Between States and Territories made by the National Environment

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Protection Council on 26 June 1998, as amended from time to time; or

(ii) any National Environment Protection Measure substituted for the Measure referred to in paragraph (a), as amended from time to time; and

(b) a substance that is prescribed by the regulations to be controlled waste;

council has the same meaning as in the *Local Government Act 1993*;

council officer means an employee of a council appointed under section 21;

Director means the Director, Environment Protection Authority appointed under section 18;

director, in relation to a body corporate, includes –

(a) a person occupying or acting in the position of a director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorized to act in the position; and

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- (b) any person in accordance with whose directions or instructions the directors or members of the governing body are accustomed to act;

EL activity means an activity that is a level 2 activity by virtue of paragraph (h) of clause 4 of Schedule 2;

emergency authorization means an authorization referred to in section 34;

environment means components of the earth, including –

- (a) land, air and water; and
- (b) any organic matter and inorganic matter and any living organism; and
- (c) human-made or modified structures and areas –

and includes interacting natural ecosystems that include components referred to in paragraph (a) or (b);

environment protection notice means an environment protection notice issued under Division 2 of Part 4;

environment protection policy means an environment protection policy made and in force under Division 1A of Part 7;

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environmental agreement means an environmental agreement entered into under section 28;

environmental audit has the meaning given by section 5B;

environmental harm means environmental harm as described in section 5;

Environmental Impact Assessment Principles means the principles set out in section 74;

environmental improvement programme means a programme referred to in section 37;

environmental infringement notice means a notice referred to in section 67;

environmental licence means an environmental licence granted under Division 8 of Part 3;

environmental nuisance means –

- (a) the emission, discharge, depositing or disturbance of a pollutant that unreasonably interferes with, or is likely to unreasonably interfere with, a person's enjoyment of the environment; and
- (b) any emission, discharge, depositing or disturbance

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specified in an environment protection policy to be an environmental nuisance;

environmentally relevant activity means an existing or proposed activity which may cause environmental harm, and includes a level 1, level 2 or level 3 activity and an environmental nuisance;

financial assurance means a financial assurance referred to in section 35;

finfish means fish of the class Osteichthyes, other than fish of the order Anguilliformes;

finfish farming – see section 5C;

fish farm has the same meaning as in the *Inland Fisheries Act 1995*;

fish farm licence means a fish farm licence that is in force under the *Inland Fisheries Act 1995*;

Fund means the Environment Protection Fund established under section 97;

general environmental duty means the duty of care described in section 23A(1);

general manager means the general manager of a council;

inland fish farming means an activity, in relation to finfish farming, that is an activity –

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- (a) that comprises fish farming, within the meaning of the *Inland Fisheries Act 1995*; or
- (b) to which section 64(1)(c) of the *Living Marine Resources Management Act 1995* relates;

investigation notice has the meaning given by section 74A;

level 1 activity means an activity which may cause environmental harm and in respect of which a permit under the *Land Use Planning and Approvals Act 1993* is required but does not include a level 2 activity or a level 3 activity;

level 2 activity means an activity specified in Schedule 2;

level 3 activity means an activity which is a project of State significance under the *State Policies and Projects Act 1993*;

marine farming has the same meaning as in the *Living Marine Resources Management Act 1995*;

marine farming licence means a marine farming licence that is in force under the *Living Marine Resources Management Act 1995*;

noise includes vibration;

occupier, in relation to –

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- (a) a place in respect of which different parts are occupied by different persons, means the respective persons occupying each part and includes a licensee and the holder of any right at law to use or carry on operations at that place but does not include a mortgagee who has not assumed active management of that place; and
 - (b) any other place, includes a licensee and the holder of any right at law to use or carry on operations at that place but does not include a mortgagee who has not assumed active management of that place;

officer, in relation to a body corporate, means

-
- (a) a director of the body corporate; or
- (b) the chief executive officer of the body corporate; or
- (c) a receiver or manager of any property of the body corporate or a liquidator of the body corporate

—

and includes, in relation to a contravention or alleged contravention of this Act by the body corporate, an

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employee of the body corporate with responsibilities in respect of the matters to which the contravention or alleged contravention relates;

owner means any one or more of the following:

- (a) in the case of a fee simple estate in land, the person in whom that estate is vested;
- (b) in the case of land not registered under the *Land Titles Act 1980* and subject to a mortgage, the person having, for the time being, the equity of redemption in that mortgage;
- (c) in the case of land held under a tenancy for life, the person who is the life tenant;
- (d) in the case of land held under a lease for a term of not less than 99 years or for a term of not less than such other prescribed period, the person who is the lessee of the land;
- (e) in the case of land in respect of which a person has a prescribed interest, that person;
- (f) if the land is unalienated from the Crown, the Crown;

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Panel means the Environment Protection Policy Review Panel established by section 96A(1);

person includes any body of persons, corporate or unincorporate;

person in charge, in relation to a vehicle, does not include a lessor, mortgagee or financial institution that has not assumed active use of that vehicle;

place includes residential premises as defined in section 53(6);

pollutant includes –

- (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, radioactivity and electromagnetic radiation; or
- (e) a combination of pollutants –

that may cause environmental harm;

pollute means –

- (a) discharge, emit, deposit or disturb pollutants; or

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- (b) cause or fail to prevent the discharge, emission, depositing, disturbance or escape of pollutants;

public authority means –

- (a) any council; or
- (b) any body corporate established under an enactment having jurisdiction limited to a district, locality or part of the State; or
- (c) any body corporate established under an enactment or in the exercise or prerogative rights of the Crown to administer or control any department, business, undertaking or public institution on behalf of the State;

reasonable costs and expenses means any reasonable costs and expenses assessed in accordance with section 5A;

regulations means regulations made and in force under this Act;

related body corporate has the same meaning as in the Corporations Act;

remediation notice has the meaning given by section 74A;

repealed Act means the *Environment Protection Act 1973*;

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sell includes –

- (a) offer or display for sale; and
- (b) keep or have in possession for sale; and
- (c) barter or exchange; and
- (d) agree to sell; and
- (e) send, forward or deliver for sale; and
- (f) supply on a gratuitous basis for commercial promotional purposes; and
- (g) authorize, direct, permit, cause or attempt any act referred to in paragraph (a), (b), (c), (d), (e) or (f);

site management notice has the meaning given by section 74A;

State Policy has the same meaning as in the *State Policies and Projects Act 1993*;

State waters means –

- (a) the waters of the territorial sea adjacent to the State that are within 3 nautical miles of the seaward side of the baseline of the territorial sea, by reference to which the territorial limits of

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Australia are defined for the purposes of international law; and

- (b) the sea on the landward side of that baseline of the territorial sea adjacent to the State that is not within the limits of the State; and
- (c) waters within the limits of the State;

threatened species means a taxon of flora or fauna listed in Schedule 3, 4 or 5 to the *Threatened Species Protection Act 1995*;

vehicle includes any vessel or aircraft;

waste means any –

- (a) discarded, rejected, unwanted, surplus or abandoned matter, whether of any value or not; or
- (b) discarded, rejected, unwanted, surplus or abandoned matter, whether of any value or not, intended –
 - (i) for recycling, reprocessing, recovery, reuse or purification by a separate operation from that which produced the matter; or
 - (ii) for sale;

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water includes water underground but does not include water in any tank, pipe or cistern in use or destined for use;

waters within the limits of the State means all tidal waters adjacent to the State other than waters in respect of which a permit may be required under sections 10A, 10B, 10C or 10D of the *Environment Protection (Sea Dumping) Act 1981* of the Commonwealth.

- (2) Words and expressions used both in this Act and in the *Land Use Planning and Approvals Act 1993* have in this Act, unless the contrary intention appears, the same respective meanings as they have in that Act.

4. Best practice environmental management

- (1) For the purposes of this Act, the best practice environmental management of an activity is the management of the activity to achieve an ongoing minimization of the activity's environmental harm through cost-effective measures assessed against the current international and national standards applicable to the activity.
- (2) In determining 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;

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- (b) administrative systems implemented by the person, including staff training;
 - (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 determining the best practice environmental management of an activity.

5. Environmental harm

- (1) For the purposes of this Act, environmental harm is any adverse effect on the environment (of whatever degree or duration) and includes an environmental nuisance.
- (2) For the purposes of this Act, the following provisions are to be applied in determining whether environmental harm is material environmental harm or serious environmental harm:
 - (a) environmental harm is to be treated as serious environmental harm if –
 - (i) it involves an actual adverse effect on the health or safety of human beings that is of a high impact or on a wide scale; or

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- (ii) it involves an actual adverse effect on the environment that is of a high impact or on a wide scale; or
 - (iii) it results in actual loss or property damage of an amount, or amounts in aggregate, exceeding ten times the threshold amount;
 - (b) environmental harm is to be treated as material environmental harm if –
 - (i) it consists of an environmental nuisance of a high impact or on a wide scale; or
 - (ii) it involves an actual adverse effect on the health or safety of human beings that is not negligible; or
 - (iii) it involves an actual adverse effect on the environment that is not negligible; or
 - (iv) it results in actual loss or property damage of an amount, or amounts in aggregate, exceeding the threshold amount.
 - (3) For the purposes of subsection (2), **loss** includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent or mitigate the environmental harm and to make good resulting environmental damage.

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- (4) For the purposes of subsection (2), ***threshold amount*** means \$5 000, or if a greater amount is prescribed by regulation, that amount.
- (5) For the purposes of this Act, environmental harm is caused by pollution –
 - (a) whether the harm is a direct or indirect result of the pollution; and
 - (b) whether the harm results from the pollution alone or from the combined effects of the pollution and other factors.

5A. Assessment of reasonable costs and expenses

For the purposes of this Act, the reasonable costs and expenses that have been or would be incurred by the Director, a council or some other public authority or person in taking any action are to be assessed by reference to the reasonable costs and expenses that would have been or would be incurred in having the action taken by independent contractors engaged for that purpose.

5B. Environmental audit

An environmental audit is a documented, systematic, objective assessment of any one or more of the following:

- (a) the ability of management systems to adequately manage waste and control pollution;

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- (b) the extent to which actions required to be taken, or outcomes required to be achieved, for waste management and pollution control have been taken or achieved;
- (c) the extent, nature and source of wastes and emissions generated by an activity or process;
- (d) the likelihood of waste management problems and pollution control problems occurring and the adequacy of safeguards in place to prevent their occurrence or limit their impact on the environment;
- (e) the degree of compliance with –
 - (i) any conditions or restrictions applied by the Board to a permit issued under the *Land Use Planning and Approvals Act 1993*; or
 - (ii) any conditions imposed by an environment protection notice; or
 - (iii) any other requirement of this Act;
- (f) any other matter specified by the Board for the purpose of determining compliance with the Act, a State Policy or an environment protection policy.

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5C. Finfish farming

- (1) For the purposes of this Act, finfish farming is the activity, in the relevant circumstances, of farming of finfish.
- (2) For the purposes of subsection (1), the activity of farming of finfish is the activity that consists of, or includes, any one or more of the following activities:
 - (a) the farming, culturing, hatching, rearing, ranching, enhancement, or breeding, of finfish;
 - (b) any activities associated with, and for the purposes of, an activity referred to in paragraph (a).
- (3) For the purposes of subsection (1), the relevant circumstances in relation to the farming of finfish are that –
 - (a) the farming of finfish is an activity –
 - (i) to which section 64(1)(a) of the *Living Marine Resources Management Act 1995* relates; or
 - (ii) in relation to which a permit under section 12 or 14 of the *Living Marine Resources Management Act 1995* is in force; or
 - (b) the farming of finfish is conducted on a fish farm and the facilities or area of

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- land, or area of State waters, on or at which the farming of finfish is conducted have the required production or containment characteristics; or
- (c) the farming of finfish is an activity to which section 64(1)(c) of the *Living Marine Resources Management Act 1995* relates and the facilities or area of land, or area of State waters, on or at which the farming of finfish is conducted have the required production or containment characteristics.
- (4) For the purposes of this section, facilities or an area of land, or an area of State waters, on or at which the farming of finfish is conducted have the required production or containment characteristics if the facilities, area of land, or area of State waters –
- (a) have, or are intended to have, the capacity to produce, in a year, 5 tonnes or more of finfish; or
- (b) contain, or are intended to contain, in a year, finfish with a biomass of 2 tonnes or more.
- (5) For the purposes of this Act, an activity may constitute finfish farming whether it occurs –
- (a) on land; or
- (b) on inland waters within the meaning of the *Inland Fisheries Act 1995*; or

(c) in State waters.

6. Responsibility for pollution

For the purposes of this Act, the occupier or person in charge of a place or vehicle at or from which a pollutant escapes or is discharged, emitted or deposited is taken to have polluted the environment with the pollutant (but without affecting the liability of any other person in respect of the escape, discharge, emission or depositing of the pollutant).

7. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

8. Objectives to be furthered

It is the obligation of any person on whom a function is imposed or a power is conferred under this Act to perform the function or to exercise the power in such a manner as to further the objectives set out in Schedule 1.

9. Interaction with other Acts

- (1) This Act does not derogate from the provisions of any other Act.
- (2)

10. Civil remedies not affected

The provisions of this Act do not limit or derogate from any civil right or remedy and compliance with this Act does not necessarily indicate that a common law duty of care has been satisfied.

11. Amendment of Schedule 2

- (1) The Governor may, by order, amend Schedule 2 –
 - (a) by omitting any activity specified in the Schedule; or
 - (b) subject to subsection (4), by inserting any activity in the Schedule.
- (2) The Governor may, by order, repeal Schedule 2 and substitute another Schedule specifying activities.
- (3) Section 47 (3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* applies to an order made under this section as if it were a regulation.
- (4) An activity may be inserted in Schedule 2, or may be included in another Schedule specifying environmentally relevant activities, only if the Governor is of the opinion that –
 - (a) a pollutant will or may be released into the environment when the activity is carried out; and

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- (b) the release of the pollutant will or may cause environmental harm.

PART 2 – ADMINISTRATION

Division 1 – Administrative bodies

12. Establishment of Environment Protection Authority

- (1) The Environment Protection Authority is established.
- (2) The Authority consists of the Board of the Environment Protection Authority and the Director.
- (3) The Authority is part of the State's resource management and planning system, the objectives of which are set out in Schedule 1.

13. Board of Environment Protection Authority

The Board of the Environment Protection Authority is established.

13A. Membership of Board

- (1) The Board consists of –
 - (a) the chairperson, being a person who has expertise or experience in public administration and environmental or natural resource management; and
 - (b) the Director; and
 - (c) a person with practical knowledge of, and experience in, environmental

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management in industry, commerce or economic development; and

(d) a person with practical knowledge of, and experience in, environmental management and expertise in one or more of the following:

(i) environmental conservation;

(ii) natural resource management;

(iii) air, noise or water pollution;

(iv) management and prevention of waste;

(v) environmental health;

(vi) social and economic analysis; and

(e) a person with practical knowledge of, and experience in, environmental management in local government.

(2) The Board is to include at least one person of each sex.

(3) The members of the Board referred to in subsection (1)(a), (c), (d) and (e) are to be appointed by the Governor.

(4) A State Service officer or State Service employee is not entitled to be appointed as a member of the Board under subsection (3).

- (5) The Governor may appoint a member referred to in subsection (1)(c), (d) or (e) as the deputy chairperson of the Board.
- (6) Schedules 3 and 4 have effect with respect to the membership and meetings of the Board.

14. Functions and powers of Board

- (1) The functions of the Board are to administer and enforce the provisions of this Act, and in particular, to use its best endeavours –
 - (a)
 - (b) to further the objectives of this Act; and
 - (c) to ensure the prevention or control of any act or omission which causes or is capable of causing pollution; and
 - (d) to advise the Minister, on the request of the Minister or at the discretion of the Board, on any matter that may significantly affect the achievement of the objectives of this Act; and
 - (e) to ensure that valuation, pricing and incentive mechanisms are considered in policy making and programme implementation in environmental issues.
- (2) The Board must perform such other functions as are conferred on it by or under this Act or any other Act.

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- (3) The Board may do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions.

15. Ministerial statement of expectation

- (1) The Minister must provide the Board with a ministerial statement of expectation by 31 March in each even-numbered year.
- (2) The Minister may at any time, at his or her discretion or on receipt of an application by the Board –
- (a) amend the ministerial statement of expectation; or
 - (b) revoke the ministerial statement of expectation and substitute another ministerial statement of expectation –
- by providing the amendment or substituted ministerial statement of expectation to the Board.
- (3) In preparing the ministerial statement of expectation, the Minister must consult with the Board.
- (4) The ministerial statement of expectation and any amendment to the ministerial statement of expectation is to be in writing and signed by the Minister.
- (5) The ministerial statement of expectation or an amendment to the ministerial statement of expectation takes effect on a day specified in it,

being a day not earlier than the day on which it is issued to the Board.

- (6) The Board is to make the ministerial statement of expectation available to the public in the manner determined by the Board.

15A. Contents of ministerial statement of expectation

- (1) The ministerial statement of expectation is to specify the objectives of the Minister on any matter relating to the functions of the Board.
- (2) The ministerial statement of expectation –
 - (a) may not prevent the Board from performing a function it is required to perform or otherwise complying with any Act; and
 - (b) may not extend the functions and powers of the Board.

15B. Statement of intent

- (1) Within 3 months after receiving the ministerial statement of expectation or any amendment to the ministerial statement of expectation, the Board must provide to the Minister a statement of intent.
- (2) A statement of intent is to –
 - (a) specify the objectives of the Board for the period covered by the statement of intent; and

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- (b) address matters raised in the ministerial statement of expectation; and
 - (c) state the nature and scope of the activities to be carried out by the Board during the period covered by the statement of intent; and
 - (d) specify the performance criteria and other measures by which the performance of the Board is to be assessed against the objectives of the Board for the period covered by the statement of intent.
- (3) The statement of intent may contain any other matter the Board considers appropriate.
 - (4) The Board may at any time at its own discretion or on the request of the Minister –
 - (a) amend the statement of intent; or
 - (b) revoke the statement of intent and substitute another statement of intent.
 - (5) The statement of intent and any amendment to the statement of intent is to be in writing and signed by the chairperson of the Board.
 - (6) The statement of intent or any amendment to the statement of intent takes effect on the day on which it is approved by the Minister or on a later day specified by the Minister.

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- (7) The Board is to make the statement of intent available to the public in the manner determined by the Board.

15C. Conduct to be consistent with ministerial statement of expectation and statement of intent

The Board is to conduct its business and affairs in a manner that is consistent with the ministerial statement of expectation and the statement of intent.

16. Delegation

- (1) The Board may, by resolution, delegate any of its functions or powers other than this power of delegation.
- (2) The Director may delegate any of the Director's functions or powers other than this power of delegation.
- (3) If any services are provided by a delegate employed in any Agency or State authority, any fee payable in respect of those services is payable to the Agency or State authority in which that person is employed.
- (4) For the purposes of subsection (3), *State authority* has the same meaning as in the *State Service Act 2000*.

17. Committees

The Board may establish committees, which may include persons who are not members of the Board, for the purpose of advising it on any matter arising in relation to the performance of its functions.

18. Director, Environment Protection Authority

- (1) The Governor may appoint a State Service officer or State Service employee to be Director, Environment Protection Authority and that person holds office in conjunction with State Service employment.
- (2) The Director has the functions and powers specified in this Act or any other Act.

19. Staff

- (1) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed or employed for the purposes of this Act.
- (2) The Secretary of the Department may make arrangements with the Head of a State Service Agency for State Service officers and State Service employees employed in that Agency to be made available to perform duties and functions under this Act, and those officers and employees may hold office in conjunction with State Service employment.

20. Authorized officers

- (1) The Director is an authorized officer for the purposes of this Act.
- (2) The Director may—
 - (a) appoint State Service officers and State Service employees appointed or employed in the Department; and
 - (b) appoint State Service officers and State Service employees appointed or employed in another Agency, with the consent of the Head of that Agency—

as authorized officers for the purposes of this Act, and those persons may exercise the powers and perform the functions of an authorized officer in conjunction with State Service employment.
- (3) A police officer is an authorized officer.
- (4) The Director may, with the consent of any person, appoint that person or an employee of that person as an authorized officer.
- (5) A person appointed as an authorized officer is to be appointed on such terms and conditions as the Director determines.

20A. Duty of council to prevent or control pollution

- (1) In this section,

prescribed activity means –

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- (a) an activity that is a level 2 activity; and
 - (b) an activity that is a level 3 activity in respect of which the council has not, by an order under section 26 of the *State Policies and Projects Act 1993*, been made responsible for the enforcement of conditions upon which the activity may proceed.
- (2) In relation to activities other than prescribed activities, a council must use its best endeavours to prevent or control acts or omissions which cause or are capable of causing pollution.

20B. Council may ask Board to exercise powers

A council may ask the Board, in respect of an activity that is not a level 2 activity or a level 3 activity, to exercise any of the Board's powers relating to the following:

- (a) an environmental audit;
- (b) an environmental improvement programme;
- (c) an environmental agreement;
- (d) lodgment of a financial assurance.

21. Council officers

A council may appoint an employee of the council to be a council officer for the purposes of this Act.

21A. Annual report

- (1) The Board must prepare for the Authority an annual report for each financial year.
- (2) The annual report must contain a report on the activities and performance of the Board and the Director during the relevant financial year.
- (3) The Board must provide a copy of the annual report to the Minister so as to enable it to be tabled in accordance with subsection (4).
- (4) On or before 31 October in each year, the Minister is to cause a copy of the annual report to be laid on the table of each House of Parliament.
- (5) If the Minister is unable to comply with subsection (4) because a House of Parliament is not sitting on 31 October in any year, the Minister must –
 - (a) on or before that day, provide copies of the annual report to the Clerk of that House; and
 - (b) on or before that day, make copies of the annual report available for purchase by the public; and

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- (c) within the first 7 sitting-days after that day, cause copies of the annual report to be laid before that House.

Division 2 – Access to information

22. Registers of environmental management and enforcement instruments

- (1) Subject to section 23, the Board must keep a register containing particulars of –
 - (aa) any licence document, in relation to an environmental licence, that is issued under section 42ZB;
 - (a) any environmental agreement entered into or approved under section 28; and
 - (b) any environmental audit required by the Board under section 30; and
 - (c) any emergency authorization issued under section 34; and
 - (d) any financial assurance required under section 35; and
 - (e) any environmental improvement programme approved under section 40, and any amendment or revocation of any such programme; and
 - (f) any environment protection notice issued under section 44, and any amendment or revocation of any such notice; and

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- (g) any notice issued under Part 5A in respect of a contaminated site, and any amendment or revocation of any such notice.
- (1A) Subject to section 23, a council must keep a register containing particulars of –
- (a) any environment protection notice issued under section 44(2) by a council officer who is an employee of that council; and
 - (b) any amendment or revocation of any notice referred to in paragraph (a).
- (2) A person is, on payment of the prescribed fee, entitled to search a register referred to in subsection (1) or (1A).

23. Trade secrets

- (1) If it appears to the Board or a council that –
- (a) any information that could be kept as a trade secret would be available to the public; and
 - (b) the release of that information would be likely to cause financial loss to any person –

the Board or council must consult with that person before including the information on any register kept under this Act, and that person may, within 14 days, make representations to the Board or council.

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- (2) After considering any representations made under subsection (1), the Board or council must—
- (a) determine whether the information is to be included in the register; and
 - (b) serve notice on any person who made representations of its decision.
- (3) A person who is served with a notice under subsection (2)(b) and who is aggrieved by a decision of the Board or a council to include information on a register may appeal to the Appeal Tribunal.
- (4) A person must not disclose any information relating to a trade secret used in any undertaking or equipment that has been obtained by the person in the administration of this Act or the repealed Act unless the disclosure is made —
- (a) with the consent of the person carrying on the undertaking or operating the equipment; or
 - (b) for the purpose of any legal proceedings under this Act or the repealed Act.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding 2 years or both.

PART 2A – ENVIRONMENTAL DUTIES

23A. General environmental duty

- (1) A person must take such steps as are practicable or reasonable to prevent or minimise environmental harm or environmental nuisance caused, or likely to be caused, by an activity conducted by that person.
- (2) In determining whether a person has complied with the general environmental duty, regard must be had to all the circumstances of the conduct of the activity, including but not limited to –
 - (a) the nature of the harm or nuisance or likely harm or nuisance; and
 - (b) the sensitivity of the environment into which a pollutant is discharged, emitted or deposited; and
 - (c) the current state of technical knowledge for the activity; and
 - (d) the likelihood and degree of success in preventing or minimising the harm or nuisance of each of the measures that might be taken; and
 - (e) the financial implications of taking each of those measures.
- (3) Failure to comply with subsection (1) does not itself constitute an offence or give rise to a civil right or remedy, but if a person has failed to

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comply with that subsection an environment protection notice may be issued to that person.

- (4) Where a person, in relation to an environmentally relevant activity, takes all measures specified, in a code of practice made and approved in accordance with the regulations, as meeting the requirements for compliance with the general environmental duty in respect of the activity, the person is taken to have complied with the general environmental duty in respect of the activity.

PART 3 – ENVIRONMENTAL MANAGEMENT

Division 1 – Assessment of environmental impacts

24. Assessment of permissible level 1 activities

(1) Where an application has been made to a planning authority under the *Land Use Planning and Approvals Act 1993* for a permit in respect of a use or development of land that is a permissible level 1 activity, the Director may, before a decision has been made by the planning authority in relation to that application –

(a) under section 43F, 57(6) or 58(2) of the *Land Use Planning and Approvals Act 1993* as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; or

(b) under section 40Y, 57(6) or 58(2) of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015* –

require the planning authority to refer the application to the Board, and the planning authority must comply with the requirement.

(1A) A requirement by the Director under subsection (1) must be made –

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- (a) in the case of an application under section 43A of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*, within 28 days after the date of lodgment of the application; or
 - (ab) in the case of an application under section 40T of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*, within 28 days after the date of lodgment of the application; or
 - (b) in the case of an application under section 57(1) of that Act, before the expiry of the period allowed for representations under subsection (5) of that section; or
 - (c) in the case of an application under section 58 of that Act, within 14 days after the date of lodgment of the application.
- (1B) Where an application under section 43A of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act*

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2015, is referred to the Board under subsection (1), the Board must deal with the application in accordance with section 25A of this Act.

- (1C) Where an application under section 40T of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*, is referred to the Board under subsection (1), the Board must deal with the application in accordance with section 25A of this Act.
- (2) Where an application under section 57 or 58 of the *Land Use Planning and Approvals Act 1993* is referred to the Board under subsection (1), the planning authority must deal with the application in accordance with section 57 of that Act.
- (3) Subsections (2), (5), (6) and (8) of section 25 apply to an application under section 57 or 58 of the *Land Use Planning and Approvals Act 1993* as if it were an application in respect of a permissible level 2 activity that the Board has determined it needs to assess under this Act.
- (3A) Despite subsection (3), section 25(2)(b) does not apply to the application if the planning authority fulfilled the requirements of section 57(3) of the *Land Use Planning and Approvals Act 1993* before being required to refer the application to the Board.
- (4) An activity in respect of which an application is referred to the Board under subsection (1) and which is assessed under this Act as if it were a

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level 2 activity is subsequently to be treated for the purposes of this Act as a level 1 activity unless the Board determines otherwise.

- (4A) If the Board determines that an activity referred to in subsection (4) is not subsequently to be treated as a level 1 activity, the activity is to be treated, for the purposes of this Act, as if it were a level 2 activity and subsections (8A), (8B) and (8C) of section 25 apply to the application in respect of that activity as if it were a level 2 activity.
- (5) In this section, *permissible level 1 activity* means a level 1 activity in respect of which a planning authority –
- (a) has a discretion to refuse a permit; or
 - (b) is bound to grant a permit either unconditionally or subject to conditions.

25. Assessment of permissible level 2 activities

- (1) Where an application has been made to a planning authority under the *Land Use Planning and Approvals Act 1993* for a permit in respect of a use or development of land that is a permissible level 2 activity or a use or development of land that is on the same land as, and is not ancillary to, an existing level 2 activity, the planning authority must –
- (a) except in the case of –

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-
- (i) an application made under Division 2A of Part 3 of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; or
- (ia) an application for a permit to which section 60D of the *Land Use Planning and Approvals Act 1993* applies; or
- (ii) an application made under section 40T of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015* –
- deal with the application in accordance with section 57 of that Act; and
- (b) refer the application to the Board as soon as practicable, but in any case within 21 days, after the date of lodgment of the application.
- (1A) For the purposes of subsection (1), a use or development that is on the same land as an

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existing level 2 activity is not ancillary to that activity if –

- (a) it constitutes conduct of works within the definition of that level 2 activity in Schedule 2; or
- (b) it constitutes an intensification of the use or development of the land for the purposes of conducting the works which define that level 2 activity in Schedule 2; or
- (c) it will, or is likely to, cause serious or material environmental harm; or
- (d) it constitutes conduct of works within the meaning of any other level 2 activity in Schedule 2.

(1B) If a planning authority determines that a use or development of land that is on the same land as an existing level 2 activity is ancillary to that activity, the planning authority must, if required by any person, give written reasons in support of its determination.

(1C)

(1D) If an application in relation to an activity, other than an EL activity, is referred to the Board under subsection (1), the Board is to determine within 14 days whether it needs to assess the activity to which the application relates.

(1DAA) If an application that relates to an EL activity is referred to the Board under subsection (1), the

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application is not an application to which subsection (1DAB) applies and there is no environmental licence in relation to the activity, the Board, within 42 days –

- (a) is to determine under section 42K(2) whether to refuse to grant an environmental licence in relation to the activity; and
- (b) if it refuses under section 42K(2) to grant an environmental licence in relation to the activity, is to determine that it does not need to assess the activity; and
- (c) if it does not refuse under section 42K(2) to grant an environmental licence in relation to the activity, is to determine that it needs to assess the activity.

(1DAB) If an application that relates to an EL activity is referred to the Board under subsection (1) and the application relates to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence, the Board, within 42 days –

- (a) is to determine whether or not the proposed expansion, intensification or modification of an activity is environmentally significant; and
- (b) if it determines that the proposed expansion, intensification or modification of an activity is environmentally significant, is to determine under section 42Q(2) whether

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to refuse to vary an environmental licence in relation to the activity; and

(c) if the Board –

(i) determines that the proposed expansion, intensification or modification of an activity is not environmentally significant; or

(ii) refuses under section 42Q(2) to vary an environmental licence in relation to the activity –

is to determine that it does not need to assess the activity; and

(d) if the Board –

(i) determines that the proposed expansion, intensification or modification of an activity is environmentally significant; and

(ii) does not refuse under section 42Q(2) to vary an environmental licence in relation to the activity –

is to determine that it needs to assess the activity.

(1DAC) Subsection (1D), subsection (1DAA) and subsection (1DAB) do not apply in relation to –

(a) an application made under Division 2A of Part 3 of the *Land Use Planning and Approvals Act 1993*, as in force before

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the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; or

- (b) an application made under section 40T of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*.

(1DA) The 14-day period referred to in subsection (1D), or, in the case of an application in relation to an EL activity, the 42-day period referred to in subsection (1DAA) or subsection (1DAB), or such lesser period as the Board requires, is to be disregarded for the purposes of the calculation of the periods referred to in sections 57(6) and 58(2) of the *Land Use Planning and Approvals Act 1993*.

(1E) The Board is taken to have determined that it needs to assess the activity to which the application relates under this Act if it has not notified the planning authority to the contrary –

- (a) where paragraph (b) does not apply, before the end of the 14-day period referred to in subsection (1D); or
- (b) if the activity is an EL activity, before the end of the 42-day period referred to in subsection (1DAA) or (1DAB), as the case may be.

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- (2) If the Board determines that it needs to assess the activity to which an application relates under this Act then, unless the application is refused under section 57(2) of the *Land Use Planning and Approvals Act 1993* –
- (a) the Board is to do the assessment in accordance with the Environmental Impact Assessment Principles and Division 1A and in consultation with the planning authority; and
 - (b) the planning authority is not to advertise the application in accordance with section 27G until it has received written notice from the Director that the Board has received sufficient information to satisfy the requirements of section 74(3); and
 - (c)
 - (d) the period referred to in section 54(1) of the *Land Use Planning and Approvals Act 1993* is extended to 42 days; and
 - (e) section 57(6) of the *Land Use Planning and Approvals Act 1993* does not apply until the completion of the Board's assessment of the activity; and
 - (f) the planning authority, notwithstanding any enactment to the contrary, is not required to assess any matter addressed in the Board's assessment under paragraph (a); and

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- (g) if, despite paragraph (f), the planning authority does its own assessment of a matter addressed in the assessment under paragraph (a), it is not entitled to recover the cost of its assessment from the applicant, the Crown or any other person.
- (3) If the Board determines that it does not need to assess the activity to which an application relates under this Act –
- (a) the planning authority may process the application without further reference to the Board; and
 - (b) the Board’s determination does not affect a requirement to assess the application under the *Land Use Planning and Approvals Act 1993* or any other Act; and
 - (c) for an application referred under subsection (1), subsections (1)(a) and (2) do not apply.
- (4) Subsection (4A) applies in relation to an application if the Board –
- (a) in accordance with subsection (1DAA)(b) or (1DAB)(c), determines that it does not need to assess an activity to which an application relates; and
 - (b) has directed the planning authority, in a notice under section 27AC(2), to refuse

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to grant a permit in relation to the activity.

- (4A) If this subsection applies in relation to an application, the planning authority is to determine the application under section 57(6) of the *Land Use Planning and Approvals Act 1993* in accordance with the direction under section 27AC(2), without exhibiting the application in accordance with section 57(3) of the *Land Use Planning and Approvals Act 1993*, and for that purpose –
- (a) section 57(3) of the *Land Use Planning and Approvals Act 1993* does not apply in relation to the application; and
 - (b) the reference in section 57(6) of the *Land Use Planning and Approvals Act 1993* to a notice under subsection (3) is to be taken to be a reference to the notice to the planning authority in accordance with section 27AC(2).
- (5) On completion of an assessment under this section in relation to an activity, other than an EL activity –
- (a) the Board must notify the planning authority –
 - (i) of any condition or restriction which the Board requires to be contained in a permit granted by the planning authority under the *Land Use Planning and*

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Approvals Act 1993 in respect of
the activity; and

- (ii) of the reasons for requiring the
condition or restriction; or
- (b) the Board must –
 - (i) direct the planning authority to
refuse to grant the permit; and
 - (ii) notify the planning authority of
the reasons for giving the
direction.
- (6) Conditions which the Board may, under
subsection (5), require to be contained in a
permit granted by the planning authority under
the *Land Use Planning and Approvals Act 1993*
may include–
 - (a) a condition requiring the person to whom
the permit is granted to apply for a
further permit under the Act in the event
of a proposed change in the activity
which might result in environmental
harm; and
 - (b) a condition requiring the person to whom
the permit is granted to prepare, and
submit to the Board for approval, an
environmental management plan for the
proposed activity; and
 - (c) a condition requiring the person to whom
the permit is granted to undertake regular
monitoring of the environmental effects

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of the activity and to report the results of that monitoring to the Board on a regular basis; and

- (d) a condition providing that the activity can be undertaken only for a specified period of time, after which period a further permit under that Act may be required; and
- (e) a condition requiring that, if the activity ceases, the site must be rehabilitated in accordance with the Board's requirements; and
- (f) a condition requiring the person to whom the permit is granted to undertake such measures as the Board may specify to limit the environmental effects of traffic movements to and from the land to which the permit applies.

(7)

(8) Where the Board has, under subsection (5), required conditions or restrictions to be contained in a permit or has directed a planning authority to refuse to grant a permit, the planning authority—

- (a) must include any such condition or restriction in a permit granted by it or must not grant the permit; and
- (b) must not include any other condition or restriction which is inconsistent with, or which extends the operation of, any

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- conditions or restrictions which the Board requires to be contained in the permit; and
- (c) must notify the Board of its decision to grant or refuse to grant a permit; and
 - (d) must, at the same time as it serves notice of its decision in accordance with section 57(7) of the *Land Use Planning and Approvals Act 1993*, notify in writing the applicant and any persons who made representations under section 57(5) of the *Land Use Planning and Approvals Act 1993* in respect of the application –
 - (i) of the conditions or restrictions that the Board requires to be contained in the permit or of the direction to the planning authority to refuse to grant the permit; and
 - (ii) of the reasons of the Board for requiring the conditions or restrictions to be contained in the permit or for giving the direction; and
 - (e) must not, if it grants the permit, exercise its power under section 56(2) of the *Land Use Planning and Approvals Act 1993* in respect of that permit without the prior written consent of the Board.
- (8A) If a permit is issued with conditions or restrictions required by the Board, the planning

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authority is not required or entitled to exercise any power that it could otherwise exercise under this or any other Act to enforce those conditions or restrictions unless the Director and the planning authority have, in writing, agreed otherwise.

- (8B) Subsection (8A) has effect notwithstanding Part 4 of this Act, Part 4 of the *Land Use Planning and Approvals Act 1993* or any other enactment.
- (8C) The Director may, by notice in writing to a planning authority, revoke any agreement that the Director has entered into with that planning authority for the purposes of subsection (8A).
- (8D) Subject to any further period agreed under section 57(6A) or 58(2A) of the *Land Use Planning and Approvals Act 1993* and to the receipt by the planning authority of additional information sufficient to satisfy a requirement under section 54 of that Act, the planning authority is to make its decision to grant or refuse to grant the permit –
 - (a) within 42 days after receiving notification from the Board under subsection (5); or
 - (b) within 42 days after receiving, under section 42M(2) or section 42R(1), a notice from the Board in relation to the activity.

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- (9) In this section, ***permissible level 2 activity*** means a level 2 activity in respect of which a planning authority –
- (a) has a discretion to refuse a permit; or
 - (b) is bound to grant a permit either unconditionally or subject to conditions.

25A. Assessment of applications for permits that are combined with applications for planning scheme amendments

- (1) If an application for a permit made under Division 2A of Part 3 of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*, is referred to it under section 24 or 25 and the activity to which the application relates is not an EL activity, the Board –
- (a) is to assess the activity to which the application relates; and
 - (b) may, by notice in writing served on the applicant for the permit within 28 days after the day of referral, require the applicant to provide it with additional information for the purpose of the assessment.
- (1A) If an application for a permit made under section 40T of the *Land Use Planning and Approvals Act 1993*, as in force after the

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commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*, is referred to it under section 24 or 25 and the activity to which the application relates is not an EL activity, the Board –

- (a) is to assess the activity to which the application relates; and
- (b) may, by notice in writing served on the applicant for the permit within 28 days after the day of referral, require the applicant to provide it with additional information for the purpose of the assessment.

(1AB) This section does not apply in relation to an application for a permit to which section 60D of the *Land Use Planning and Approvals Act 1993* applies.

(1B) Subsection (1C) applies to –

- (a) an application for a permit made under Division 2A of Part 3 of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; and
- (b) an application for a permit made under section 40T of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals*

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*Amendment (Tasmanian Planning
Scheme) Act 2015 –*

if the activity to which the application relates is an EL activity.

(1C) If an application, in relation to an activity, to which this subsection applies is referred to the Board under section 25 –

(a) the Board, if the application –

(i) is not an application to which subparagraph (ii) applies, must, within 42 days, determine under section 42K(2) whether to refuse to grant an environmental licence in relation to the activity; or

(ii) relates to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence, must, within 42 days, determine under section 42Q(2) whether to refuse to vary an environmental licence in relation to the activity; and

(b) the Board –

(i) if it refuses under section 42K(2) or section 42Q(2) to grant or vary an environmental licence in relation to the activity, must determine that it does not need to assess the activity; or

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- (ii) if it does not refuse under section 42K(2) or section 42Q(2) to grant or vary an environmental licence in relation to the activity, must assess the activity; and
 - (c) the Board may, by notice in writing served on the applicant for the permit within 28 days after the day of referral, require the applicant to provide it with additional information for the purpose of the assessment.
- (1D) If the Board, in accordance with subsection (1C)(b)(i), determines that it does not need to assess an activity to which an application, referred to the Board under section 25, relates and has directed the planning authority, in a notice under section 27AC(2), to refuse to grant a permit in relation to the activity –
- (a) the planning authority, after determining, under section 40Y of the *Land Use Planning and Approvals Act 1993*, the application in accordance with the notice under section 27AC(2) by refusing to grant a permit, is to give notice to the applicant of the determination; and
 - (b) the planning authority is to be taken to have refused, under section 38 of the *Land Use Planning and Approvals Act 1993*, to prepare a draft amendment of an LPS that is referred to in a request under

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section 40T of that Act in relation to the application for a permit; and

- (c) despite any other provision of the *Land Use Planning and Approvals Act 1993*, no further action by the planning authority or the Commission is to be taken under the *Land Use Planning and Approvals Act 1993* in relation to –
 - (i) the application; or
 - (ii) the application, for an amendment to an LPS, that is referred to in a request under section 40T of that Act in relation to the application for a permit.
- (2) If the Board requires the applicant under subsection (1), (1A) or (1C) to provide it with additional information, the period referred to in subsection (3) does not run while the request for information has not been answered to the satisfaction of the Board.
- (3) The Board must complete its assessment, if any, for the purposes of the *Land Use Planning and Approvals Act 1993*, of an application referred to in subsection (1), (1A) or (1C), and notify the planning authority of the result of that assessment, within 10 weeks of the date on which the application was referred to the Board or such longer period as the Minister may allow.
- (3A) For the purposes of subsection (3), the result of the assessment, for the purposes of the *Land Use Planning and Approvals Act 1993*, is the result

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of the assessment before the Board takes into account any representations, in relation to the application, that are provided to the Board under section 41(3) of that Act.

- (3B) The Board must complete its assessment, for the purposes of making a determination under Division 8 of Part 3 in relation to an application referred to in subsection (1C), as soon as practicable after the date on which the application was referred to the Board.
- (3C) For the purposes of subsection (3B), the Board is to complete its assessment of an application referred to in subsection (1C), after taking into account any representations, in relation to the application, that are provided to the Board under section 41(3) of the *Land Use Planning and Approvals Act 1993*.
- (3D) Section 41(4) of the *Land Use Planning and Approvals Act 1993* does not apply in relation to an application referred to in subsection (1C).
- (4) Division 1A of this Part and subsections (6) and (7) of section 74 do not apply to the assessment by the Board of an application referred to in subsection (1), (1A) or (1C).

26. Assessment of level 3 activities

Where an order has been made under section 18 (2) of the *State Policies and Projects Act 1993* declaring a project to be a project of State significance, a direction under section 20 (1) of that Act may require the Tasmanian Planning

Commission established under the *Tasmanian Planning Commission Act 1997* to undertake the integrated assessment of the project of State significance in accordance with the Environmental Impact Assessment Principles.

27. Assessment of activities which do not require a permit

(1) Where a person proposes to undertake a level 2 activity which does not require a permit under the *Land Use Planning and Approvals Act 1993*, that person must refer the proposed activity to the Board for assessment under this Act.

(1A) Subsection (1) does not apply to a waste transport business in respect of the transport of controlled waste to Tasmania from another State or a Territory or from Tasmania to another State or a Territory if –

(a) that business is permitted under the laws of the State or Territory in which it has its principal place of business; and

(b) the transfer of the controlled waste is conducted in accordance with any conditions or restrictions imposed by or under the laws of that State or Territory.

(2) Where the Director is of the opinion that it is expedient in the public interest to do so, having regard to the environmental impact of any other proposed environmentally relevant activity (other than a level 1 activity, level 2 activity or level 3 activity) for which a permit is not

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required, the Director may direct the person who proposes to undertake the environmentally relevant activity to refer details of the proposed activity to the Board for assessment under this Act and that person must comply with that direction.

- (3) Subject to subsection (4), the Board must undertake, in accordance with the Environmental Impact Assessment Principles and Division 1A, an assessment of an activity which has been referred to the Board under this section.
- (4) If the Board is of the opinion that an activity which has been referred to the Board under this section will not result in serious or material environmental harm, the Board may notify the person who proposes to undertake the activity that an assessment under this Act is not required and must, if required by any person, give written reasons in support of that opinion.
- (5) Subject to subsection (4), a person must not commence an activity which must be referred to the Board under this section until the assessment by the Board has been made.

Penalty: Fine not exceeding 500 penalty units.

- (6) On completion of an assessment, the Board must –
 - (a) cause the Director to, within 7 days after completion of the assessment –
 - (i) issue and serve on the person who proposes to undertake the

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activity which has been referred to the Board under this section an environment protection notice containing the conditions or restrictions (if any) which the Board requires to apply to the activity and the reasons for those conditions or restrictions; and

- (ii) by notice in writing served on any person who has made a representation in relation to the activity in accordance with section 74(6), notify that person of the issue of the environment protection notice and the conditions or restrictions (if any) that the Board requires to apply to the activity and the reasons for those conditions or restrictions; or
- (b) by notice in writing served within 7 days after completion of the assessment –
 - (i) on the person who proposes to undertake the activity, notify that person that the activity must not proceed, together with reasons in support of the Board's decision; and
 - (ii) on any person who has made a representation in relation to the activity in accordance with section 74(6), notify that person

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that the activity must not proceed,
together with reasons in support
of the Board's decision.

- (7) A person aggrieved by the decision of the Board may, within 14 days after the day on which the notice was served under subsection (6), appeal to the Appeal Tribunal.
- (8) This section does not apply in relation to an activity to which section 27AA applies.

27AA. Assessment of EL activities where no planning permit required or where Director refers proposal for variation to Board

- (1) If a person proposes to undertake a level 2 activity that is an EL activity and that does not require a permit under the *Land Use Planning and Approvals Act 1993*, the person must refer the proposed activity to the Board for assessment under this Act.
- (2) Subsection (1) does not apply in relation to an activity if –
 - (a) an application has been made under the *Living Marine Resources Management Act 1995* for a marine farming licence in relation to the activity; or
 - (b) there is a permit, issued under section 12 or 14 of the *Living Marine Resources Management Act 1995*, that is in force in relation to the activity.

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- (3) If an activity is referred to the Board under subsection (1) or an application in relation to an activity is referred to the Board under section 42I(2) –
 - (a) the Board must determine under section 42K(2) whether to refuse to grant an environmental licence in relation to the activity; and
 - (b) if the Board does not refuse under section 42K(2) to grant an environmental licence in relation to the activity, the Board must undertake, in accordance with the Environmental Impact Assessment Principles and Division 1A, an assessment of the activity.
- (4) If an application in relation to an activity is referred to the Board under section 42O –
 - (a) the Board must determine under section 42Q(2) whether to refuse to vary an environmental licence in relation to the activity; and
 - (b) if the Board does not refuse under section 42Q(2) to vary an environmental licence in relation to the activity, the Board must undertake, in accordance with the Environmental Impact Assessment Principles and Division 1A, an assessment of the activity.
- (5) If a proposal to vary an environmental licence in relation to an activity is referred to the Board

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under section 42P(6), (7) or (8), the Board must –

- (a) notify the holder of the licence; and
- (b) undertake, in accordance with the Environmental Assessment Principles and Division 1A, an assessment of the activity.

27AB.

27AC. Directions in relation to permits in respect of EL activities

(1) In this section –

Commission means the Tasmanian Planning Commission established under the *Tasmanian Planning Commission Act 1997*;

permit means a permit under the *Land Use Planning and Approvals Act 1993*.

(2) As soon as practicable after the Board has decided under section 42K or section 42Q to refuse to grant or vary an environmental licence in relation to an activity –

- (a) to which relates an application, referred to the Board under section 25, including an application to which section 25A relates, the Board must, by notice to the

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planning authority, direct the planning authority; or

(b) referred to in an application to which section 25A relates, the Board must, by notice to the Commission, direct the Commission –

(c)

to refuse to grant a permit in relation to the activity or the project, as the case may be.

(3) If the Board has, under subsection (2), directed a planning authority or the Commission to refuse to grant a permit in relation to an activity or the project, the planning authority or the Commission, as the case may be –

(a) must refuse under the *Land Use Planning and Approvals Act 1993* to grant a permit in relation to the activity or the project; and

(b) must notify the Board of its decision to refuse to grant a permit.

(4) If the Board, under section 42M(2) or section 42R(1), gives a relevant notice, to a planning authority or the Commission, specifying that the Board has granted or varied an environmental licence in relation to an activity, the planning authority or the Commission, as the case may be, must not impose on a permit in relation to the activity a condition or restriction which is inconsistent

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with, or extends or restricts the operation of, a condition or restriction imposed on the licence.

- (5) If a planning authority or the Commission grants a permit in relation to an activity to which section 25 or 25A relates, the planning authority or Commission, respectively, must, within 7 days, notify the Board of the grant of the permit and provide to the Board a copy of the permit.

27AD. Minor variations of planning permit in relation to EL activities

- (1) If a permit is granted under the *Land Use Planning and Approvals Act 1993* in relation to an EL activity, the permit must not be amended under section 43 or 56 of that Act without the approval of the Board.
- (2) A planning authority may apply to the Board for approval to amend under section 43 or 56 of the *Land Use Planning and Approvals Act 1993* a permit in relation to an EL activity.
- (3) As soon as practicable after receiving an application under subsection (2) in relation to an activity, the Board must notify the planning authority whether the Board approves, or refuses to approve, the amendment, under section 43 or 56 of the *Land Use Planning and Approvals Act 1993*, of a permit in relation to the activity.

Division 1A – Assessment of activities

27A. Classes of assessment

- (1) An assessment by the Board of an activity, pursuant to section 25, 27 or 27AA, is to be one of the following classes:
 - (a) class 2A;
 - (b) class 2B;
 - (c) class 2C.
- (2) In determining a class of assessment under this Part, the Board is to take into consideration the characteristics set out in Schedule 5.
- (3) The Minister, by order, may amend Schedule 5 by doing any one or more of the following:
 - (a) inserting a characteristic in the Schedule;
 - (b) omitting a characteristic from the Schedule;
 - (c) omitting a characteristic from the Schedule and substituting another characteristic.
- (4) The provisions of section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under this section as if the order were regulations within the meaning of that Act.

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- (5) An order under this section is not an instrument of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.
- (6) An order under this section is a regulation for the purposes of the *Subordinate Legislation Committee Act 1969*.

27B. Notice of intent

- (1) A person who lodges an application for a permit for a permissible level 2 activity may first lodge with the Board a notice of intent.
- (1A) If a notice of intent lodged under subsection (1) relates to an EL activity –
 - (a) the Board, if the activity to which the notice of intent refers –
 - (i) is not an activity to which subparagraph (ii) applies, must determine under section 42K(2) whether to refuse to grant an environmental licence in relation to the activity; or
 - (ii) relates to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence, must determine under section 42Q(2) whether to refuse to vary an environmental licence in relation to the activity; and

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- (b) the Board, if it refuses under section 42K(2) or section 42Q(2) to grant or vary an environmental licence in relation to the activity, is not to take any further action under this Division in relation to the project to which the activity relates.
- (2) A notice of intent is to contain the following information in sufficient detail to enable the Board to determine the appropriate class of assessment:
- (a) the name and contact details of the person lodging the application;
 - (b) the name of the proposed project and its location;
 - (c) background of the project proponent, including details of the proponent's experience and financial capacity to undertake the project and his, her or its contact details;
 - (d) a description of the proposed project, including its key physical components;
 - (e) an outline of the proposed location of the project and a general site location map;
 - (f) an outline of the stakeholder consultation process undertaken or proposed to be undertaken, including the consultation method, stakeholders consulted or to be consulted and the issues raised or to be raised;

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- (g) a general description of the physical environment that may be affected by the project;
- (h) the key environmental, health, economic and social issues identified for the project to date;
- (i) the surveys and studies proposed or underway in relation to the key issues for the project;
- (j) the proposed timetable for the project;
- (k) any other details that the Board may consider relevant to the project.

27C. Board to advise of proposed class of assessment

The Board is to advise the proponent or applicant, and, except if section 27AA applies, the planning authority, of the class of assessment that is proposed to be undertaken under section 27A within 14 days of –

- (a) the lodgment of a notice of intent that is acceptable to the Board under section 27B(2) or the referral of an application under section 25(1), whichever occurs first; or
- (b) the referral of an application under section 24(1); or
- (c) the referral of a proposal under section 27(1) or (2), section 27AA(1),

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section 42I, section 42O or section 42P(6), (7) or (8).

27D. Periods for provision of guidance under section 74(4)

Subject to section 27E, the Board must provide guidance under section 74(4) –

- (a) in the case of a class 2A assessment, within 21 days; or
- (b) in the case of a class 2B assessment, within 28 days; or
- (c) in the case of a class 2C assessment, within 63 days –

of the Board's advice under section 27C.

27E. Board may require further information

- (1) The Board may require a person to provide information to assist it in the provision of guidance under section 74(4).
- (2) If the Board requires the provision of information under subsection (1), the periods specified in section 27D do not run, or cease running, until that information has been provided to the satisfaction of the Board.

27F. Case for assessment to be lodged within 12 months

- (1) A case for assessment of an application or proposal must be –

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- (a) in accordance with the guidance provided by the Board under section 74(4); and
 - (b) lodged with the Board within 12 months after the Board provides that guidance, or within such other period as determined by written agreement between the Board and the applicant or proponent.
- (1A) A case for assessment is not taken to be lodged with the Board until the applicant or proponent has been notified by the Board under section 27FA(3) that the case for assessment has been accepted.
- (2) If a case for assessment referred to in subsection (1) is not lodged within the period specified in that subsection, the Board –
 - (a) is not required to complete the assessment; and
 - (b) may reject the application or proposal.
- (3) If the Board rejects an application or proposal under subsection (2)(b) –
 - (a) the Board is to notify the applicant or proponent of that rejection; and
 - (b) the Board may, in the case of an application for a permit for a permissible level 2 activity, direct the relevant planning authority to refuse to grant the application; and

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- (c) the applicant or proponent is to pay the assessment fee, or such portion of it as the Board determines.
- (4) The planning authority must comply with a direction under subsection (3).
- (5) A person who is aggrieved by a decision of the Board to reject, under subsection (2)(b), a proposal referred to it under section 27(1) or (2), may appeal to the Appeal Tribunal within 14 days after being notified of the Board's decision.

27FA. Acceptance by Board of case for assessment

- (1) In this section –

applicant or proponent, in respect of a case for assessment, means the applicant or proponent in respect of the application or proposal to which the case for assessment relates;

required information, in relation to a case for assessment, means the information required in order to satisfy the Board's requirements, as referred to in section 74(3), in respect of the application or proposal to which the case for assessment relates.

- (2) An applicant or proponent in respect of a case for assessment may request the Board to accept the case for assessment.

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- (3) The Board, within 42 days after the day on which a request is made to the Board under subsection (2) in relation to a case for assessment, is to, by notice in writing to the applicant or proponent in respect of the case for assessment, advise the applicant or proponent as to whether the case for assessment has been accepted by the Board or has not been accepted by the Board.
- (4) If the Board, within 40 days after the day on which a request is made to the Board under subsection (2) in relation to a case for assessment, is not satisfied that the case for assessment includes the required information, the Board is to, by notice in writing to the applicant or proponent in respect of the case for assessment –
 - (a) advise the applicant or proponent that the information included in the case for assessment is insufficient or unsatisfactory, or both, as the case may be; and
 - (b) request the applicant or proponent to provide to the Board a case for assessment that includes the information specified in the notice.
- (5) If the Board gives, under subsection (4) or this subsection, a notice (the *relevant notice*) to an applicant or proponent, the Board must, within 8 days from the day on which it receives a case for assessment in accordance with the relevant notice, if the Board is not satisfied that the

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information specified in the relevant notice has been included in the case for assessment, by notice in writing to the applicant or proponent –

- (a) advise the applicant or proponent that the Board is not satisfied that the information specified in the relevant notice has been included in the case for assessment; and
 - (b) request the applicant or proponent to provide to the Board a case for assessment that includes the information specified in the notice under this subsection.
- (6) If the Board gives, under subsection (4) or subsection (5), a notice to an applicant or proponent in respect of a case for assessment, the 42-day period referred to in subsection (3) does not continue to run, in relation to the case for assessment, during the period –
- (a) beginning on the day on which the first such notice is given to the applicant or proponent; and
 - (b) ending on the day on which the applicant or proponent provides to the Board a case for assessment that the Board is satisfied includes the information specified in the notice under subsection (4) or subsection (5), respectively.

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27G. Periods for advertising of applications and proposals

- (1) Once a case for assessment in respect of an application or proposal has been lodged with the Board, the Board is to –
 - (a) in respect of an application referred to the Board under section 24(1) or section 25(1), cause the Director to direct the relevant planning authority to advertise the application and to call for public submissions in respect of it; or
 - (b) in respect of a proposal referred by a person to the Board under section 27(1) or (2), section 27AA or section 42P(6), (7) or (8) or that is a proposal in an application referred to the Board under section 42I(2) or 42O(1) or (5), advertise the proposal and call for public submissions in respect of it.
- (2) Any person may make representations relating to an application or proposal –
 - (a) in the case of a class 2A assessment, within 14 days after the application or proposal is advertised; or
 - (b) in the case of a class 2B assessment, within 28 days after the application or proposal is advertised; or
 - (c) in the case of a class 2C assessment, within 42 days after the application or proposal is advertised.

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- (3) Notwithstanding section 57(5) of the *Land Use Planning and Approvals Act 1993* and subject to section 54 of that Act, the planning authority must comply with the Director's direction under subsection (1)(a) of this section, unless the application is refused under section 57(2) of that Act.
- (4) In the case of an application referred to the Board under section 24(1) or section 25(1), the planning authority must, within 7 days after the end of the relevant period referred to in subsection (2) of this section, forward to the Board copies of any representations received under section 57(5) of the *Land Use Planning and Approvals Act 1993*.

27H. Period for completion of assessment

- (1) Notwithstanding the *Approvals (Deadlines) Act 1993* and subject to section 27I, after receipt from the planning authority of any representations in the case of an application referred to the Board under section 24(1) or section 25(1), or after closure of the public comment period in the case of a proposal referred to the Board under section 27(1) or (2), section 27AA or section 42P(6), (7) or (8) or that is a proposal in an application referred to the Board under section 42I(2) or 42O(1) or (5), the Board must complete its assessment –
 - (a) in the case of a class 2A assessment, within 35 days; or

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- (b) in the case of a class 2B assessment, within 56 days; or
 - (c) in the case of a class 2C assessment, within 91 days.
- (2) An assessment commenced by the Board before the commencement of the *Environmental Management and Pollution Control Amendment Act 2007* must be determined within the period specified in Schedule 1 to the *Approvals (Deadlines) Act 1993* as in effect immediately before the commencement of that amendment Act.

27I. Additional information

- (1) The Board, after the expiration of the relevant period for representations under section 27G, may require the applicant or proponent to submit further information to assist the Board in its assessment of an application or a proposal.
- (2) If the Board requires the submission of further information, the periods referred to in section 27H do not run, or cease running, until that information is provided to the satisfaction of the Board.

27J. Extension of periods

- (1) The periods referred to in section 27H may be extended by –
 - (a) any period as determined by a written agreement between the Board and the

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- applicant or proponent at any time before the expiration of the period to be extended; or
- (b) a period not exceeding half of the relevant period under section 27H as the Minister may determine on application by the Board.
- (2) An extension under subsection (1)(b) may be made only –
- (a) before the expiration of the relevant period specified in section 27H; and
- (b) where the Minister determines that there are special circumstances preventing the Board from complying with section 27H.
- (3) The Board must give written notice of an extension –
- (a) under subsection (1)(a) to the planning authority, in the case of an application referred to the Board under section 24(1) or section 25(1); or
- (b) under subsection (1)(b) to –
- (i) the applicant or proponent; and
- (ii) the planning authority, in the case of an application referred to the Board under section 24(1) or section 25(1).
- (4) Notice under subsection (3) must be given within 7 days after the agreement under

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subsection (1)(a) or the Minister's determination under subsection (1)(b), as the case may be.

27K. Calculation of number of days

A reference in this Division to a period of a number of days does not include any public holiday or any day in the period from the public holiday in respect of Christmas Day to the public holiday in respect of New Year's Day, both inclusive.

Division 2 – Environmental agreements

28. Environmental agreements

- (1) Subject to this section, the Board, on its own initiative or at the request of another person –
 - (a) may enter into an environmental agreement with an operator of premises in respect of those premises; and
 - (b) may approve an agreement entered into between persons as an environmental agreement; and
 - (c) may prepare an environmental agreement to be entered into between persons.
- (2) Environmental agreements may be made in respect of individual operations, premises, areas or regions and may apply to industry or activity groups.

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- (3) An environmental agreement must specify the management, investment and monitoring functions which the parties to the agreement consider necessary to ensure environmental performance beyond that required to ensure compliance with this Act.
- (4) An environmental agreement –
- (a) may require reports on a regular basis to be given to the Board in relation to the environmental performance of the operation to which the agreement relates; and
 - (b) may contain terms providing for any matter that the Board considers will assist it in performing its functions; and
 - (c) may provide for any matter intended to achieve or advance the objectives specified in Schedule 1.
- (5) A report given to the Board under subsection (4)(a) must be accompanied by a statutory declaration signed by the operator or person authorized by the operator to do so, or, if the operator is a body corporate, the chief executive officer of the body corporate or person holding a similar position to a chief executive officer, certifying the accuracy of the contents of the report.
- (6)

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- (7) A person who is not a party to an environmental agreement must not hold himself or herself out as being a party to an environmental agreement.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; and
 - (b) a natural person, a fine not exceeding 50 penalty units.
- (8) The Board must review an environmental agreement at the end of the period for which it is in force.

29. Effect of environmental agreements

- (1) Subject to this section, an environmental agreement must not have effect to relieve a party to the agreement from any duty under this or any other Act, and any obligations imposed under such an agreement have effect in addition to and not in derogation of the requirements imposed by or under this or any other Act.
- (2) Subject to subsection (1), an environmental agreement has effect as a contract binding on the parties to the agreement.
- (3) An environmental agreement must not require or allow anything to be done which would contravene a planning scheme, an interim order, an environmental licence or a permit.
- (4) An environmental agreement may not –

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- (a) make provision for any grant or remission of any fees, rates or taxes payable to the Crown, except with the prior approval of the Treasurer; or
 - (b) make provision for any grant or remission of any fees, rates or taxes payable to a council, except with the prior approval of the council.
- (5) Any provision for remission of fees, rates or taxes made by an environmental agreement in accordance with this section will have effect according to its terms and notwithstanding the provisions of any other Act.
- (6) An environmental agreement remains in force for a maximum period of 5 years from the date of its commencement.

Division 3 – Environmental audits

30. Mandatory environmental audits

- (1) If the Board considers that an environmentally relevant activity has caused, is causing, or is likely to cause, environmental harm, the Board may, by written notice served on a person, require that person –
- (a) to undertake an environmental audit of the environmentally relevant activity for which that person is or was responsible; and

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- (b) to prepare and submit to the Board a report on the audit.
- (2) The report on an environmental audit submitted to the Board must be accompanied by a statutory declaration signed by the person who undertook the environmental audit certifying the accuracy of the content of the report.
- (3) The Board may require the report on an environmental audit to be revised in accordance with written reasons given to the person required to undertake the environmental audit.
- (4) A person must not refuse to undertake an environmental audit when required to do so by the Board.

Penalty: Fine not exceeding 100 penalty units.

- (5) A person who is aggrieved by a requirement under subsection (1) may appeal to the Appeal Tribunal.

31. Protection for information produced in voluntary environmental audits

- (1) A person may apply to the Board to obtain the protection of this section in respect of a proposed voluntary environmental audit or an audit which has been or is being undertaken at the commencement of this Act.
- (2) The application may be made by lodging with the Board a detailed outline of action taken, or proposed to be taken, by the person for the

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evaluation of the person's performance in endeavouring to achieve compliance with this or any other Act, including evaluation of the management practices, production processes and technical systems and equipment adopted or used by the person.

- (3) On application by a person under this section, the Board may issue to the person a determination conferring the protection of this section in respect of a report of the results of the audit programme.
- (4) A determination may be subject to such conditions as the Board thinks fit, which may include all or any of the following:
 - (a) conditions limiting the kinds of information that may be included in the report;
 - (b) conditions requiring that the report be compiled and kept in a specified manner and form;
 - (c) conditions requiring the person to lodge with the Board evidence (supported by statutory declaration) as to the time of completion of the audit programme and as to the compilation and keeping of the report;
 - (d) a condition requiring the person to provide to the Board a copy of the report.
- (5) Despite any other provisions of this Act but subject to this section and compliance with the

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conditions of the determination, a report defined in a determination of the Board issued to a person under this section –

- (a) is not admissible in evidence against the person in any proceedings under this Act or any other proceedings for the enforcement of this Act; and
 - (b) may not be seized or obtained without the person's consent by the Board, the Director, an authorized officer or any other person for any purpose connected with the administration or enforcement of this Act.
- (6) A person to whom a determination has been issued under this section in respect of a report of the results of an audit programme must not claim the protection of this section based on that determination in respect of any information knowing that the information may not, in accordance with the conditions of the determination, be included in the report of the results of the audit programme.

Penalty: Fine not exceeding 50 penalty units.

- (7) For the purposes of this section, a report includes any material used in the preparation of that report.

Division 4 – Notification obligations

32. Notification of incidents

- (1) A person responsible for –
- (a) a level 1 activity, other than an activity in relation to which a determination has been made in accordance with section 24(4A); or
 - (b) an activity that is not a level 2 activity or a level 3 activity, and that has not been assessed and approved by the Board under section 27 –

must notify the relevant council, as soon as reasonably practicable but not later than 24 hours, after becoming aware of the release of a pollutant occurring as the result of any incident in relation to that activity, including an emergency, accident or malfunction, if this release causes or may cause an environmental nuisance.

- (2) A person responsible for an activity that is to be treated as if it were a level 2 activity in accordance with section 24(4A), or an activity that is a level 2 activity or a level 3 activity, or an activity that is assessed and approved by the Board under section 27, must notify the Director, as soon as reasonably practicable but not later than 24 hours, after becoming aware of the release of a pollutant occurring as a result of any incident in relation to that activity, including an emergency, accident or malfunction, if this

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release causes or may cause an environmental nuisance.

- (3) A person responsible for an environmentally relevant activity must notify the Director, as soon as reasonably practicable but not later than 24 hours, after becoming aware of the release of a pollutant occurring as a result of any incident in relation to that activity, including an emergency, accident or malfunction, if this release causes or may cause serious or material environmental harm.
- (4) Any notification referred to in subsection (1), (2) or (3) must include details of the incident, its nature, the circumstances in which it occurred and any action that has been taken to deal with it.
- (5) A person who contravenes subsection (1), (2) or (3) is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 200 penalty units;
or
 - (b) a natural person, a fine not exceeding 600 penalty units.
- (6) For the purposes of –
- (a) subsection (1), a person is not required to notify the council of such an incident if the person has reasonable grounds for

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believing that the incident has already come to the notice of the council; and

(b) subsections (2) and (3), a person is not required to notify the Director of such an incident if the person has reasonable grounds for believing that the incident has already come to the notice of the Director.

(6A) A person is required to notify the council or the Director under this section despite the fact that to do so might incriminate the person or make the person liable to a penalty.

(7) Any notification given by a person in compliance with this section is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

(8) In this section –

release includes the emission, discharge, depositing or disturbance of a pollutant.

33.

Division 5 – Emergency authorizations

34. Emergency authorizations

(1) The Director or an authorized officer may issue an authorization in writing to a person

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authorizing an act or omission that might otherwise constitute a contravention of this Act if the Director or authorized officer is satisfied –

- (a) that circumstances of urgency exist; and
 - (b) that authorization of the act or omission is justified by the need to protect life, the environment or property.
- (2) An authorization under this section may be issued subject to such conditions as the Director or authorized officer considers appropriate and specifies in the authorization.
- (3) A person does not incur criminal liability in respect of an act or omission authorized under this section.

Division 6 – Financial assurances

35. Financial assurance to secure compliance with Act

- (1) Subject to this section, the Board may by notice in writing served on the person responsible for an environmentally relevant activity, or a site in respect of which a notice issued under Part 5A has been issued, require that person to lodge with the Board a financial assurance in the form of a bond (supported by a guarantee, insurance policy or other security approved by the Board), or a specified pecuniary sum, the discharge or repayment of which is conditional on that person–

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- (a) not committing any contravention of this Act of a specified kind during a specified period; or
- (b) taking specified action within a specified period to achieve compliance with this Act; or
- (c) complying with any conditions or restrictions requiring the person to take action for the purposes of remediation, site clean-up, site decommissioning or infrastructure decommissioning and which –
 - (i) have been required by the Board under section 25 to be contained in a permit or under section 27 to be contained in an environment protection notice; or
 - (ii) are contained in an environment protection notice issued and served by the Director under section 44; or
- (d) in the case of a notice issued under Part 5A, complying with any requirements specified in the notice; or
- (da) complying with any conditions or restrictions imposed on an environmental licence held by the person; or
- (e) complying with any conditions or restrictions that are, in accordance with a request contained in a final advice given

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by the Board under section 60ZZF(1) of the *Land Use Planning and Approvals Act 1993*, imposed on a major project granted under that Act.

- (2) The Board may not require the lodgment of a bond or pecuniary sum unless satisfied –
- (a) that imposition of the conditions is justified in view of the degree of risk of environmental harm associated with the activities that may be undertaken by the person or the likelihood of action being required to make good resulting environmental damage; or
 - (b) that –
 - (i) the person has on one or more occasions contravened this Act in relation to the activity; and
 - (ii) the requiring of the assurance is justified in view of the nature of the contravention or the nature, number or frequency of the contraventions; or
 - (c) as to any other matters prescribed by regulation.
- (3) The Board may not require the lodgment of a bond or a pecuniary sum of an amount greater than the amount that, in the opinion of the Board, represents the total of the likely costs, expenses, loss and damage that might be incurred or suffered by persons as a result of

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failure by the person to satisfy the conditions of discharge or repayment of the bond or pecuniary sum.

- (4) A pecuniary sum lodged with the Board in accordance with conditions under subsection (1) is to be paid into the Fund, and the amount of the pecuniary sum that has not been repaid or forfeited to the Fund is, on satisfaction of the conditions of repayment, to be repaid to the person together with an amount representing interest calculated in accordance with the regulations.
- (5) If the Board requires a person to lodge with the Board a financial assurance under subsection (1), that person may appeal to the Appeal Tribunal against the requirement.

36. Claim on financial assurance

- (1) Where a person fails to satisfy the conditions of discharge or repayment of a bond or pecuniary sum lodged with the Board, the Board may do all or any of the following:
 - (a) determine that the whole or part of the amount of the bond or pecuniary sum is forfeited to the Fund;
 - (b) apply from the Fund any money so forfeited in payment for or towards the costs, expenses, loss or damage incurred or suffered by the Crown, a public authority or other person as a result of the failure by the person;

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- (c) in the case of a pecuniary sum, on the expiry or termination of the authorization and when satisfied that there is no reasonable likelihood of any or further valid claims in respect of costs, expenses, loss or damage incurred or suffered as a result of the failure of the person, repay any amount of the pecuniary sum that has not been repaid or forfeited to the Fund.
- (2) If a person who fails to satisfy the conditions of discharge or repayment of a bond or pecuniary sum lodged with the Board is aggrieved by any action taken by the Board under subsection (1), that person may appeal to the Appeal Tribunal against that action.

Division 7 – Environmental improvement programmes

37. Environmental improvement programme

An environmental improvement programme is a specific programme the intent of which, when approved, is to achieve compliance with this Act for a particular activity by–

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

38. Content of environmental improvement programme

- (1) An environmental improvement programme is to –

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-
- (a) specify the objectives to be achieved and maintained under the programme for an activity; and
 - (b) specify a timetable to achieve the objectives, taking into account –
 - (i) the best practice environmental management for the activity; and
 - (ii) the risk of environmental harm being caused by the activity; and
 - (c) make provision for monitoring compliance with the programme.
- (2) An environmental improvement programme may make provision for review of the programme during the period over which the programme is to be carried out.

39. When environmental improvement programme required

- (1) The Board may require a person to prepare and submit to it a draft environmental improvement programme if the Board is satisfied that –
 - (a) an activity carried out by the person, or that activity in combination with other factors, is causing, or may cause, serious or material environmental harm; or
 - (b) it is not practicable for a person to comply with a State Policy, a provision of this Act, the regulations or an environment protection policy.

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- (2) A requirement under subsection (1) must be made by written notice given to the person.
- (3) The notice must specify –
 - (a) the grounds on which the requirement is made; and
 - (b) the matters to be addressed by the programme; and
 - (c) the period (not longer than 3 years) over which the programme is to be carried out; and
 - (d) the day (not less than a reasonable period after the notice is given) by which the programme is to be prepared and given to the Board.

40. Approval of environmental improvement programmes

- (1) On receiving a draft environmental improvement programme, the Board must advertise the receipt of the programme by notice published in a daily newspaper circulating in the relevant part of the State.
- (2) A notice published under subsection (1) is, in addition to any other matters required to be contained in it, to name a place where a copy of the draft environmental improvement programme, and of all plans and other documents relating to the programme, will be open to inspection by the public at all reasonable

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hours during the period for which representations may be made.

- (3) Any person may make representations to the Board relating to the draft environmental improvement programme during the period of 30 days commencing on the date on which notice of the programme is given under subsection (2) or such further period not exceeding 14 days as the Board may allow.
- (4) The Board must, after taking into consideration any representations made in relation to the draft environmental improvement programme –
 - (a) approve the programme with or without amendment; or
 - (b) refuse to approve the programme as submitted.
- (5) Where the Board approves or refuses to approve a draft environmental improvement programme, the Board must, within 7 days, serve notice of its decision on the person who prepared the draft environmental improvement programme and all persons who made representations relating to the programme.

41. Appeals against environmental improvement programmes

- (1) Where the Board approves an environmental improvement programme in respect of an activity, the person responsible for the activity may appeal to the Appeal Tribunal against the

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programme or against any requirement contained in the programme.

- (2) Where the Board refuses to approve an environmental improvement programme in respect of an activity, the person responsible for the activity may appeal to the Appeal Tribunal against the refusal.
- (3) A person who, pursuant to section 40, has made a representation to the Board in respect of an environmental improvement programme may appeal to the Appeal Tribunal against the approval of the programme or against any requirement contained in the programme.

41A. Minor amendment of environmental improvement programmes

- (1) On the request of the person who prepared an environmental improvement programme that has been approved under section 40(4), the Board may amend the requirements of that programme if the amendment –
 - (a) does not prevent the achievement of the outcomes of the programme; and
 - (b) does not extend by more than 3 months the time by which any requirement of that programme must be achieved; and
 - (c) does not extend the total period during which the programme is to be carried out so that the total period exceeds 3 years.

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- (2) If an amendment is made under subsection (1), the Board must –
- (a) within 7 days after making the amendment, notify the person who requested the amendment and each person who made a representation under section 40(3) of the amendment; and
 - (b) if required by any person to do so, provide written reasons in support of the amendment.
- (3) If the Board refuses a request to amend an environmental improvement programme, the Board must –
- (a) within 7 days after making the decision to refuse to amend, notify the person who requested the amendment of that decision; and
 - (b) if required by any person to do so, provide written reasons for that decision.

42. Contravention of requirements contained in environmental improvement programmes

- (1) A person does not incur liability for prosecution in respect of an act or omission –
- (a) in respect of which a person is required to prepare and submit a draft environmental improvement programme under section 39 if that person complies with that requirement; or

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(b) that is authorised by an environmental improvement programme during the period over which the programme is to be carried out.

(2) A person who contravenes a requirement contained in an environmental improvement programme is guilty of an offence.

Penalty: Fine not exceeding 2 500 penalty units or imprisonment for a term not exceeding 4 years, or both.

42A. Completion of environmental improvement programmes

If the Board considers that an environmental improvement programme in respect of an activity has been satisfactorily completed, the Board must, by notice in writing served on the person responsible for the activity and any person who made a representation under section 40(3), notify those persons of the satisfactory completion of the programme.

Division 8 – Environmental licences

Subdivision 1 – Interpretation and offences

42B. Interpretation of Division 8

In this Division –

associate, in relation to another person,
means –

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- (a) a person who holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in their own right or on behalf of any other person), in a business of the other person and, by virtue of that interest or power, is able to, or will be able to, exercise a significant influence over or in respect of the management or operation of that business; or
- (b) a person who holds or will hold any relevant position (whether in their own right or on behalf of any other person) in a business of the other person; or
- (c) a person who is a relative of the other person;

exemption permit means –

- (a) a permit issued under section 12 or 14 of the *Living Marine Resources Management Act 1995* ; or
- (b) a permit issued under section 172 of the *Inland Fisheries Act 1995* –

that authorises, whether expressly or impliedly, the carrying out of finfish farming;

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existing authorisation, in relation to an activity, means –

- (a) a permit under which the activity is authorised to be carried out; or
- (b) an exemption permit under which the activity is expressly or impliedly authorised to be carried out; or
- (c) an order under the *State Policies and Projects Act 1993* under which the activity is authorised to be carried out; or
- (d) a marine farming licence under which the activity is authorised to be carried out; or
- (e) a fish farm licence under which the activity is authorised to be carried out; or
- (f) an environment protection notice –
 - (i) that is issued under section 44(1) (other than section 44(1)(d)) or section 44(2) (other than section 44(2)(d)); and
 - (ii) that is an environment protection notice under which the activity is expressly or impliedly

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authorised to be carried out;

holder of an environmental licence, in relation to an environmental licence, means the person to whom –

- (a) the licence has been granted or, if the licence has been transferred, to whom the licence has been transferred; and
- (b) the licence document in relation to the licence has been issued under section 42ZB;

land includes any water situated on land;

permit means a permit under the *Land Use Planning and Approvals Act 1993*;

relative, of a person, means –

- (a) the spouse, parent, child or sibling (whether of the full or half blood) of the person; or
- (b) the person with whom the first-mentioned person is in a personal relationship within the meaning of the *Relationships Act 2003*;

relevant financial interest, in relation to a business, means –

- (a) any share in the capital of the business; or

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- (b) any entitlement to receive any income derived from the business;

relevant position, in relation to a business, means the position of director, manager or other executive position or secretary, however that position is designated in that business;

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others –

- (a) to participate in a directorial, managerial or executive decision;
or
- (b) to elect or appoint any person to any relevant position;

vary, in relation to an environmental licence, means to –

- (a) vary the conditions or restrictions imposed on the licence, by –
 - (i) revoking a condition or restriction imposed on the licence; or
 - (ii) varying a condition or restriction imposed on the licence; or

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- (iii) imposing a condition or restriction on the licence;
or
- (b) vary the period for which a licence is to remain in force; or
- (c) add to, alter or restrict the activities that may be carried out under the licence; or
- (d) alter the area of land, or the area of State waters, to which the licence relates; or
- (e) vary the licence so that an expansion, intensification or modification of an activity is expressly authorised to be carried out under the licence.

42C. Offences relating to licences

- (1) A person must not carry out an EL activity unless the person is authorised under an environmental licence to do so.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
- (b) an individual, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.

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- (2) Subsection (1) does not apply in respect of a person in relation to an activity if the activity is expressly or impliedly authorised to be carried out under an environment protection notice.
- (3) Subsection (1) does not apply in respect of a person in relation to an activity if there is no environmental licence in force in relation to the activity and the person was, immediately before the commencement of this section –
 - (a) carrying out the activity under an existing authorisation; or
 - (b) carrying out the activity and –
 - (i) no permit is required under the *Land Use Planning and Approvals Act 1993* in relation to the activity; and
 - (ii) no marine farming licence is required in relation to the activity; and
 - (iii) no fish farm licence is required in relation to the activity.
- (4) A person who carries out an activity to which an environmental licence relates must not contravene –
 - (a) a condition or restriction imposed on the licence; or

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- (b) a condition or restriction of a notice, issued under section 42ZH(2), of the approval of a surrender of the licence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
 - (b) an individual, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.
- (5) A court must, in relation to an offence under subsection (4) in respect of a contravention of a condition or restriction imposed on an environmental licence, impose a special penalty of an amount –
- (a) prescribed by the regulations; or
 - (b) calculated in accordance with a method prescribed by the regulations.
- (6) A special penalty imposed under subsection (5) is in addition to a fine, if any, imposed under subsection (4).
- (7) Regulations for the purposes of subsection (5) may prescribe different amounts, or different methods, that are to apply according to circumstances specified in the regulations.

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- (8) The holder of an environmental licence must not expand, intensify or modify the activity to which the licence relates except if –
- (a) the expansion, intensification or modification –
 - (i) is expressly authorised under the environmental licence, including the licence as varied under Subdivision 4, and does not contravene the conditions or restrictions imposed on the licence; or
 - (ii) is expressly authorised under an environment protection notice; or
 - (b) the Board has determined under section 25(1DAB) that the expansion, intensification or modification of the activity is not environmentally significant.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
 - (b) an individual, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.
- (9) The holder of an environmental licence must not –

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-
- (a) cease to carry out an activity to which the licence relates; or
 - (b) resume an activity to which the licence relates –
- unless –
- (c) the person, before ceasing to carry out the activity or resuming the activity, notified the Director of the person's intention to cease or resume the activity, respectively; or
 - (d) the cessation or resumption occurs in pursuance of a notice issued under section 42ZF(1) or because the licence has ceased to be suspended or cancelled; or
 - (e) the cessation or resumption occurs in accordance with a requirement of an environment protection notice.

Penalty: Fine not exceeding 100 penalty units.

Subdivision 2 – Licences in relation to existing lawful activities

42D. Persons to whom licences for existing lawful activities may be granted

- (1) A person is, on the day on which this section commences, taken to have applied under this subsection for an environmental licence in relation to an activity if the activity is an EL activity and, immediately before that day –

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- (a) the person is the person to whom the existing authorisation in relation to the activity –
 - (i) was granted or issued, if the person has not lawfully transferred the authorisation to another person; or
 - (ii) was lawfully transferred by a person to whom the authorisation was granted or issued or to whom the authorisation was lawfully transferred; or
- (b) the person –
 - (i) is lawfully carrying out the activity; and
 - (ii) is a person authorised under a permit to carry out the activity; and
 - (iii) is a person whom the Director determines under subsection (2) to be the person at whose direction the activity is being carried out; or
- (c) each of the following subparagraphs applies in relation to the activity:
 - (i) the person is lawfully carrying out the activity;

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- (ii) the person is a person to whom, if an existing authorisation (other than an existing authorisation referred to in paragraph (b)) were to be granted or issued to a person in relation to the activity, the authorisation would have been granted or issued or is a person whom the Director determines under subsection (2) to be the person at whose direction the activity is being carried out;
 - (iii) no permit was required under the *Land Use Planning and Approvals Act 1993* in relation to the activity;
 - (iv) no fish farm licence or marine farming licence was required to be held by the person in relation to the activity.
- (2) The Director may determine, for the purposes of subsection (1)(b)(iii) or (c)(ii), a person to be the person at whose direction an activity, that is being lawfully carried out under a permit, is being carried out immediately before the day on which this section commences.
- (3) A person is, on the day on which this section commences, taken to have applied under this subsection for an environmental licence in relation to an activity if the activity is an EL

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activity and, immediately before the day on which this section commences –

- (a) there is an existing authorisation, consisting of a marine farming licence, in relation to the activity; and
- (b) there is a lease under Part 4 of the *Marine Farming Planning Act 1995* in relation to the activity; and
- (c) the person holds under Part 4 of the *Marine Farming Planning Act 1995* a sub-lease of the lease referred to in paragraph (b); and
- (d) the person is carrying out the activity under the sub-lease.

42E. Grant of licences in relation to existing lawful activities

- (1) The Director must grant, to a person who is taken to have applied under section 42D for an environmental licence in relation to an activity, an environmental licence in relation to the activity.
- (2) An environmental licence in relation to an activity may not be granted under subsection (1) to more than one person who is to hold the licence, unless the persons comprise a trust that is to hold the licence.

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- (3) If 2 or more persons are to be taken to have applied under section 42D for an environmental licence in relation to the same activity –
- (a) the persons may, by notice to the Director, nominate which of the persons is to be the person to whom the licence is to be granted; and
 - (b) the Director is to grant under subsection (1) an environmental licence in relation to the activity to the person so nominated.
- (4) An environmental licence may be granted under subsection (1) in relation to an activity –
- (a) that is to be conducted at more than one location; and
 - (b) that is conducted under more than one existing authorisation in relation to the activity –

but only if the prescribed criteria are satisfied.

- (5) If an existing authorisation relates to an area of land, or State waters, that had not, within the 10 year period ending on the day 3 months before the day on which this Act commences, been used for the purposes of marine farming, or inland fish farming, of finfish, a licence granted by the Director under this section in relation to the existing authorisation is not to be taken to have been granted in relation to that area.

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- (6) Subject to subsection (7), the Director may grant an environmental licence under subsection (1) for a period determined by the Director or determine that the licence is granted for an unlimited period.
- (7) If an environmental licence is granted under subsection (1) in relation to an activity to which relates an existing authorisation that is to expire on a day, the Director must determine under subsection (6) to grant the licence for a period that expires on the same day.
- (8) Subsection (7) does not apply in relation to an environmental licence if –
 - (a) the environmental licence is, in accordance with subsection (4)(b), granted under subsection (1) in relation to an activity that is conducted under more than one existing authorisation in relation to the activity; and
 - (b) the existing authorisations are to expire on different days.
- (9) The Director must notify a person to whom an environmental licence has been granted under subsection (1) of –
 - (a) the grant of the licence; and
 - (b) any conditions or restrictions that are imposed on the licence and the reasons for imposing them; and

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- (c) the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.

42F. Conditions of licences in relation to existing lawful activities

- (1) Subject to section 42Z, the Director may impose conditions or restrictions, or both, on an environmental licence granted under section 42E(1).
- (2) The conditions or restrictions imposed, in accordance with subsection (1), on an environmental licence granted under section 42E(1) in relation to an activity are to include, but are not limited to including, conditions or restrictions –
 - (a) that are substantially the same as the conditions or restrictions, that relate to the environment, that were imposed on the existing authorisation in relation to the activity; or
 - (b) that, where the existing authorisation was an environment protection notice, are substantially the same as the measures or requirements imposed by that notice.
- (3) A condition or restriction that –
 - (a) is imposed, in accordance with subsection (1), on an environmental licence in relation to an activity; and

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(b) is not a condition, or restriction, (*a compulsory provision*) that is required under subsection (2) to be imposed on the licence –

may not be of substantially the same effect as, and relate to the same biomass, product containing finfish, raw material, water, source of energy or pollutant as, a compulsory provision.

(4) Subsection (3) does not apply in relation to a condition, referred to in section 42Z(2)(m), that is imposed on a licence in accordance with subsection (1).

(5) If –

(a) the environmental licence is, in accordance with section 42E(4)(b), granted in relation to an activity that is conducted under more than one existing authorisation in relation to the activity; and

(b) the conditions or restrictions imposed on the existing authorisations are not consistent –

subsection (6) applies, and subsections (2) and (3) do not apply, in relation to the licence.

(6) Without limiting the generality of subsection (1), if this subsection applies in relation to an environmental licence –

(a) the conditions or restrictions imposed, in accordance with subsection (1), on an

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environmental licence, may include any of the conditions or restrictions that were specified in, or imposed by, any of the existing authorisations in relation to the activity to which the licence relates; and

- (b) any other condition or restriction, not imposed in accordance with paragraph (a), may not be of substantially the same effect as, and relate to the same biomass, product containing finfish, raw material, water, source of energy or pollutant as, a condition or restriction imposed in accordance with paragraph (a).

42G. Effect of decision to grant licence in relation to existing authorisations

- (1) Subsection (2) applies in relation to a permit, if –
 - (a) immediately before the day on which this section commences, a person is carrying out an EL activity under the permit; and
 - (b) an environmental licence is issued in relation to the EL activity.
- (2) If this subsection applies in relation to a permit –
 - (a) a condition or restriction, imposed on the permit by virtue of a direction under section 25(5) of this Act, as in force before the day on which this section commences, is void on and from the day

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on which an environmental licence is issued in relation to the activity; and

(b) any –

(i) condition or restriction of the permit that is included by a variation to the permit specified in any environment protection notice issued under section 44(1)(d) or section 44(2)(d); and

(ii) other variation, to a condition or restriction of the permit, that is specified in any environment protection notice issued under section 44(1)(d) or section 44(2)(d) –

is void on and from the day on which an environmental licence is issued in relation to the activity; and

(c) any environment protection notice, issued under section 44(1)(d) or section 44(2)(d), that varies a condition or restriction of the permit that is in force in relation to the activity, is taken to be revoked on and from the day on which an environmental licence is issued in relation to the activity; and

(d) any condition or restriction, of the permit, that is not referred to in paragraph (a) or (b) and that –

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- (i) relates to the reduction, minimisation or removal of potential risk to the environment; and
 - (ii) is inconsistent with a condition or restriction of an environmental licence in relation to an activity –

is void on and from the day on which an environmental licence is issued in relation to the activity.
- (3) If a person is, immediately before the day on which this section commences, carrying out an EL activity in accordance with an exemption permit, then, on and from the day on which an environmental licence is issued in relation to the activity, any condition or restriction of the exemption permit that is inconsistent with a condition or restriction of the environmental licence is void.
- (4) If a person is, immediately before the day on which this section commences, carrying out an EL activity that the person is expressly or impliedly authorised to carry out –
 - (a) by an environment protection notice issued under section 44(1) (other than section 44(1)(d)); or
 - (b) by an environment protection notice issued under section 44(2) (other than section 44(2)(d)) –

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the environment protection notice is taken to be revoked on and from the day on which an environmental licence is issued in relation to the person.

- (5) If a person is, immediately before the day on which this section commences, carrying out an EL activity in accordance with a fish farm licence or a marine farming licence, then, on and from the day on which an environmental licence is issued in relation to the person, a condition or restriction of the fish farm licence, or marine farming licence, that is inconsistent with a condition or restriction of the environmental licence is void.

42H. Notification that existing authorisation is void or condition inconsistent

- (1) The Director may notify a person who, immediately before a licence document, in relation to an environmental licence granted under section 42E in relation to an activity, is issued to the person under section 42ZB, was carrying out an activity under an existing authorisation in relation to the activity –
- (a) that the existing authorisation is void; or
 - (b) that a condition or restriction of an existing authorisation that, in the opinion of the Director, is inconsistent with a condition or restriction imposed on the environmental licence, is void.

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- (2) If the Director notifies a person under subsection (1)(b) that a condition or restriction of an existing authorisation is void, the condition or restriction is void.
- (3) Nothing in subsection (2) is to be taken to have the effect that a condition or restriction of an existing authorisation is not void only because the person has not been notified under subsection (1) that the condition or restriction is void.

Subdivision 3 – Licences where no existing authority

42I. Applications for environmental licences

- (1) A person may apply to the Director, in a form approved by the Director, for an environmental licence in relation to an activity that is an EL activity.
- (2) If –
 - (a) an application is made under subsection (1) for an environmental licence in relation to an activity that does not require a permit; and
 - (b) either –
 - (i) an application has been made under the *Living Marine Resources Management Act 1995* for a marine farming licence in relation to the activity; or

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- (ii) there is a permit, issued under section 12 or 14 of the *Living Marine Resources Management Act 1995*, that is in force in relation to the activity –

the Director may refuse to accept the application under subsection (1) and instead refer the application to the Board for assessment under section 27AA.

- (3) The Director must decide under subsection (2) whether to refer an application to the Board for assessment under section 27AA and must make that decision in accordance with the prescribed criteria as to when the Director must, or must not, refer an application to the Board.
- (4) If an application is made under subsection (1) by the holder of a sub-lease of a lease under Part 4 of the *Marine Farming Planning Act 1995*, the reference in subsection (2)(b)(i), to an application made under the *Living Marine Resources Management Act 1995* for a marine farming licence in relation to an activity, includes a reference to an application made under the *Living Marine Resources Management Act 1995* for a marine farming licence that is to relate in whole or in part to an area of land, or an area of State waters, to which the application under subsection (1) relates, whether or not the marine farming licence is to relate to the same activity.
- (5) The Director must refuse to accept an application under subsection (1) in relation to an

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EL activity if the activity is an activity in relation to which a lease is required under Part 4 of the *Marine Farming Planning Act 1995* and either –

- (a) the lease has not been granted; or
 - (b) the applicant is not the holder of a permit under section 12 or 14 of the *Living Marine Resources Management Act 1995* in relation to the activity.
- (6) The Director must refuse to accept an application under subsection (1) from a person if the application, or the activity to which the application relates, has been, or is required to be, referred to the Board under section 25(1), section 25A or section 27AA(1).
- (7) The Director may refuse to accept an application under subsection (1) from a person in relation to an EL activity if –
- (a)
 - (b) the proposal to carry out the activity has been declared, or, in the opinion of the Director, is likely to be declared, to be a project of state significance under the *State Policies and Projects Act 1993*.

42J. Grant of licence by Director

- (1) If an application has been made to the Director under section 42I(1) in relation to an activity and

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the Director has not refused under that section to accept the application, the Director must –

- (a) grant an environmental licence in relation to the activity; or
 - (b) refuse to grant an environmental licence in relation to the activity.
- (2) Subject to section 42L, the Director may, under subsection (1), grant to a person an environmental licence in relation to an activity if the Director is satisfied that it is appropriate to do so.
- (3) An environmental licence may be granted under subsection (1) in relation to an activity that is to be conducted at more than one location, but only if the prescribed criteria are satisfied.
- (4) The Director may under subsection (1) only grant, in relation to an application under section 42I(1), an environmental licence that is to be held by more than one person, if the persons to whom the licence is to be granted will hold the licence as trustees.
- (5) Subject to section 42Z, the Director may impose conditions or restrictions, or both, on an environmental licence granted by the Director under subsection (1).
- (6) The Director may grant an environmental licence under subsection (1) for a period determined by the Director or determine that the licence is granted for an unlimited period.

42K. Grant of licence by Board

(1) In this section –

relevant application means an application, in relation to an EL activity, that –

(a) is an application, or relates to an activity, referred to the Board –

(i) under section 25 or 27AA; or

(ii) under section 42I(2); and

(b) is not a relevant application within the meaning of section 42Q(1);

relevant project means a project that –

(a) is a project, in relation to an EL activity, in relation to which a notice of intent is lodged under section 27B; and

(b) is not a relevant project within the meaning of section 42Q(1).

(2) The Board may –

(a) within 28 days after a relevant application, or a relevant project, in relation to an EL activity is referred to the Board under section 25, section 27AA or section 42I(2); or

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- (b) after a notice of intent in relation to a relevant project, in relation to an EL activity, is lodged under section 27B –
- refuse, on a ground referred to in section 42L(1) or (2), to grant an environmental licence in relation to the activity.
- (3) As soon as practicable after the Board has completed under section 25, 25A or 27AA(3) an assessment in relation to an EL activity, the Board must –
- (a) grant an environmental licence in relation to the activity; or
- (b) refuse to grant an environmental licence in relation to the activity.
- (4) Subject to section 42L, the Board may, under subsection (3), grant to a person an environmental licence in relation to an activity if the Board is satisfied that it is appropriate to do so.
- (5) An environmental licence may be granted under subsection (3) in relation to an activity that is to be conducted at more than one location, but only if the prescribed criteria are satisfied.
- (6) The Board may only grant an environmental licence under subsection (3) that is to be held by more than one person, if the persons to whom the licence is to be granted will hold the licence as trustees.

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- (7) Subject to section 42Z, the Board may impose conditions or restrictions, or both, on an environmental licence granted by the Board under this section.
- (8) The Board may grant an environmental licence under this section for a period determined by the Board or determine that the licence is granted for an unlimited period.

42L. Refusal by Director or Board to grant licence

- (1) The Director or the Board must refuse under section 42J or 42K to grant to a person an environmental licence in relation to an activity if the Director or the Board, respectively, is satisfied that the person is, at the time of the application, disqualified under section 42ZF(8) from holding an environmental licence.
- (2) The Director or the Board may refuse under section 42J or 42K to grant to a person an environmental licence in relation to an activity if the Director or the Board, respectively, is satisfied that –
 - (a) the person has contravened this Act; or
 - (b) the person has, within the 5-year period before the day on which the licence is granted, been convicted of an offence, which the Director, or the Board, respectively, considers to be an offence relevant to the holding of the licence, against –

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- (i) this Act; or
 - (ii) any other Act; or
 - (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment; or
- (c) the person is not a fit and proper person to hold an environmental licence; or
- (d) an associate of the person has, within the 5-year period before the day on which the licence is granted, been convicted of an offence, which the Director, or the Board, respectively, considers to be an offence relevant to the holding of the licence, against –
- (i) this Act; or
 - (ii) any other Act; or
 - (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment; or
- (e) where the person is a natural person, the person is not an adult; or
- (f) the person has not paid any fees that are due and payable under this Act, in relation to the licence, by the person.
- (3) The Director or the Board may determine for the purposes of subsection (2)(c) that a person is not

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a fit and proper person to hold an environmental licence in relation to an activity if the Director or the Board, respectively, is reasonably of the opinion that the person, or an associate of the person, was an associate in relation to another person (including a body corporate) who or that –

(a) had –

(i) committed an offence against a provision, of a law, relating to protection of the environment; or

(ii) failed to comply with a duty, including a duty of care, imposed on the person in relation to protection of the environment; or

(iii) caused environmental harm; and

(b) had sought to be declared bankrupt, or to be deregistered as a corporation under the Corporations Law, for the purpose of avoiding –

(i) liability for the offence, for failing to comply with the duty or for causing the environmental harm; or

(ii) liability to pay a fine, penalty, including a civil penalty, or damages, in relation to the offence, the failure to comply with the duty or the causing of environmental harm.

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- (4) Subsection (3) does not limit the circumstances in which the Director or the Board may determine that, for the purposes of subsection (2)(c), a person is not a fit and proper person to hold an environmental licence.
- (5) Subsections (1) and (2) do not limit the circumstances in which the Director or the Board may refuse under section 42J or 42K to grant an environmental licence.

42M. Notifications of grant or refusal of licences or refusal to accept application for licences

- (1) The Director must, as soon as practicable after deciding under section 42J to grant, or to refuse to grant, an environmental licence to a person, give a relevant notice to the person.
- (2) The Board must, as soon as practicable after deciding under section 42K to grant, or refuse to grant, an environmental licence in relation to an EL activity –
 - (a) to which section 25, 25A or 27AA relates, give a relevant notice to the planning authority; and
 - (b)
 - (c) to which section 25A relates, give a relevant notice to the Commission within the meaning of the *Land Use Planning and Approvals Act 1993*; and

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- (d) to which section 25, 25A or 27AA relates, give a relevant notice to the person to whom the licence is granted or to whom, if the Board had not refused to grant the licence, the licence would have been granted.
 - (e)
- (3) The Board must, as soon as practicable after deciding under section 42K to grant, or refuse to grant, an environmental licence in relation to an EL activity after completing an assessment referred to in section 42K(2)(a), give a relevant notice to each person who has made, in relation to the activity, a representation under section 27G(2) or the *Land Use Planning and Approvals Act 1993*.
- (4) If the Director refuses under section 42I to accept an application for an environmental licence, the Director must give a relevant notice to the person who made the application.
- (5) For the purposes of this section, a relevant notice, in relation to a decision, to be given to a person or body is a notice –
- (a) that the decision has been made, the terms of the decision and the reasons for making the decision; and
 - (b) of any conditions or restrictions that have been imposed on an environmental licence in accordance with the decision and the reasons for imposing them; and

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- (c) if the person is a person who has a right under Subdivision 9 to appeal to the Appeal Tribunal in relation to the decision, of that person's right under Subdivision 9 to appeal to the Appeal Tribunal in relation to the decision.

Subdivision 4 – Variation of licences

42N. Variation of licence by Director at holder's request

- (1) The holder of an environmental licence granted by the Board or the Director may apply to the Director, in a form approved by the Director, for a variation of the licence.
- (2) The Director must refuse to accept an application to vary an environmental licence so as to authorise a proposed expansion, intensification or modification of an activity (a ***relevant alteration***) to be carried out under the licence if the Director is of the opinion that a permit is required under the *Land Use Planning and Approvals Act 1993* in relation to the relevant alteration and such a permit has not been granted.
- (3) The Director must, on receiving an application under subsection (1) from the holder of an environmental licence, if the Director has not refused, under subsection (2), to accept the application –
 - (a) vary the licence, unless the Director must refer the application under section 42O to

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- the Board for assessment under section 27AA; or
- (b) refuse to vary the licence, unless the Director must refer the application under section 42O to the Board for assessment under section 27AA; or
 - (c) refer the application under section 42O to the Board for assessment under section 27AA.
- (4) The Director may, in accordance with subsection (3), vary an environmental licence under that subsection if the Director is satisfied that it is appropriate to do so.
- (5) The Director may, in accordance with subsection (3), refuse to vary an environmental licence under that subsection if the Director is satisfied that –
- (a) the holder of the environmental licence has contravened this Act; and
 - (b) the holder of the environmental licence has, within the 5-year period before the day on which the licence is varied, been convicted of an offence, which the Director considers to be an offence relevant to the holding of the licence, against –
 - (i) this Act; or
 - (ii) any other Act; or

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- (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment; and
 - (c) the holder of the environmental licence has not paid any fees that are due and payable under this Act, in relation to the licence, by the holder of the licence.
- (6) Subsection (5) does not limit the circumstances in which the Director may refuse under subsection (3) to vary an environmental licence.
- (7) The Director must notify the holder of an environmental licence of –
 - (a) a decision by the Director –
 - (i) to refuse to accept an application under this section in relation to the licence; or
 - (ii) to vary, or to refuse to vary, a licence under this section; or
 - (iii) to refer to the Board, under section 42O, an application under this section in relation to the licence; and
 - (b) the reasons for the decision; and
 - (c) if the decision is a decision to vary the licence, the details of each variation and the reason for each variation; and

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- (d) the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.

42O. Referral to Board of certain applications for variation

(1) If –

- (a) an application is made under section 42N(1) for a variation of an environmental licence in relation to an EL activity that does not require a permit; and
- (b) an application has been made under the *Living Marine Resources Management Act 1995* for a variation of a marine farming licence in relation to the activity –

the Director may, instead of accepting the application, refer the application to the Board for assessment under section 27AA.

- (2) The Director must decide under subsection (1) whether to refer an application to the Board for assessment under section 27AA and must make that decision in accordance with the prescribed criteria as to when the Director must, or must not, refer an application to the Board.
- (3) If –

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- (a) an application is made under section 42N(1) for a variation of an environmental licence in relation to an EL activity that does not require a permit; and
- (b) either –
 - (i) an application has not been made under the *Living Marine Resources Management Act 1995* for a variation of a marine farming licence in relation to the activity and such an application is not required to be made under that Act; or
 - (ii) the application under section 42N(1) is not an application to which subparagraph (i), or subsection (1), applies –

the Director must determine whether the variation to which the application under section 42N(1) relates is a minor variation or a major variation.

- (4) In making a determination under subsection (3) as to whether the variation to which an application under section 42N(1) relates is a minor variation or a major variation, the Director –
 - (a) must take into consideration the characteristics set out in Schedule 5, as if a reference in that Schedule to a project

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- or an activity were a reference to the proposed variation; and
- (b) if the Director is of the opinion that the variation has class A characteristics under that Schedule, must determine that the variation is a minor variation; and
 - (c) if the Director is of the opinion that the variation has class 2B or class 2C characteristics under that Schedule, must determine that the variation is a major variation.
- (5) If the Director determines under subsection (3) that the variation to which an application under section 42N(1) relates is a major variation, the Director, instead of accepting the application, must refer the application to the Board for assessment under section 27AA.

42P. Variation of licence on Director's initiative

- (1) The Director may, on his or her own initiative, vary an environmental licence, including a licence granted by the Board.
- (2) The Director may only vary an environmental licence under subsection (1) if the Director –
 - (a) has, at least 14 days before varying the licence, issued a notice to the holder of the environmental licence –
 - (i) specifying the proposed variation; and

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- (ii) specifying the reasons why the Director proposes to vary the licence; and
 - (iii) inviting the holder of the environmental licence to provide to the Director, within 14 days after receiving the notice, written reasons as to why the licence ought not be varied as proposed; and
 - (b) has considered any written reasons provided to the Director under subsection (3).
- (3) The holder of an environmental licence to whom a notice is issued under subsection (2) may provide to the Director, within 14 days after receiving the notice, written reasons as to why the licence ought not be varied as proposed.
- (4) The Director must notify the holder of an environmental licence of –
 - (a) a decision by the Director to vary the licence under this section; and
 - (b) the details of the variation and the reason for the variation; and
 - (c) the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.

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- (5) The Director may not vary under subsection (1) an environmental licence if –
- (a) the licence is a licence in relation to an activity to which subsection (6)(a) and (b), or subsection (7)(a) and (b), relates; and
 - (b) the Director is permitted under subsection (6) or (7) to refer to the Board a proposal for such a variation.
- (6) The Director may refer to the Board a proposal, prepared by the Director, to vary an environmental licence in relation to an activity if –
- (a) a permit is not required in relation to the activity; and
 - (b) there is a marine farming licence, or a permit issued under section 12 or 14 of the *Living Marine Resources Management Act 1995*, in force in relation to the activity; and
 - (c) were the variation contained in an application to which section 42O(1) applies, the Director would be required, under section 42O(2), to refer the application to the Board under section 42O(1).
- (7) The Director may refer to the Board a proposal, prepared by the Director, to vary an environmental licence in relation to an activity if –

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- (a) a permit is not required in relation to the activity; and
 - (b) subsection (6)(b) does not apply in relation to the activity; and
 - (c) were the variation contained in an application to which section 42O(3) relates, the Director would be required under section 42O to determine that the variation is a major variation.
- (8) The Director must prepare, and refer to the Board, a proposal requiring the Board to conduct an environmental assessment in relation to an area to which an environmental licence relates (whether or not the area comprises all or part of all of the area to which the licence relates) if marine farming, or inland fish farming, of finfish under the licence has not occurred in the area for a period of not less than 10 years.
- (9) If a proposal to vary a licence is referred to the Board under subsection (6), (7) or (8), the Board may only vary under section 42Q(3) the environmental licence to which the proposal relates after assessing the proposal in accordance with section 27AA(5), if the Board –
- (a) has, at least 14 days before varying the licence under section 42Q(3), issued a notice to the holder of the environmental licence –
 - (i) specifying the proposed variation; and

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- (ii) specifying the reasons why the Board proposes to vary the licence; and
 - (iii) inviting the holder of the environmental licence to provide to the Board, within 14 days after receiving the notice, written reasons as to why the licence ought not be varied as set out in the proposal; and
- (b) has considered any written reasons provided to the Board under subsection (10).
- (10) The holder of an environmental licence to whom a notice is issued under subsection (9) may provide to the Board, within 14 days after receiving the notice, written reasons as to why the licence ought not be varied as proposed.

42Q. Variation by Board of licence

- (1) In this section –

relevant application means –

- (a) an application, referred to the Board under section 25 or 27AA, in relation to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence; and

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- (b) an application that is referred to the Board by the Director under section 42O;

relevant assessment means an assessment completed by the Board –

- (a) under section 25 or 27AA in relation to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence; or
- (b) under section 27AA in relation to an application that is referred to the Board by the Director under section 42O; or
- (c) under section 27AA(5) in relation to a proposal that is referred to the Board by the Director under section 42P(6), (7) or (8);

relevant project means a project that –

- (a) consists of a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence; and
- (b) is a project, in relation to an EL activity, in relation to which a notice of intent has been lodged under section 27B.

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- (2) The Board may –
- (a) within 28 days after a relevant application, or a relevant project, in relation to an EL activity is referred to the Board under section 25, section 27AA or section 42O; or
 - (b) after a notice of intent in relation to a relevant project, in relation to an EL activity, is lodged under section 27B –
refuse, on a ground referred to in subsection (5), to vary an environmental licence in relation to the activity.
- (3) As soon as practicable after the Board has completed a relevant assessment, the Board must –
- (a) vary an environmental licence in relation to the activity; or
 - (b) refuse to vary an environmental licence in relation to the activity.
- (4) The Board may vary under subsection (3) an environmental licence if the Board is satisfied that it is appropriate to do so.
- (5) The Board may, under subsection (2) or subsection (3), refuse to vary an environmental licence if the Board is satisfied that –
- (a) the holder of the environmental licence has contravened this Act; and

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- (b) the holder of the environmental licence has, within the 5-year period before the day on which the licence is varied, been convicted of an offence, which the Board considers to be an offence relevant to the holding of the licence, against –
 - (i) this Act; or
 - (ii) any other Act; or
 - (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment; and
 - (c) the holder of the environmental licence has not paid any fees that are due and payable under this Act, in relation to the licence, by the holder of the licence.
- (6) Subsection (5) does not limit the circumstances in which the Board may refuse to vary an environmental licence under subsection (3).

42R. Notice of decision by Board in relation to variation

- (1) The Board must, as soon as practicable after making a decision under section 42Q(2) or (3) in relation to a relevant application within the meaning of section 42Q(1), give a relevant notice to –
 - (a) the person who made the application; and
 - (b) if the application is an application to which section 25 or 25A relates, the

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planning authority for the area of land, or area of State waters, to which the application relates; and

- (c) if the application is an application to which section 25A relates, the Commission.
- (2) The Board must, as soon as practicable after making a decision under section 42Q(3) in relation to an EL activity, give a relevant notice to each person who has made a representation under the *Land Use Planning and Approvals Act 1993* or section 27G(2) in relation to the activity.
- (3) The Board must, as soon as practicable after making a decision under section 42Q(3) in relation to a proposal, for a variation of an environmental licence, that is referred to the Board in accordance with section 42P(6), (7) or (8), give a relevant notice to the person who is the holder of the licence.
- (4) For the purposes of this section, a relevant notice, in relation to a decision, to be given to a person or body is a notice –
- (a) specifying whether the Board has varied, or refused to vary, the environmental licence to which the decision relates and the reasons for making the decision; and
- (b) if the decision is a decision to vary an environmental licence, specifying details of the variation and the reason for the variation; and

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- (c) if the person is a person who has a right under Subdivision 9 to appeal to the Appeal Tribunal in relation to the decision, of the person's right under Subdivision 9 to appeal to the Appeal Tribunal in relation to the decision.

Subdivision 5 – Renewal of licences

42S. Applications for renewal of licences

- (1) The holder of an environmental licence that is in force for a period specified on the licence, may apply to the Director, in a form approved by the Director, for a renewal of the environmental licence.
- (2) An application under subsection (1) for the renewal of an environmental licence is invalid if it is not made before the number of days, before the day on which the licence expires, that is prescribed.
- (3) The Director, in his or her discretion, may, despite subsection (2), accept an application under subsection (1) for the renewal of an environmental licence, if the application is made before the day on which the licence expires and, if the Director so accepts the application, the application is, despite subsection (2), valid.
- (4) If an application under subsection (1) for the renewal of an environmental licence is valid, the licence remains in force, despite section 42ZC(5), until the holder of the environmental licence is notified under

section 42T(9) of the decision of the Director to renew, or to refuse to renew, the licence.

42T. Renewal of licences on application

- (1) If the Director receives under section 42S(1) a valid application for the renewal of an environmental licence, the Director must –
 - (a) renew the environmental licence; or
 - (b) refuse to renew the environmental licence.
- (2) Subject to this section, the Director may renew under subsection (1) an environmental licence if the Director is satisfied that it is appropriate to do so.
- (3) The Director must refuse to renew an environmental licence under subsection (1) if, immediately before the licence is renewed, the licence contained a condition that the licence may not be renewed.
- (4) The Director may refuse to renew an environmental licence under subsection (1) if he or she is satisfied that the applicant for renewal of the licence –
 - (a) has contravened the conditions and restrictions of the licence in the 5-year period immediately before the application for renewal of the licence is made; or

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- (b) has, within the 5-year period before the day on which the licence is renewed, been convicted of an offence against –
 - (i) this Act; or
 - (ii) any other Act; or
 - (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment –

which the Director considers to be an offence relevant to the holding of the licence; or
 - (c) is not a fit and proper person to hold an environmental licence; or
 - (d) has not paid any fees that are due and payable under this Act, in relation to the licence, by the person.
- (5) Subsection (4) does not limit the circumstances in which the Director may refuse to vary an environmental licence.
- (6) If, immediately before an environmental licence is renewed under subsection (1), the licence contained a condition limiting the ability of the Director to renew the licence, the Director may only renew the licence under subsection (1) in accordance with the condition.
- (7) Subject to section 42Z, the Director may impose conditions or restrictions, or both, on an

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environmental licence renewed under subsection (1).

- (8) The Director may renew an environmental licence under subsection (1) for a period determined by the Director or determine that the licence is renewed for an unlimited period.
- (9) The Director must give notice, to the person who applied for the renewal of an environmental licence –
 - (a) of a decision by the Director to renew, or to refuse to renew, the environmental licence under this section; and
 - (b) if the Director has refused to renew the licence under this section, of the reasons for refusing to renew the licence; and
 - (c) of any conditions or restrictions that are imposed on the licence as renewed under subsection (1) and the reasons for imposing them; and
 - (d) of the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.

42U. Renewal of licence on Director's own initiative

- (1) The Director may, on his or her own initiative, renew an environmental licence.

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- (2) The Director may renew an environmental licence under subsection (1) whether or not the licence has expired.
- (3) The Director may only renew an environmental licence under subsection (1) if the Director is of the opinion that it is necessary to do so to ensure –
 - (a) that potential environmental harm from the conduct of an activity under, or purportedly under, the licence before it is renewed, is reduced; or
 - (b) the decommissioning of any facilities on the area of land, or the area of State waters, to which the licence relates; or
 - (c) the rehabilitation of –
 - (i) the area of land, or the area of State waters, to which the licence, before it was renewed, related; or
 - (ii) areas of land, or of State waters, to which environmental harm may have been caused by the conduct of the activity under, or purportedly under, the licence.
- (4) Subject to section 42Z, the Director may, under subsection (1), impose conditions or restrictions, or both, on an environmental licence that is renewed.
- (5) The Director may renew an environmental licence under subsection (1) for a period

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determined by the Director or determine that the licence is renewed for an unlimited period.

- (6) The Director must give notice, to the holder of an environmental licence, of –
- (a) a decision by the Director to renew the licence under this section; and
 - (b) any conditions or restrictions that are imposed on the licence renewed under subsection (1) and the reasons for imposing them; and
 - (c) the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.

Subdivision 6 – Transfer of licences

42V. Transfer of licence only authorised if approved

- (1) The holder of an environmental licence must not transfer, or purport to transfer, the licence to another person.
- (2) A transfer, or purported transfer, of an environmental licence otherwise than by the Director under section 42W(2) is void and of no effect.

42W. Transfer of licences

- (1) The holder of an environmental licence may apply to the Director, in a form approved by the

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Director, for the Director to transfer the licence to another person.

- (2) The Director may, if he or she receives an application under subsection (1) from the holder of an environmental licence –
 - (a) transfer the licence to another person; or
 - (b) refuse to transfer the licence to another person.
- (3) Subject to section 42X, the Director may transfer under subsection (2) an environmental licence if the Director is satisfied that it is appropriate to do so.
- (4) Subject to section 42Z, the Director may impose conditions or restrictions, or both, on an environmental licence as transferred under subsection (2).
- (5) The Director may determine that an environmental licence, when transferred under subsection (2) –
 - (a) is to remain in force, subject to this Act, for a period determined by the Director and specified in the licence document; or
 - (b) is to remain in force, subject to this Act, for an unlimited period.
- (6) The Director must notify a person who has applied under subsection (1) for the transfer of an environmental licence –

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- (a) of a decision by the Director to transfer, or to refuse to transfer, the licence under subsection (2); and
- (b) if the Director has refused to transfer the licence under subsection (2), of the reasons for refusing to transfer the licence; and
- (c) of any conditions or restrictions that are imposed on the licence as transferred under subsection (2) and the reasons for imposing them; and
- (d) of the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section or section 42Y(1).

42X. Refusal to transfer licence

- (1) The Director must not transfer under section 42W(2) an environmental licence to another person if the licence is to be held by more than one person, unless the persons comprise a trust that is to hold the licence.
- (2) The Director must not transfer under section 42W(2) an environmental licence to another person if –
 - (a) the other person is a person to whom a licence must not, under section 42L(1), be granted; or

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- (b) the transfer of the licence would be in contravention of a condition or restriction of the licence to which the application relates; or
 - (c) the activity is an activity in relation to which a lease is required under Part 4 of the *Marine Farming Planning Act 1995* and either –
 - (i) the lease has not been transferred under that Act to the person to whom the licence is to be transferred; or
 - (ii) the person to whom the licence is to be transferred is not the holder of a permit issued under section 12 or 14 of the *Living Marine Resources Management Act 1995* in relation to the activity.
- (3) The Director may refuse to transfer under section 42W(2) an environmental licence to a person if the person is a person in relation to whom the Director may refuse under section 42L(2) to grant an environmental licence.
- (4) The Director may refuse to transfer under section 42W(2) an environmental licence to another person if the holder of the environmental licence, or the person to whom the licence is to be transferred, has not paid any fees that are due and payable under this Act, in relation to an

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environmental licence, by the holder of the licence.

- (5) Subsections (1), (2), (3) and (4) do not limit the circumstances in which the Director may refuse to transfer an environmental licence under section 42W(2).

42Y. Director may require condition to be satisfied before transfer

- (1) The Director may, but is not required to, agree to transfer an environmental licence under section 42W(2) subject to conditions or restrictions specified in the agreement.
- (2) If a condition or restriction is specified, in accordance with subsection (1), in an agreement to transfer an environmental licence under section 42W(2), the Director may refuse to transfer the licence under section 42W(2) if the condition or restriction has not been complied with.
- (3) A condition or restriction specified, in accordance with subsection (1), in an agreement to transfer an environmental licence under section 42W(2), may relate to the person to whom the licence is to be transferred, the person from whom the licence is to be transferred or any other person.

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Subdivision 7 – General provisions

42Z. Conditions and restrictions of licences

- (1) The conditions or restrictions that may be imposed on an environmental licence as granted, varied, transferred or renewed –
 - (a) by the Director, are the conditions or restrictions that the Director thinks fit to impose on the licence and which, in the opinion of the Director, will further the objectives of this Act; and
 - (b) by the Board, are the conditions or restrictions that the Board thinks fit to impose on the licence and which, in the opinion of the Board, will further the objectives of this Act.
- (2) Without limiting the generality of subsection (1), the conditions or restrictions that may be imposed on an environmental licence in relation to an activity include the following:
 - (a) a condition or restriction limiting the amount of biomass of finfish that may be contained in or at the facilities, or on the area of land, or area of State waters, in, at or on which the finfish farming is conducted, or is to be conducted, under the licence;
 - (b) a condition or restriction limiting the amount of finfish, or a product

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- containing finfish, that is capable of being produced under the licence;
- (c) a condition or restriction limiting the amount of raw materials (including smolt) that may be introduced into the facilities, or an area of land, or an area of State waters, in, at or on which the finfish farming is conducted, or is to be conducted, under the licence;
- (d) a condition or restriction limiting the amount of water or energy that may be used to conduct finfish farming under the licence;
- (e) a condition or restriction that –
- (i) limits the amount of a pollutant that may be produced or emitted in the course of the conduct of an activity; or
 - (ii) prohibits the production or emission of any amount of a pollutant that may be produced or emitted in the course of the conduct of an activity; or
 - (iii) limits the rate, or concentration, or both, at which a pollutant that may be produced or emitted in the course of the conduct of an activity may be produced or emitted in the course of the conduct of the activity;

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- (f) a condition or restriction requiring the holder of the environmental licence to prepare, and submit to the Director for approval, an environmental management plan in relation to the conduct of the activity under the licence;
- (g) a condition or restriction requiring the holder of the environmental licence to undertake monitoring of the environmental effects of the conduct of the activity under the licence and to report the results of that monitoring to the Director at a time, or at times, specified in the condition or restriction or by the Director;
- (h) a condition or restriction requiring that, if the conduct of the activity under the licence ceases, the licence holder must ensure that the site is decommissioned or rehabilitated in accordance with the Director's requirements;
- (i) a condition or restriction requiring the holder of the environmental licence to undertake such measures as are specified in the licence to limit the environmental effects of traffic movements, or vessel movements, to and from the area of land, or area of State waters, to which the licence applies;
- (j) a condition or restriction that gives effect to a State policy or an environment protection policy;

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- (k) a condition that prevents or limits the renewal of the licence;
 - (l) a condition or restriction to secure compliance with the general environmental duty;
 - (m) a condition or restriction –
 - (i) requiring the holder of the licence to prepare and submit to the Board a draft environmental improvement programme; and
 - (ii) requiring the holder of the licence to comply with an environmental improvement programme, approved by the Board under section 40(4), that is in force.
- (3) If conditions of a kind referred to in subsection (2)(m) are imposed on an environmental licence –
- (a) the draft environmental improvement programme prepared and submitted to the Director in accordance with the condition is to be treated as such a programme prepared and submitted to the Board under section 39, and Division 7 applies accordingly; and
 - (b) any requirements of the environmental improvement programme approved by the Board under section 40(4) in relation to the holder of the licence are to be taken to be conditions of the

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environmental licence while the programme remains in force; and

- (c) any activity undertaken in accordance with the requirements of the environmental improvement programme approved by the Board under section 40(4) in relation to the holder of the licence is not to be taken for the purposes of this Act to constitute an expansion, intensification or modification of an activity to which the environmental licence relates.
- (4) In determining the conditions and restrictions, if any, to be imposed on an environmental licence in relation to the conduct of an activity to which a marine farming development plan applies under the *Marine Farming Planning Act 1995*, the Director or the Board, as the case may be, is to take into account –
 - (a) the conditions and restrictions, if any, included in the plan; and
 - (b) the management controls, if any, included in the plan.
- (5) Nothing in subsection (4) is to be taken to limit the conditions or restrictions that may be imposed on an environmental licence.
- (6) If a condition or restriction imposed on an environmental licence in relation to an activity is inconsistent with –

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- (a) the conditions and restrictions, if any, included in a marine farming development plan that applies in relation to the activity under the *Marine Farming Planning Act 1995*; or
- (b) a management control, if any, included in a marine farming development plan that applies in relation to the activity under the *Marine Farming Planning Act 1995* –

the condition or restriction, or management control, included in the marine farming development plan is of no effect to the extent of the inconsistency.

- (7) If a condition or restriction imposed on an environmental licence in relation to an activity is inconsistent with the conditions and restrictions, if any, imposed on –
 - (a) a marine farming licence or a fish farm licence; or
 - (b) an exemption permit –

that applies in relation to the activity, the condition or restriction of the marine farming licence, fish farm licence or exemption permit is of no effect to the extent of the inconsistency.

42ZA. Director may require information to be provided

- (1) This section applies in relation to a person if –

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- (a) the person is taken under section 42D to have applied for an environmental licence; or
 - (b) the person has applied under section 42I(1) for an environmental licence; or
 - (c) the person has applied under section 42N(1) for a variation of an environmental licence or the Director is proposing to vary under section 42P(1) an environmental licence held by the person; or
 - (d) the person has applied under section 42S(1) for the renewal of an environmental licence; or
 - (e) the person has applied under section 42W(1) for the transfer of an environmental licence.
- (2) If this section applies in relation to a person, the Director may require the person to –
- (a) provide any information that the Director requires; or
 - (b) verify by statutory declaration any information given in an application made by the person or pursuant to a requirement under this section.
- (3) If this section applies in relation to a person in respect of an application referred to in subsection (1), the Director may refuse to make

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a decision under this Division in relation to the application before the information is provided or verified.

- (4) If this section applies in relation to a person by virtue of subsection (1)(a), the person must comply with a requirement imposed on the person by a notice under subsection (2).

Penalty: Fine not exceeding 100 penalty units.

42ZB. Issue of licence document in relation to licence granted, varied, transferred or renewed

- (1) If an environmental licence is granted, varied, transferred or renewed under this Division by the Director or the Board, the Director must issue a licence document in relation to the licence, by serving the licence document on –
- (a) the person to whom the licence is granted; or
 - (b) the holder of the environmental licence that is being varied or renewed; or
 - (c) the person to whom the environmental licence is to be transferred –

as the case may be.

- (2) If an environmental licence, a variation of an environmental licence, or a condition or restriction of an environmental licence, is specified in section 42ZK to be of no effect subject to the determination of an appeal, a licence document in relation to the

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environmental licence is not, if an appeal against the decision is made, to be issued, if at all, until the determination of the appeal within the meaning of that section.

- (3) Subsection (2) does not apply in relation to the grant of an environmental licence under section 42E.
- (4) If the Board was required –
 - (a) under section 42K to determine whether to grant an environmental licence in relation to an activity in relation to which a permit is required; or
 - (b) under section 42Q to determine whether to vary an environmental licence in relation to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence and that is an expansion, intensification or modification for which a permit is required –

the Director must not issue a licence document in relation to the activity unless and until the Board is notified under section 27AC(5) that a permit has been granted in relation to the activity or the proposed expansion, intensification or modification of an activity that is carried out under an environmental licence, as the case may be.

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- (5) A licence document is to be in the form approved by the Director, which may be an electronic form.
- (6) The form, of a licence document, in relation to an environmental licence, that is approved by the Director, must include the following:
- (a) the name of the person to whom the licence document is issued, with sufficient particularity to accurately identify the person;
 - (b) a statement as to –
 - (i) whether the Board or the Director granted, varied, transferred or renewed the licence; and
 - (ii) the provision of this Act under which the licence was granted, varied, transferred or renewed;
 - (c) the conditions or restrictions, if any, imposed on the licence as granted, varied, transferred or renewed, as the case may be;
 - (d) a description of the land, and any premises, to which the licence relates, that is sufficient to accurately identify the land and premises;
 - (e) if, under the licence, finfish farming is to be conducted in State waters, a description, of the area of State waters on which the finfish farming is to be

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conducted, that accurately identifies the area of State waters;

- (f) the period, if any, for which the licence is, subject to this Act, to remain in force or, if such a period has not been determined in relation to the licence, a statement that the licence remains in force, subject to this Act, for an indefinite period.
- (7) The Director is to provide a copy of a licence document issued under this section to each planning authority in respect of the area of land, or the area of State waters, to which the licence document relates.
- (8) The Director may issue, reissue or cancel a licence document if necessary for the purposes of a determination of the Appeal Tribunal in relation to a decision under this Part.

42ZC. When licences take and cease to have effect

- (1) This section applies subject to section 42ZK.
- (2) An environmental licence that is granted or renewed takes effect on the day on which the licence document in relation to the licence is served under section 42ZB(1) on the holder of the environmental licence.
- (3) The variation of an environmental licence under section 42N, 42P or 42Q takes effect on the day on which the licence document in relation to the licence, as so varied, is served under

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section 42ZB(1) on the holder of the environmental licence.

- (4) On the day on which a copy of a licence document in relation to an activity is served under section 42ZB(1) on a person to whom the environmental licence to which the licence document relates is transferred –
- (a) the environmental licence specified in the licence document takes effect; and
 - (b) the previous environmental licence, in relation to the activity, that was in force immediately before that day, ceases to have effect.
- (5) Subject to this Act, an environmental licence remains in force from the day on which it takes effect until –
- (a) if a period for which the licence is to remain in effect is specified in the licence document in relation to the licence – the day on which that period expires; or
 - (b) if the licence is surrendered – the day on which the licence ceases under section 42ZH to have effect; or
 - (c) the day on which a subsequent licence in relation to the activity that is issued under section 42ZB(1) takes effect; or
 - (d) the day on which notice of the cancellation of the licence is served on the holder of the licence –

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whichever occurs first.

42ZD. Deferral of certain decisions pending outcome of proceedings

(1) In this section –

relevant person, in relation to a decision,
means –

- (a) a person who has made an application to which the decision relates or an associate of such a person; or
- (b) a person –
 - (i) whose application under the *Land Use Planning and Approvals Act 1993* or this Act is referred to the Board or who intends to carry out, or is carrying out, an activity which is referred to the Board under this Division; and
 - (ii) who is a person to whom the decision relates; or
- (c) an associate of a person referred to in paragraph (b); or
- (d) a person to whom, in an application under section 42W, it is proposed that an environmental

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licence be transferred or an associate of such a person.

- (2) This section applies in relation to section 42I, section 42J, section 42K, section 42N, section 42Q, section 42T and section 42W.
- (3) If the Director or the Board is required under a section to which this section applies to make a decision in relation to a relevant person, the Director or the Board, respectively, may defer making the decision pending the outcome of proceedings, against the relevant person or another relevant person, in relation to an offence committed against –
- (a) this Act; or
 - (b) any other Act; or
 - (c) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment –
- by the relevant person or the other relevant person.

42ZE. Notices of certain decisions to be given

- (1) In this section –

Director of Inland Fisheries means the Director of Inland Fisheries appointed under section 11 of the *Inland Fisheries Act 1995* ;

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Secretary means the Secretary of the Department responsible to the Minister to whom the administration of the *Living Marine Resources Management Act 1995* is assigned.

- (2) The Director is to notify the Director of Inland Fisheries of –
- (a) an application under this Division for the grant, variation, renewal or transfer of an environmental licence in relation to inland fish farming or for approval of the surrender of an environmental licence in relation to inland fish farming; and
 - (b) a decision of the Director or the Board to grant or vary, or to refuse to grant or vary, an environmental licence in relation to inland fish farming; and
 - (c) a decision of the Director to renew, transfer, or approve the surrender of, or to refuse to renew, transfer, or approve the surrender of, an environmental licence in relation to inland fish farming; and
 - (d) a decision of the Director to suspend or cancel an environmental licence in relation to inland fish farming.
- (3) The Director is to notify the Secretary of –
- (a) an application under this Division for the grant, variation, renewal or transfer of an environmental licence in relation to

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marine farming or for approval of the surrender of an environmental licence in relation to marine farming; and

- (b) a decision of the Director or the Board to grant or vary, or to refuse to grant or vary, an environmental licence in relation to marine farming; and
- (c) a decision of the Director to renew, transfer, or approve the surrender of, or to refuse to renew, transfer, or approve the surrender of, an environmental licence in relation to marine farming; and
- (d) a decision of the Director to suspend or cancel an environmental licence in relation to marine farming.

Subdivision 8 – Surrender, suspension and cancellation of licences

42ZF. Suspension, or cancellation, of licences

- (1) The Director may, by notice to the holder of an environmental licence, suspend or cancel the licence.
- (2) The Director may only suspend or cancel an environmental licence under subsection (1) if the Director is satisfied that –
 - (a) a condition or restriction of the licence has been contravened; or
 - (b) the holder of the environmental licence has, within the 5-year period before the

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suspension or cancellation, been convicted of an offence, which the Director considers to be an offence relevant to the holding of the environmental licence, against –

- (i) this Act; or
 - (ii) any other Act; or
 - (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment; or
- (c) a lease under Part 4 of the *Marine Farming Planning Act 1995*, for an area on which activities under the environmental licence are carried out, has been cancelled or has expired; or
- (d) the holder of the environmental licence has not paid any fees that are due and payable under this Act, in relation to an environmental licence, by the holder of the licence; or
- (e) an activity under the licence has caused, is causing or is likely to cause serious environmental harm or material environmental harm and the risk of such harm cannot be, within a reasonable period, removed, or adequately reduced, by varying the licence.

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- (3) If an environmental licence is suspended, the licence is to be taken not to be in force while the suspension remains in force.
- (4) A notice under subsection (1) –
- (a) may suspend an environmental licence –
 - (i) for a period specified in the notice; or
 - (ii) until a requirement specified in the notice is satisfied; or
 - (iii) until the Director issues a notice under subsection (7) in relation to the licence –whichever occurs first; and
 - (b) must specify the reasons for suspending or cancelling the licence; and
 - (c) must specify the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.
- (5) Without limiting the generality of subsection (4)(a)(ii), a requirement specified in a notice under that subsection may include a requirement that the holder of a licence to which the notice relates –
- (a) ensure that a scientific study be carried out; or

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- (b) take an action to prevent environmental harm; or
 - (c) take an action to ensure the remediation of environmental harm.
- (6) A person does not commit an offence under section 42C in relation to an activity conducted in accordance with a requirement specified in a notice under subsection (1).
- (7) The Director may, by notice in writing to the holder of an environmental licence, notify the holder of the environmental licence that the suspension of the licence has ceased.
- (8) The Director may, by notice in writing to a person who was the holder of an environmental licence that has been cancelled under this section, disqualify the person from holding an environmental licence at any time or for a period specified in the notice.
- (9) The Director may only issue a notice under subsection (8) to a person who was the holder of an environmental licence that has been cancelled under this section if –
 - (a) the notice is issued after the end of the period in which an application for an appeal against the decision to cancel the licence may be made under Subdivision 9; and
 - (b) where an application for an appeal is made under Subdivision 9 against the

decision to cancel the licence, the appeal is not upheld.

42ZG. Notice to be given before suspension or cancellation

- (1) The Director may not suspend or cancel an environmental licence under section 42ZF(1) unless the Director has –
 - (a) at least 14 days before the suspension or cancellation, issued a notice to the holder of the environmental licence –
 - (i) advising that the Director intends to suspend or cancel the licence; and
 - (ii) specifying the grounds on which the Director intends to suspend or cancel the licence; and
 - (iii) inviting the holder of the environmental licence to provide to the Director, within 14 days after receiving the notice, written reasons as to why the licence ought not be suspended or cancelled; and
 - (b) considered any written reasons provided to the Director under subsection (3).
- (2) If the Director has complied with subsection (1) in relation to a notice to the holder of an environmental licence advising that the Director

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intends to cancel the licence, the Director may suspend the licence instead of cancelling it.

- (3) The holder of an environmental licence to whom a notice has been issued under subsection (1) may provide to the Director, within 14 days after receiving the notice, written reasons as to why the licence ought not be suspended or cancelled as proposed in the notice.

42ZH. Surrender of licence

- (1) The holder of an environmental licence may apply to the Director, in a form approved by the Director, for an approval of the surrender of the licence.
- (2) The Director may, on receiving an application under subsection (1), by notice to the holder of an environmental licence –
- (a) grant an approval of the surrender of the licence without conditions or restrictions; or
 - (b) grant an approval of the surrender of the licence on the conditions or restrictions specified in the notice; or
 - (c) refuse to grant an approval of the surrender of the licence.
- (3) A notice under subsection (2) must –
- (a) if the Director grants an approval of the surrender of an environmental licence on conditions or restrictions, specify the

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- reasons for imposing the conditions or restrictions; and
- (b) if the Director refuses to grant an approval of the surrender of an environmental licence, specify the reasons for the refusal; and
 - (c) specify the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.
- (4) If the Director grants an approval of the surrender of an environmental licence –
- (a) under subsection (2)(a), the licence is surrendered and ceases to have effect on the day on which the notice of grant of the approval is given under that subsection or on a later date specified in the approval; or
 - (b) under subsection (2)(b), the licence is surrendered and ceases to have effect on the day on which the conditions or restrictions specified in the approval of the surrender are satisfied.
- (5) A person whose environmental licence is surrendered under this section is not entitled to any compensation or refund in respect of any matter arising from the surrender.

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Subdivision 9 – Appeals in relation to licences

42ZI. Right of appeal

- (1) A person who intends to carry out an EL activity may appeal to the Appeal Tribunal against a decision of the Director or the Board under section 42J or section 42K to refuse to grant an environmental licence in relation to the activity, except in relation to a decision in accordance with section 42L(1).
- (2) A person to whom an environmental licence has been granted may appeal to the Appeal Tribunal against a decision of the Director or the Board –
 - (a) under section 42F to impose conditions or restrictions on the environmental licence, but only if the condition or restriction to which the appeal relates is not a condition or restriction substantially the same as a condition or restriction imposed on an existing authorisation in relation to the activity to which the environmental licence relates; or
 - (b) under section 42J, or section 42K, to impose conditions or restrictions on the environmental licence.
- (3) A person who holds or has held an environmental licence may appeal to the Appeal Tribunal against a decision of the Director or the Board –

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- (a) under section 42N to vary the environmental licence, if the variation is not a variation of the licence for which the holder of the environmental licence applied under section 42N(1); or
- (b) under section 42N to refuse to vary the environmental licence; or
- (c) under section 42P to vary the environmental licence, but only if the person provided the Director under section 42P(3) with written reasons why the licence ought not be so varied; or
- (d) under section 42Q to vary the environmental licence but, if the variation is made after an assessment conducted under section 27AA(5), only if the person provided the Board under section 42P(10) with written reasons why the licence ought not be so varied; or
- (e) under section 42Q to refuse to vary the environmental licence; or
- (f) under section 42T to refuse to renew the environmental licence; or
- (g) under section 42U to renew the environmental licence; or
- (h) under section 42T or 42U to impose a condition or restriction on an environmental licence as renewed under that section, if the condition or restriction was not a condition or restriction of the

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- licence before the licence was renewed;
or
- (i) under section 42W to refuse to transfer the environmental licence; or
 - (j) under section 42W(4) to impose, on the environmental licence as transferred under section 42W, a condition or restriction that was not a condition or restriction of the environmental licence before it was transferred; or
 - (k) under section 42ZF to suspend or cancel the environmental licence; or
 - (l) under section 42ZH to refuse to grant an approval of the surrender of the environmental licence; or
 - (m) under section 42ZH to impose a condition or restriction on an approval, granted under that section, of the surrender of the environmental licence.
- (4) Subsections (2) and (3) do not apply in relation to a decision of the Director or the Board to impose on an environmental licence a condition referred to in section 42Z(2)(m) or to vary such a condition.
- (5) An appeal under this section must be made by a person within 14 days after the day on which notice of the decision to which the appeal relates was given to the person under section 42E(9), section 42M, section 42N(7), section 42P(4), section 42R, section 42T(9), section 42U(6),

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section 42W(6), section 42ZF(1) or
section 42ZH(2), as the case may be.

42ZJ. Appeals by persons who have made representations

(1) In this section –

relevant representation means –

- (a) a representation under the *Land Use Planning and Approvals Act 1993*, or under section 27G(2), in relation to an application for a permit under that Act in relation to an EL activity; and
 - (b)
 - (c) a representation under section 27G(2), in relation to an assessment under section 27AA.
- (2) A person who has, in respect of an EL activity, made a relevant representation may, within 14 days after being notified under section 42M(3) or section 42R(2) of a decision by the Board –
- (a) to grant or refuse to grant an environmental licence; or
 - (b) to vary or refuse to vary an environmental licence; or
 - (c) to impose a condition or restriction on an environmental licence –

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appeal to the Appeal Tribunal in relation to the decision of the Board.

- (3) Subsection (2) does not apply in relation to a decision of the Board to impose on an environmental licence a condition referred to in section 42Z(2)(m) or to vary such a condition.

42ZK. Effect of notice of appeal

- (1) If an application is made under section 42ZJ(2)(a) in relation to a decision to grant an environmental licence, the licence is of no effect, subject to the determination of the appeal.
- (2) If an application is made under section 42ZI(2)(a) in relation to a decision to impose a condition or restriction on an environmental licence, the licence remains in effect, but the condition or restriction against which the appeal is made is of no effect, subject to the determination of the appeal.
- (3) If an application is made under section 42ZI(2)(b) or section 42ZJ(2)(c) in relation to a decision to impose a condition or restriction on an environmental licence, the licence is of no effect, subject to the determination of the appeal.
- (4) If an application is made under section 42ZI(3)(a), (c) or (d) or section 42ZJ(2)(b) in relation to a decision to vary an environmental licence, the variation of

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the licence is of no effect, subject to the determination of the appeal.

- (5) If an application is made under section 42ZI(3)(f) in relation to a decision to refuse to renew an environmental licence, the licence remains of no effect from the date on which it was due to expire, subject to the determination of the appeal.
- (6) If an application is made under section 42ZI(3)(g) in relation to a decision to renew an environmental licence, the licence remains in effect, subject to the determination of the appeal.
- (7) If an application is made under section 42ZI(3)(h) in relation to a decision to impose a condition or restriction on an environmental licence that is renewed, the condition or restriction of the licence remains in effect, subject to the determination of the appeal.
- (8) If an application is made under section 42ZI(3)(j) in relation to a decision under section 42W(4) to impose a condition or restriction on an environmental licence, the condition or restriction remains in effect, subject to the determination of the appeal.
- (9) If an application is made under section 42ZI(3)(k) in relation to a decision to suspend or cancel an environmental licence, the suspension or cancellation remains in force, subject to the determination of the appeal.

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- (10) If an application is made under section 42ZI(3)(l) in relation to a decision to refuse to grant an approval of the surrender of an environmental licence, the licence remains in effect, subject to the determination of the appeal.
- (11) If an application is made under section 42ZI(3)(m) in relation to a decision to impose, on a grant of an approval under section 42ZH to surrender the licence, a condition or a restriction, the condition or restriction remains in effect, subject to the determination of the appeal.
- (12) A reference in this section to the determination of an appeal includes a reference to the withdrawal, abandonment or dismissal of an appeal.

42ZL. Power of Appeal Tribunal in relation to certain appeals

If an application is made under section 42ZI in relation to an EL activity, the Appeal Tribunal may direct the Board to –

- (a) conduct an assessment under Division 1A and, if it thinks fit, to conduct the assessment in accordance with the directions of the Appeal Tribunal; and
- (b) to provide to the Appeal Tribunal the results of the assessment.

PART 4 – ENFORCEMENT PROVISIONS

Division 1 – Information to be supplied

43. Power to require information

- (1) The Director may, by notice in writing served on a person, require that person to provide the Director, within the period specified in the notice, with such information as the Director reasonably considers necessary in the interests of the environment.
- (2) A person who is aggrieved by a requirement under subsection (1) may appeal to the Appeal Tribunal.
- (3) If a person served with a notice under this section contravenes a provision of the notice, that person is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units;
and
- (b) a natural person, a fine not exceeding 100 penalty units.

43A. False or misleading statements

A person must not, in providing any information or answering any question under this Act –

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- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; or
- (b) a natural person, a fine not exceeding 100 penalty units.

Division 2 – Environment protection notices

43B. Interpretation of Division

For the purposes of this Division –

environmentally relevant activity includes an activity that is no longer being carried out.

44. Environment protection notices

- (1) Where the Director is satisfied that in relation to an environmentally relevant activity –
 - (a) serious or material environmental harm or environmental nuisance is being, or is likely to be, caused; or
 - (b) serious or material environmental harm or environmental nuisance has occurred

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and remediation of that harm or nuisance is required; or

- (c) it is necessary to do so in order to give effect to a State Policy or an environment protection policy; or
- (d) it is desirable to vary the conditions or restrictions of a permit or major project permit; or
- (e) it is necessary to secure compliance with the general environmental duty –

the Director may cause an environment protection notice to be issued and served on the person who is or was responsible for the environmentally relevant activity.

- (2) Where a council officer is satisfied that in relation to an environmentally relevant activity other than a level 2 or level 3 activity –
 - (a) serious or material environmental harm or environmental nuisance is being, or is likely to be, caused; or
 - (b) serious or material environmental harm or environmental nuisance has occurred and remediation of that harm or nuisance is required; or
 - (c) it is necessary to do so in order to give effect to a State Policy or an environment protection policy; or

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- (d) it is desirable to vary the conditions or restrictions of a permit or major project permit; or
- (e) it is necessary to secure compliance with the general environmental duty –

the council officer may issue and serve an environment protection notice on the person who is or was responsible for the environmentally relevant activity.

- (3) An environment protection notice –
 - (a) is to specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
 - (b) is to specify the grounds on which it is issued; and
 - (c) may require the person on whom it is served to take the measures specified in the notice to prevent, control, reduce or remediate environmental harm within a period specified in the notice; and
 - (d) may impose any requirement reasonably required for the purpose for which the notice is issued, including one or more of the following requirements:
 - (i) that the person discontinue, or not commence, a specified activity indefinitely or for a specified period;

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- (ii) that the person not carry on a specified activity except at specified times or subject to specified conditions;
 - (iii) that the person take specified action within a specified period; and
- (e)
- (f) is to contain a statement that the person may, within 14 days from the date on which the notice is served, appeal to the Appeal Tribunal against the notice or against any requirement contained in the notice; and
- (g) takes effect on the day on which it is served.
- (3A) The Director or, in the case of a notice issued under section 44(2), the council officer may require the person on whom an environment protection notice is served to pay reasonable costs and expenses for the issuing of the notice and for ensuring that it is complied with.
- (4) Where an environment protection notice is issued by a council officer, the council must, as soon as practicable and in any event within 7 days, advise the Director in writing of that fact and of any amendment or revocation of the notice.
- (4A) Where an environment protection notice in respect of an activity that is not a level 2 activity

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or a level 3 activity is issued by the Director, the Director must, as soon as practicable and in any event within 7 days, advise the relevant council in writing of that fact and of any amendment or revocation of the notice.

- (5) The Director or, in the case of a notice issued by a council officer, a council officer may, by notice in writing served on a person served with an environment protection notice –
- (a) revoke the notice; or
 - (b) amend the notice by extending the period within which a requirement is to be complied with; or
 - (c) amend or revoke any requirement or condition of the notice.
- (6) A person on whom an environment protection notice has been served or an owner of land to whom an environment protection notice has been forwarded under section 46(1)(a) may appeal to the Appeal Tribunal against the notice or against any requirement contained in the notice.
- (6A) A person who has been served with a notice amending or revoking any requirement or condition of an environment protection notice under subsection (5)(c) may appeal to the Appeal Tribunal against the amendment or revocation.
- (7) An environment protection notice has effect even if it is inconsistent with a permit, or major project permit, in force under the *Land Use*

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Planning and Approvals Act 1993 and the permit or major project permit has no effect to the extent of the inconsistency.

- (7A) An environment protection notice has effect even if it is inconsistent with an environmental licence and the environmental licence has no effect to the extent of the inconsistency.
- (8) If the conditions or restrictions of a permit or a major project permit are varied by the issuing of an environment protection notice under subsection (1)(d) or subsection (2)(d), the Director or, in the case of an environment protection notice issued by a council officer, the council officer must by notice in writing served on any person who made a representation under section 57(5) of the *Land Use Planning and Approvals Act 1993* –
- (a) notify the person of the variation in the conditions or restrictions of the permit; and
 - (b) provide written reasons to that person for the decision to vary the conditions or restrictions of the permit.
- (9) Where the Director or, in the case of an environment protection notice issued under subsection (2), a council officer considers that 2 or more environmentally relevant activities that are subject to permits or major project permits, and in respect of which separate environment protection notices could be issued to vary the conditions or restrictions of those permits or

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major project permits, can be viewed as forming one integrated activity, the Director or council officer may issue a single environment protection notice to vary those conditions or restrictions.

(10) In this section –

vary the conditions or restrictions of a permit includes change existing conditions or restrictions and add or remove conditions or restrictions, provided that the fundamental use or development authorised by the permit or major project permit is not changed.

44A. Correction of mistakes

The Director may correct an environment protection notice issued, or caused to be issued, by him or her, and a council officer may correct an environment protection notice issued by him or her, if the notice contains –

- (a) a clerical mistake or an error arising from any accidental slip or omission; or
- (b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the notice.

45. Duties arising under environment protection notice

- (1) A person who is responsible for an environmentally relevant activity who, having

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been served with an environment protection notice, intends to cease to be responsible for or, in any event, to cease to conduct, the activity in respect of which the notice was served must, before that cessation –

- (a) notify the Director or, in the case of an environment protection notice served by a council officer, the council in writing of that intention; and
- (b) where there is an intention to cease to be responsible for the activity, provide the Director or the council with full particulars in writing of any person succeeding him or her as the person responsible.

Penalty: Fine not exceeding 10 penalty units.

- (2) Where a person who has ceased to conduct an environmentally relevant activity, in respect of which an environment protection notice was served upon him or her, intends to resume conduct of the activity, he or she must, not less than 30 days before that resumption, notify the Director or, in the case of an environment protection notice served by a council officer, the council in writing of that intention.

Penalty: Fine not exceeding 10 penalty units.

- (3) If a person bound by an environment protection notice contravenes a requirement of the notice, that person is guilty of an offence and is liable on summary conviction to –

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- (a) if the notice was issued for the purpose of securing compliance with a requirement imposed by or under this Act and a penalty is fixed by this Act for contravention of that requirement, that penalty; or
 - (b) in any other case, a penalty not exceeding 1 000 penalty units in the case of a body corporate or 500 penalty units in any other case.
- (4) Where a requirement of an environment protection notice is contravened, each person served with the notice is, for the purposes of this section, taken to have contravened that requirement.

45A. Transfer of environment protection notice

- (1) On receipt of notification from a person under section 45(1)(a) and particulars from that person under section 45(1)(b), the Director or, in the case of an environment protection notice served by a council officer, the council officer may amend the environment protection notice by substituting the name of that person with the name of the person identified in the particulars.
- (2) On the amendment of an environment protection notice under subsection (1) –
 - (a) the amended notice must be served on any person whose name has been inserted in the notice in substitution for

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- another name in accordance with that subsection; and
- (b) any such person is not, in respect of the service of the amended notice, a person to whom section 44(6) applies; and
 - (c) the person whose name has been omitted in accordance with subsection (1) is no longer bound by the notice, notwithstanding section 45(4).
- (3) On service being effected under subsection (2)(a), the person served is, subject to subsection (2)(b), taken to have been served with an environment protection notice under section 44(1) or (2), as the case may be.

46. Registration of environment protection notices

- (1) Where an environment protection notice has been served on a person and the Director is of the opinion that the notice affects a title to land, the Director must, as soon as practicable after the environment protection notice is served –
 - (a) cause a copy of the notice to be forwarded to the owner of the land; and
 - (b) cause a copy of the notice, together with particulars of title, to be lodged with the Recorder of Titles.
- (2) Where the land to which the notice relates is not under the *Land Titles Act 1980*, the Recorder of

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Titles must, as soon as practicable after lodgment of the notice and particulars of title –

- (a) register the notice in the Registry of Deeds; and
 - (b) bring the land under that Act as if an application had been made in relation to that land under section 11 of that Act.
- (3) The Recorder of Titles is not bound for the purposes of subsection (2)(b) to investigate the title to any land.
- (4) The Recorder of Titles must register the environment protection notice as if it were a dealing, within the meaning of the *Land Titles Act 1980*, lodged in accordance with that Act.
- (5) Where an environment protection notice has been registered by the Recorder of Titles –
- (a) it remains in force notwithstanding any subsequent disposition of the land to which it relates or any other dealing in the land; and
 - (b) it operates as the basis for a charge on the land, as provided by this Division, securing payment to the Director of costs and expenses incurred in the event of a contravention of the notice.
- (5A) An environment protection notice that is registered under subsection (2) binds, to the extent specified in the notice, any person who –

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-
- (a) is the owner or occupier of the relevant area of land when the notice is registered; and
 - (b) becomes the owner or occupier of the relevant area of land after the notice has been registered –

as if the notice were served on that person.

(6) Where –

- (a) a registered notice is amended or revoked under section 44; or
- (b) a registered notice has been complied with in full; or
- (c) the Director has taken action under this Division to carry out the requirements of a registered notice and payment has been made to the Director of the amount recoverable under this Division in respect of that action –

the Director must deliver to the Recorder of Titles a certificate, in a form approved by the Recorder, certifying that the relevant event took place on the date specified in that certificate.

(6A) In subsection (6) –

registered notice means an environment protection notice that has been registered by the Recorder of Titles.

(7) On receiving a certificate delivered under subsection (6), the Recorder of Titles must

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amend or cancel the registration of the relevant environment protection notice and endorse the register book accordingly.

- (8) Nothing in section 40 of the *Land Titles Act 1980* is to be construed as affecting the validity of any environment protection notice issued under this Division or as prejudicing or affecting the operation of any such notice.

47. Action on non-compliance with environment protection notice

- (1) The Director or, in the case of an environment protection notice served by a council officer, the council may take any action required by an environment protection notice if the requirements of the notice are not complied with within –
- (a) the period specified in the notice under section 44(3)(d)(iii); or
 - (b) if a period is not so specified in the notice, a reasonable time.
- (1A) In determining what is a reasonable time for the purposes of subsection (1)(b), regard must be had to –
- (a) the seriousness of the environmental harm that has occurred or is likely to occur as a result of the act or omission which is the subject of the environment protection notice; and

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- (b) the type of measures the environment protection notice requires the person on whom it is served to undertake to prevent, control, reduce or remediate that environmental harm and the degree of difficulty that person is likely to have in undertaking and completing those measures.
- (2) Any action to be taken under subsection (1) may be taken –
 - (a) on the Director’s behalf, by authorized officers; and
 - (b) on the council’s behalf, by council officers.
- (3) The reasonable costs and expenses incurred by the Director or a council in taking action under this section may be recovered by the Director or the council as a debt from the person who failed to comply with the requirements of the environment protection notice.
- (4) Where an amount is recoverable from a person under this section, the Director or the council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person.
- (5) If the amount is not paid by the person within the period fixed, the person is liable to pay interest charged at the prescribed rate on the amount unpaid.

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- (6) The amount recoverable together with any interest charge payable is, until paid, a charge in favour of the Director or the council on any land owned by the person in relation to which the environment protection notice is registered under this Division.
- (7) Subject to section 119 of the *Local Government Act 1993*, a charge imposed on land by this section has priority over –
- (a) any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and
 - (b) any other charge on the land other than a charge registered before registration of the environment protection notice in relation to the land.
- (8) For the purposes of this Act, a person is an associate of another if –
- (a) they are partners; or
 - (b) one is a spouse, parent or child of another or in a personal relationship, within the meaning of the *Relationships Act 2003*, with the other; or
 - (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
 - (d) one is a body corporate or other entity (whether inside or outside Australia) and

- the other is a director or member of the governing body of the body corporate or other entity; or
- (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body corporate or other entity; or
 - (f) they are related bodies corporate; or
 - (g) a relationship of a prescribed kind exists between them; or
 - (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (9) For the purposes of subsection (8), a beneficiary of a trust includes an object of a discretionary trust.

Division 3 – Civil enforcement

48. Civil enforcement proceedings

- (1) Where –
- (a) a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act; or
 - (b) a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act; or

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- (c) a person has caused environmental harm by contravention of this Act, any other Act or the repealed Act –

the Director, a council or a person who has, in the opinion of the Appeal Tribunal, a proper interest in the subject matter may apply to the Appeal Tribunal for an order under this section.

- (2) The application may be made *ex parte* and, if the Appeal Tribunal is satisfied that there are sufficient grounds, it must issue a summons requiring the respondent to appear before the Appeal Tribunal to show cause why an order should not be made under this section.
- (3) If after hearing –
- (a) the applicant and the respondent; and
- (b) any other person who has, in the opinion of the Appeal Tribunal, a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings –

the Appeal Tribunal may, if it considers it appropriate to do so, by order do any of the things specified in subsection (5).

- (4) If the respondent fails to appear in response to the summons or, having appeared, does not avail himself or herself of an opportunity to be heard the Appeal Tribunal may, if it considers it appropriate to do so, by order do any of the things specified in subsection (5).

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- (5) The Appeal Tribunal may do all or any of the following:
- (a) require the respondent to refrain, either temporarily or permanently, from the act or course of action that constitutes the contravention of, the potential contravention of, or the failure to comply with, this Act;
 - (b) preclude, for a period specified by the Appeal Tribunal, the respondent from carrying out any use or development in relation to the land in respect of which the contravention relates;
 - (c) require the respondent to make good the contravention or default in a manner, and within a period, specified by the Appeal Tribunal;
 - (d) require compliance with any environmental agreement, environmental improvement programme, environmental licence, environment protection notice, investigation notice, remediation notice or site management notice;
 - (e) require the respondent to pay the reasonable costs and expenses incurred by the Board, the Director or a public authority as a result of taking action to prevent or mitigate environmental harm caused by a contravention of this, or any other, Act or to make good resulting environmental damage;

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- (ea) require a respondent to pay the reasonable costs and expenses incurred by an applicant in the course of investigating the matter that is the subject of an application for an order under this section and the making of that application, including, but not limited to, costs arising from –
 - (i) any action taken by an authorized officer or council officer under Division 1 of Part 7; and
 - (ii) the taking of witness statements; and
 - (iii) the gathering of other evidence, including the taking of samples and the conduct of tests, examinations and analyses; and
 - (iv) the preparation and submission of a brief of evidence to any person acting on behalf of the applicant; and
 - (v) any appearance of counsel on behalf of the applicant;
- (f) require the payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred to a person who has suffered injury or loss or damage, to property as a result of a contravention of this, or any other, Act including costs and expenses incurred in taking action to

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- prevent or mitigate such injury, loss or damage;
- (g) require payment (for the credit of the Environment Protection Fund) of an amount in the nature of exemplary damages determined by the Appeal Tribunal.
- (5A) Where an application for an order under this section is rejected, the Appeal Tribunal may require an applicant to pay the reasonable costs and expenses incurred by a respondent in the course of investigating the matter that is the subject of the application and of responding to the application including, but not limited to, costs arising from –
- (a) the taking of witness statements; and
 - (b) the gathering of other evidence, including the taking of samples and the conduct of tests, examinations and analyses; and
 - (c) the preparation and submission of a brief of evidence to any person acting on behalf of the respondent; and
 - (d) any appearance of counsel on behalf of the respondent.
- (6) If in proceedings under this section the Appeal Tribunal is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make a temporary order under this section, the Appeal

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Tribunal may at any time during those proceedings make such an order.

- (7) A temporary order –
- (a) may be made on an *ex parte* application before a summons has been issued under subsection (2); and
 - (b) may be made subject to such conditions as the Appeal Tribunal thinks fit; and
 - (c) is not to operate after the proceedings in which it is made are finally determined.
- (8) A person must not contravene an order or a temporary order under this section.

Penalty: Fine not exceeding 500 penalty units.

- (9) Where the Appeal Tribunal makes an order under subsection (5)(c) and the respondent fails to comply with the order within the period specified by the Appeal Tribunal, the Director may, by leave of the Appeal Tribunal, cause any work contemplated by the order to be carried out, and may recover the costs of that work, as a debt, from the respondent.
- (10) The Appeal Tribunal may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for a permit that should have been but was not made, or to remedy any other default.
- (11) The Appeal Tribunal may, on an application under this section, exercise the powers conferred

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on it by section 62 (1) of the *Land Use Planning and Approvals Act 1993* in relation to any use or development of land as if the application were a hearing of an appeal.

(12)

(13) Proceedings under this section may be commenced at any time within 3 years after the date of the relevant event referred to in subsection (1).

48A. Minister may revoke order of Appeal Tribunal

(1) The Minister, by notice published in the *Gazette*, may revoke an order of the Appeal Tribunal made under section 48 if –

- (a) the order has effect, at least in part, by reference to a quantitative value in respect of a particular matter; and
- (b) a different quantitative value is provided for in respect of that matter in a subsequent Act or other instrument of a legislative character.

(2) A notice under subsection (1) –

- (a) may extend to an order of the Appeal Tribunal made before the commencement of this section; and
- (b) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

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- (3) This section does not apply to a temporary order of the Appeal Tribunal.

49.

Division 4 – General offences

50. Offences of causing serious environmental harm

- (1) A person who causes serious environmental harm by polluting the environment intentionally or recklessly and with the knowledge that serious environmental harm will or might result is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 10 000 penalty units; or
- (b) a natural person, a fine not exceeding 2 500 penalty units or imprisonment for a term not exceeding 4 years, or both.

- (2) A person who causes serious environmental harm by polluting the environment is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or

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- (b) a natural person, a fine not exceeding 1 200 penalty units.
- (3) If in proceedings for an offence against subsection (1) the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the latter offence.

51. Offences of causing material environmental harm

- (1) A person who causes material environmental harm by polluting the environment intentionally or recklessly and with the knowledge that material environmental harm will or might result is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units;
or
- (b) a natural person, a fine not exceeding 1 200 penalty units or imprisonment for a term not exceeding 2 years, or both.
- (2) A person who causes material environmental harm by polluting the environment is guilty of an offence.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 1 200 penalty units;
or
 - (b) a natural person, a fine not exceeding 600 penalty units.
- (3) If in proceedings for an offence against subsection (1) the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the latter offence.

51A. Offence to deposit pollutant where environmental harm may be caused

- (1) A person must not deposit a pollutant, or cause or allow a pollutant to be deposited, in a place or position where it could reasonably be expected to cause serious environmental harm.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2500 penalty units;
or
 - (b) a natural person, a fine not exceeding 1200 penalty units.
- (2) A person must not deposit a pollutant, or cause or allow a pollutant to be deposited, in a place or position where it could reasonably be expected to cause material environmental harm.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 1200 penalty units;
or
- (b) a natural person, a fine not exceeding 600 penalty units.

51B. Offence of contravening permit conditions

A person must not conduct an activity to which a permit, granted by a planning authority pursuant to a planning scheme or order or to a determination of the Appeal Tribunal, relates in such a way that constitutes a breach of a condition or restriction of the permit that –

- (a) the Board has required under section 25(5); or
- (b) the Director has caused to be varied under section 44(1)(d).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
- (b) a natural person, a fine not exceeding 500 penalty units.

52. Treatment of offences

- (1) An offence against section 50, 51 or 51A is an indictable offence.

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- (2) Notwithstanding that an offence referred to in subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.
- (3) If in proceedings for an offence against this Part of causing serious environmental harm the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against this Part of causing material environmental harm or of causing an environmental nuisance, the court may find the defendant guilty of either of the latter offences.
- (4) If in proceedings for an offence against this Part of causing material environmental harm the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against this Part of causing an environmental nuisance, the court may find the defendant guilty of the latter offence.
- (5) If in proceedings for an offence against section 51A(1) the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against section 51A(2) or 53, the court may find the defendant guilty of either of the latter offences.
- (6) If in proceedings for an offence against section 51A(2) the court is not satisfied that the

defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against section 53, the court may find the defendant guilty of the latter offence.

53. Offence of causing environmental nuisance

- (1) A person who wilfully and unlawfully causes an environmental nuisance is guilty of an offence.

Penalty: Fine not exceeding 300 penalty units.

- (2) A person who unlawfully causes an environmental nuisance is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units.

- (3) Where an offence under subsection (1) or (2) is constituted by the emission of noise that is not an emission specified in an environment protection policy to be an environmental nuisance, the emission is to be taken to unreasonably interfere with a person's enjoyment of the environment if it is unreasonable having regard to –

- (a) its volume, intensity or duration; and
- (b) the time, place and other circumstances in which it is emitted; and
- (c) in the case of noise emitted from residential premises, whether it is, or is likely to be, audible in a habitable room in any other residential premises.

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- (4) If in proceedings for an offence against subsection (1) the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the latter offence.
- (5) Subsections (1) and (2) do not apply to the following:
- (a) conduct that is an offence against section 50 or 51;
 - (b) noise that –
 - (i) is emitted from or by a primary industry activity, within the meaning of the *Primary Industry Activities Protection Act 1995*; and
 - (ii) by reason of section 4 of that Act, does not constitute a nuisance within the meaning of that Act.
- (6) In this section –
- habitable room*** means any room other than a storage area, bathroom, laundry, toilet or pantry;
- residential premises*** means any building or part of a building lawfully used as, or for the purposes of, a residence and includes any land within the boundaries of the block of land on which the building is situated.

53A. Evidentiary provision for environmental nuisance

If, in a proceeding for an offence against section 53(1) or (2), an authorized officer or a council officer gives evidence, based on the officer's own senses, that noise, smoke, dust, fumes or odour was emitted from a place occupied by the defendant and travelled to, or was, or was likely to be, detectable at, a place occupied by another person, that evidence is *prima facie* evidence of the matters so stated.

54. Continuing offences

- (1) Where an offence against this Act is alleged to have been committed by a person and the act or omission which constituted the alleged offence continues after the person has been served with notice of the alleged offence and the person is subsequently convicted of the offence, the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues after the service of the notice of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.
- (2) Where an offence against this Act is committed by a person and the act or omission which constituted the offence continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and is liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission

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continues after that conviction of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.

- (3) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

55. General criminal defence

- (1) It is a defence to a charge of an offence against this Act, including –
- (a) an offence by a body corporate or a natural person where conduct or a state of mind is imputed to the body corporate or person under this Part; and
 - (b) an offence by an officer of a body corporate under this Part –

if it is proved that –

- (c) the alleged offence did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the commission of the offence or offences of the same or a similar nature; or
- (d) the act or omission alleged to constitute the offence was justified by the need to protect life, the environment or property in a situation of emergency and that the

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defendant was not guilty of any failure to take all reasonable and practicable measures to prevent or deal with such an emergency.

- (2)
- (3) Where a body corporate or other employer seeks to establish either of the defences provided by this section by proving the establishment of proper workplace systems and procedures designed to prevent a contravention of this Act, that proof must be accompanied by proof–
- (a) that proper systems and procedures were also in place whereby any such contravention or risk of such contravention of this Act that came to the knowledge of a person at any level in the workforce was required to be reported promptly to the governing body of the body corporate or to the employer, or to a person or group with the right to report to the governing body or to the employer; and
 - (b) that the governing body of the body corporate or the employer actively and effectively promoted and enforced compliance with this Act and with all such systems and procedures within all relevant areas of the workforce.
- (4) A person who would, but for either of the defences provided by this section, be guilty of an offence of contravening a provision of this Act

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is, despite that defence, to be taken to have contravened that provision for the purposes of–

- (a) any civil proceedings under this Act in respect of the contravention; and
- (b) the issuing or enforcement of any environment protection notice, investigation notice, remediation notice or site management notice under this Act in respect of the contravention; and
- (c) the making by a court of an order under section 63 in proceedings for an offence in respect of the contravention.

55A. General environmental duty defence

- (1) In any proceedings under this Act, if it is alleged that a person has contravened section 50, 51, 51A or 53, it is a defence if –
 - (a) in the case of an offence arising solely from the emission of a pollutant, maximum quantities, concentrations, emission rates, discharge rates or overall volumes of the particular pollutant have been set in a State Policy, an environment protection policy, a condition or restriction specified in an environmental licence (other than a condition referred to in section 42Z(2)(a), (b), (c) or (d)), or as a condition in a permit or a major project permit, within the meaning of the *Land Use Planning and Approvals Act 1993*,

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and it is shown that those quantities, concentrations, emission rates, discharge rates or overall volumes were not exceeded; or

(b) in the case of any other offence –

(i) a State Policy, environment protection policy, environmental licence, permit or a major project permit, within the meaning of the *Land Use Planning and Approvals Act 1993*, provides that compliance with specified provisions of that instrument will satisfy the general environmental duty in respect of an activity, and it is shown that those provisions, insofar as they relate to, or involve, the act or omission comprising the offence were complied with; or

(ii) a code of practice, made and approved in accordance with the regulations, provides that the taking of specified measures will satisfy the general environmental duty in respect of an activity, and it is shown that those measures, insofar as they relate to, or involve, the act or omission comprising the offence were taken.

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- (2) The defences applied under subsection (1) are in addition to, and do not derogate from, the general defence under section 55.

56. Notice of defences

- (1) A person who intends to rely on a defence under this Act may only do so if the person gives notice in writing of that intention to the Director within 28 days after the summons to answer to the charge is served on the person.
- (2) The court may, on the application of a person who intends to rely on a defence under this Act, waive the period within which notice of that intention is to be given to the Director.

57. Proof of intention, &c., for offences

Subject to any express provision in this Act to the contrary, it is not necessary to prove any intention or other state of mind in order to establish the commission of an offence against this Act.

58. Imputation in proceedings of conduct or state of mind of officer, employee, &c.

- (1) For the purposes of proceedings for an offence against this Act –
- (a) the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible

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authority will be imputed to the body corporate; and

- (b) the conduct and state of mind of an employee or agent of a natural person acting within the scope of his or her actual, usual or ostensible authority will be imputed to that person.

(2) Where –

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence but for the operation of subsection (1) –

the person is not liable to be punished by imprisonment for the offence.

- (3) For the purposes of this section, a reference to *conduct* or *acting* includes a reference to failure to act.

59. Statement of officer evidence against body corporate

In proceedings for an offence against this Act by a body corporate, a statement made by an officer of the body corporate is admissible as evidence against the body corporate.

60. Liability of officers of body corporate

- (1) Where a body corporate commits an offence against this Act, a person who is an officer of the body corporate is –
 - (a) subject to the general defence under this Part, guilty of an offence; and
 - (b) subject to subsection (2), liable to the same penalty as may be imposed for the principal offence when committed by a natural person.
- (2) Where an officer of a body corporate is convicted of an offence under subsection (1), the officer is not liable to be punished by imprisonment for the offence.
- (3) Where a body corporate commits an offence of contravening a provision of this Act, an officer of the body corporate who knowingly promoted or acquiesced in the contravention is also guilty of an offence against that provision.
- (4) An officer of a body corporate may be prosecuted and convicted of an offence pursuant to subsection (1) or (3) whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

61. Reports in respect of alleged contraventions

Where a person reports to the Director or a council an alleged contravention of this Act, the Director or the council must, at the request of the

person, advise the person as soon as practicable of the action (if any) taken or proposed to be taken by the Director or the council in respect of the allegation.

62. Commencement of proceedings for offences

- (1) Proceedings for an offence against this Act may be commenced –
 - (a) in the case of an offence relating to a level 1 activity or an environmental nuisance, by an authorized officer or a council officer; or
 - (b) in any other case, by an authorized officer.
- (2) Proceedings for an offence against this Act may be commenced at any time within 3 years after the date of the alleged commission of the offence or, if the court is satisfied that it is just and reasonable, at any later time within 10 years after the date of the alleged commission of the offence.

63. Orders by court against offenders

- (1) Where, in proceedings for an offence against this Act, the court finds the defendant guilty of a contravention of this Act, the court may, in addition to any penalty it may impose, do one or more of the following:
 - (a) order the person to take specified action to make good any resulting

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environmental damage and, if appropriate, to take specified action to prevent or mitigate further environmental harm;

- (b) order the person to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit;
- (c) order the person to take specified action to publicize the contravention and its environmental and other consequences and any other orders made against the person;
- (d) order the person to pay—
 - (i) to the Board, the Director or any public authority that has incurred costs or expenses in taking action to prevent or mitigate the environmental harm or to make good any resulting environmental damage; and
 - (ii) to any person who has suffered loss or damage to property as a result of the contravention, or incurred costs or expenses in taking action to prevent or mitigate such loss or damage—

the reasonable costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be,

in such amount as is determined by the court.

- (2) The court may, by an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

64. Recovery of technical costs associated with prosecutions

Where a person is convicted of an offence against this Act, the court may, on application by the Director or a council, order the convicted person to pay to the Director or the council the reasonable costs and expenses incurred by the Director or the council in the taking of any samples or the conduct of tests, examinations or analyses in the course of the investigation and prosecution of the offence.

65. Recovery of other costs associated with prosecutions

Where a person is convicted of an offence, the court may order the person to pay, in addition to any costs and expenses payable under section 63 or 64, the reasonable costs and expenses incurred by the Director or the council in the course of the investigation and prosecution of the offence, including, but not limited to, costs and expenses arising from –

- (a) any action taken by an authorized officer or council officer under Division 1 of Part 7; and

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- (b) the taking of witness statements; and
- (c) the gathering of other evidence; and
- (d) the preparation and submission of a brief of evidence to any person acting on behalf of the applicant; and
- (e) any appearance of counsel on behalf of the Director or the council.

66. Recovery from related bodies corporate

Where –

- (a) an amount is payable by a body corporate under this Act or an order of a court made under this Act; and
- (b) at the time of the contravention giving rise to that liability, that body and another body were related bodies corporate –

the related bodies corporate are jointly and severally liable to make the payment.

Division 5 – Environmental infringement notices

67. Environmental infringement notices

- (1) Where an authorized officer or a council officer is satisfied that a person has committed a prescribed offence, the authorized officer or the council officer may serve an environmental infringement notice in respect of that offence on

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that person or, if the identity of that person cannot be readily ascertained or confirmed, on the occupier or person apparently in charge of the place or vehicle at, in or in relation to which the officer is satisfied such an offence has been committed.

- (2) An environmental infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.

(3 - 10)

68 - 70.

71. Payments in respect of environmental infringement notices

Any payments in respect of an environmental infringement notice are payable –

- (a) to a council, if the notice was served by a council officer; or
- (b) in any other case, into the Public Account and then paid from the Public Account to the Environment Protection Fund.

72. Prescribed offences and penalties for Division 5

- (1) The regulations may prescribe offences for the purposes of this Division and the penalties applicable under this Division to those offences.

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- (2) The offences that may be prescribed for the purposes of subsection (1) may include –
- (a) any offence that is an offence under this Act or the regulations; or
 - (b) any offence that is an offence under the *Pollution of Waters by Oil and Noxious Substances Act 1987*, the *Marine-related Incidents (MARPOL Implementation) Act 2020* or regulations made under either of those Acts; or
 - (c) any offence under section 63(2)(c) of the *Land Use Planning and Approvals Act 1993*.
- (3) Regulations made for the purposes of subsection (1) may provide that an offence is a prescribed offence for the purposes of this Division only if it is constituted by conduct of a type specified in the regulations.
- (4) If an offence under the *Pollution of Waters by Oil and Noxious Substances Act 1987*, the *Marine-related Incidents (MARPOL Implementation) Act 2020*, regulations made under either of those Acts or section 63(2)(c) of the *Land Use Planning and Approvals Act 1993* is prescribed by the regulations for the purposes of this Division –
- (a) this Division applies in respect of that offence; and
 - (b) this Division is to be read as one with the *Pollution of Waters by Oil and Noxious*

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Substances Act 1987, the Marine-related Incidents (MARPOL Implementation) Act 2020, regulations made under either of those Acts or the Land Use Planning and Approvals Act 1993, as the case requires.

PART 5 – ENVIRONMENTAL IMPACT ASSESSMENTS

73. Requirement for environmental impact assessment

A requirement under any law for an environmental impact assessment to be undertaken in respect of a proposed environmentally relevant activity is to be read as a requirement for the authority responsible for assessing the proposed environmentally relevant activity to undertake an environmental impact assessment in accordance with the Environmental Impact Assessment Principles.

74. Environmental Impact Assessment Principles

- (1) An environmental impact assessment may be required when an environmentally relevant activity is proposed to be undertaken by the public or the private sector.
- (2) The level of assessment which may be required is to be appropriate to the degree of significance of the proposed environmentally relevant activity to the environment and the likely public interest in the proposed activity.
- (3) Preparation of the case required for assessment of the proposed environmentally relevant activity must be undertaken by the proponent in accordance with the requirements of the authority responsible for assessing the proposed environmentally relevant activity.

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- (4) An authority responsible for assessing the proposed environmentally relevant activity must provide the proponent of the proposed activity with guidance on –
 - (a) the potential environmental impacts arising from the proposed activity; and
 - (b) the issues arising from the proposed activity which might give rise to public concern; and
 - (c) the level of assessment required; and
 - (d) the timing for each stage of the assessment.
- (5) If required by the Director of Public Health, an environmental impact assessment must include an assessment of the impact of the proposed environmentally relevant activity on public health.
- (6) An opportunity is to be provided for public consultation on the proposal before the assessment process is complete.
- (7) The authority responsible for assessing a proposed environmentally relevant activity must publicly disclose all information relating to the environmental impact of the proposal, except where there is a legitimate commercial, national security or environmental reason for confidentiality.
- (8) The authority responsible for assessing a proposed environmentally relevant activity must

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develop procedures with a view to resolving any conflict or dispute which may arise for consideration during the course of the assessment process.

- (9) The environmental impact assessment is to establish the information base for decision-making on –
- (a) the environmental impacts of the proposed environmentally relevant activity; and
 - (b) whether the proposed activity should proceed; and
 - (c) any restrictions or conditions under which the proposed activity should proceed; and
 - (d) the management regime under which the proposed activity should proceed.

PART 5A – CONTAMINATED SITES

Division 1 – Preliminary

74A. Interpretation of Part 5A

(1) In this Part –

allow, in relation to the escape, discharge, emission or release of a pollutant, includes the failure of a person with the authority to prevent the escape, discharge, emission or release to prevent it;

area of land includes any water in, on or under that area of land;

background concentration, in relation to a pollutant, means the naturally occurring, ambient concentration of that pollutant;

contaminated site has the meaning given by subsections (2), (3) and (4);

investigation notice means an investigation notice, as amended from time to time, issued under section 74C for the purpose specified in section 74E(1);

notice means an investigation notice, a remediation notice or a site management notice;

owner, in relation to an area of land, includes a person who has taken possession of the area of land in the exercise of a right

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under a mortgage, charge or other encumbrance and has the power to sell or otherwise dispose of the area of land;

remediation notice means a remediation notice, as amended from time to time, issued under section 74C for the purpose specified in section 74F(1);

site management notice means a site management notice, as amended from time to time, issued under section 74C for the purpose specified in section 74G(1).

- (2) An area of land is a contaminated site if –
- (a) there is in, on or under that area of land a pollutant in a concentration that –
 - (i) is above the background concentration; and
 - (ii) is causing or is likely to be causing serious or material environmental harm or environmental nuisance, or is likely to cause serious or material environmental harm or environmental nuisance in the future if not appropriately managed; or
 - (b) a site management notice is registered on the land under section 74I and shown on the relevant folio in the register of title of land kept under the *Land Titles Act 1980*.

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- (3) Despite subsection (2), an area of land is not a contaminated site if –
- (a) the pollutant present in the area of land in a concentration above the background concentration as referred to in that subsection is a prescribed pollutant; or
 - (b) the pollutant present in the area of land in a concentration above the background concentration as referred to in that subsection is present in or because of prescribed circumstances.
- (4) A contaminated site includes any water in, on or under the contaminated site.

Division 2 – Action on becoming aware of contaminated site

74B. Action by owner or occupier on becoming aware of contaminated site

- (1) If the owner or occupier of any area of land knows, reasonably believes or should in the circumstances reasonably believe that the area of land is or is likely to be a contaminated site, the owner or occupier –
- (a) must not commence or continue any activity that may directly or indirectly further cause or continue the exposure, escape, discharge, emission or release of the pollutant that the owner or occupier knows, reasonably believes or should reasonably believe has made the area of land a contaminated site; and

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- (b) must notify the Director of the details, if known, of the pollutant concerned, the circumstances in which the pollutant escaped or was discharged, emitted or released and any action that has been or is being taken to remedy the pollution –
 - (i) within 24 hours after the owner or occupier becomes aware, first reasonably believes or should first reasonably believe that the area of land is likely to be a contaminated site, if he or she became aware, first reasonably believed or should first reasonably have believed that the area of land is, or is likely to be, a contaminated site after the commencement of this section; or
 - (ii) within 6 months after the commencement of this section if the owner or occupier, at the time this section commenced, was aware, reasonably believed or should reasonably have believed that the area of land was, or was likely to be, a contaminated site.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 200 penalty units;
or

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- (b) a natural person, a fine not exceeding 600 penalty units.
- (2) An owner or occupier is not required to give notice under subsection (1)(b) if the person has reasonable grounds for believing that the fact that the area of land is likely to be a contaminated site has already come to the notice of the Director.
- (3) An owner or occupier of an area of land is required to notify the Director under subsection (1)(b) despite the fact that to do so might incriminate him or her or make him or her liable to a penalty.

Division 3 – Investigation, remediation and site management notices

74C. Types of notices

The Director may issue one or more of the following notices in accordance with this Division:

- (a) an investigation notice;
- (b) a remediation notice;
- (c) a site management notice.

74D. Content of notices generally

- (1) A notice must specify –
- (a) the area of land to which it applies; and

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- (b) the name and address of every person to be served with the notice; and
- (c) either –
 - (i) the works required to be carried out by each person served with the notice; or
 - (ii) the works required to be carried out and the proportion of those works for which each person served with the notice is responsible; and
- (d) the time within which the works referred to in paragraph (c) must be completed; and
- (e) any other action each person served with the notice must take, must not take or must cease; and
- (f) the time within which a person must take, must not take or must cease any action referred to in paragraph (e); and
- (g) the grounds on which the Director reasonably believes that the area of land is or may be contaminated; and
- (h) that, within 14 days after receiving the notice, a person served with the notice may appeal to the Appeal Tribunal against the notice or any requirement of the notice.

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- (2) When determining the work or action to be carried out by each person served with a notice or the proportion of the works or actions to be carried out by each such person, the Director may take into account –
- (a) the period during which each of those persons occupied or was responsible for the area of land which is the contaminated site; and
 - (b) the use to which each of those persons put the area of land; and
 - (c) the responsibility of each of those persons for any known or likely incident or circumstance which, in the opinion of the Director, could have caused or contributed to the presence of the pollutant in, on or under that area of land; and
 - (d) any other matter the Director considers relevant.
- (3) A notice may –
- (a) specify that the notice binds any person who becomes the owner or occupier of the area of land after the notice has been issued; and
 - (b) contain any other matter the Director considers appropriate.

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74E. Investigation notice

- (1) If the Director reasonably believes that an area of land is or may be a contaminated site, he or she may issue an investigation notice for the purpose of determining one or more of the following:
 - (a) whether the area of land is a contaminated site;
 - (b) the type of pollutant concerned;
 - (c) the extent of the pollution caused by the pollutant;
 - (d) the possibility of the pollutant escaping from the area of land and affecting another area of land or a watercourse or body of water;
 - (e) the extent of environmental harm caused, being caused or that may be caused by the pollution;
 - (f) whether the pollutant is being appropriately managed.
- (2) The Director may serve an investigation notice in respect of an area of land on any person the Director knows or reasonably believes is, or is likely to be, wholly or partly responsible for causing or possibly causing that area of land to be a contaminated site.
- (3) For the purposes of subsection (2) and without limiting that subsection, an owner, occupier or

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person in charge, or former owner, occupier or person in charge, of an area of land (the “pollutant source land”) may be taken to be responsible for causing or possibly causing the pollutant source land, or another area of land, in respect of which the investigation notice is issued to be a contaminated site if he or she, while such an owner, occupier or person in charge, in the opinion of the Director –

- (a) knew, or suspected or reasonably should have suspected, that there was or possibly was in, on or under the pollutant source land a pollutant in a concentration greater than the background concentration; and
 - (b) allowed or is likely to have allowed, or possibly allowed or possibly is likely to have allowed, the pollutant to escape or be discharged, emitted or released into, on or under the pollutant source land or that other area of land.
- (4) The Director may serve an investigation notice in respect of an area of land on the owner of the area of land who is not or is not likely to be responsible for causing or possibly causing that area of land to be a contaminated site if –
- (a) the owner became the owner of the area of land after the commencement of this section; and
 - (b) the Director is of the opinion that, at the time the owner became the owner of the

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area of land, the owner knew, suspected or should have reasonably suspected that the area of land was or was likely to be a contaminated site; and

(c) either –

(i) the Director has been unable to identify, find or serve with the investigation notice under subsection (2), after taking all reasonable steps to do so, any person who the Director reasonably believes is, or is likely to be, wholly or partly responsible for causing or possibly causing that area of land to be a contaminated site; or

(ii) each person served with a notice under subsection (2) is bankrupt or insolvent; or

(iii) each person served with a notice under subsection (2) has appealed in relation to the notice and the appeal has been upheld.

(5) The Director may serve an investigation notice in respect of an area of land on a person not referred to in subsection (2) or (4) if the Director has been provided with written documentation showing to the satisfaction of the Director that the person has accepted responsibility for the investigation of the pollution of the area of land, either specifically or as part of a more general

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acceptance of responsibility in relation to the pollution of the area of land.

- (6) Without limiting the works or actions that an investigation notice may require a person on whom it is served to do or take, an investigation notice may require a person to do or take one or more of the following works or actions:
- (a) testing, sampling and analysis of land, water and air;
 - (b) the installation of groundwater bores;
 - (c) data analysis;
 - (d) the making of progress reports to the Director;
 - (e) the conduct of public meetings for the purpose of informing the public on the progress made in investigating the area of land to which the investigation notice relates or for any other purpose the Director considers appropriate.

74F. Remediation notice

- (1) The Director may issue a remediation notice in respect of an area of land that is a contaminated site for the purpose of requiring the taking of action to ensure that persons are protected from harm, and the environment is protected from harm or further harm, that is or is likely to be caused by the relevant pollutant in, on or under that area of land when that area of land is used in

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accordance with its existing land use or a proposed land use.

- (2) The Director may serve a remediation notice in respect of an area of land on any person the Director reasonably believes is, or is likely to be, wholly or partly responsible for causing that area of land to be a contaminated site.
- (3) For the purposes of subsection (2) and without limiting that subsection, an owner, occupier or person in charge, or former owner, occupier or person in charge, of an area of land (the “pollutant source land”) may be taken to be responsible for causing the pollutant source land, or another area of land, in respect of which the remediation notice is issued to be a contaminated site if he or she, while such an owner, occupier or person in charge, in the opinion of the Director –
 - (a) knew, suspected or reasonably should have suspected that there was in, on or under the pollutant source land a pollutant in a concentration greater than the background concentration; and
 - (b) allowed or is likely to have allowed the pollutant to escape or be discharged, emitted or released into, on or under the pollutant source land or that other area of land.
- (4) The Director may serve a remediation notice in respect of an area of land on the owner of the area of land who is not or is not likely to be

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responsible for causing that area of land to be a contaminated site if –

- (a) the owner became the owner of the area of land after the commencement of this section; and
- (b) the Director is of the opinion that, at the time that owner became the owner of the area of land, that owner knew, suspected or should have reasonably suspected that the area of land was or was likely to be a contaminated site; and
- (c) either –
 - (i) the Director has been unable to identify, find or serve with the notice under subsection (2), after taking all reasonable steps to do so, any person who the Director reasonably believes is, or is likely to be, wholly or partly responsible for causing that area of land to be a contaminated site; or
 - (ii) each person served with a notice under subsection (2) is bankrupt or insolvent; or
 - (iii) each person served with a notice under subsection (2) has appealed in relation to the notice and the appeal has been upheld.

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- (5) The Director may serve a remediation notice in respect of an area of land on a person not referred to in subsection (2) or (4) if the Director has been provided with written documentation showing to the satisfaction of the Director that that person has accepted responsibility for the remediation of the area of land, either specifically or as part of a more general acceptance of responsibility in relation to the pollution of the area of land.
- (6) Without limiting the works or actions that a remediation notice may require a person on whom it is served to do or take, a remediation notice may require a person to do or take one or more of the following works or actions:
 - (a) for the purpose of determining what remediation options are suitable, any of the actions that may be required by an investigation notice;
 - (b) the erection of a fence, wall, bund or other barrier;
 - (c) the removal, destruction, reduction, containment or dispersal of the pollutant;
 - (d) the removal or treatment of any soil, sand, rock, water or any other solid or liquid material;
 - (e) the vacation by the occupier of the whole or any part of the contaminated site;
 - (f) the erection or display of a sign that does one or more of the following:

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- (i) prohibits persons from entering, or regulates the entry of persons to, the contaminated site;
 - (ii) prohibits or regulates the use of the contaminated site as specified in the sign;
 - (iii) gives directions relating to the use of the contaminated site or any other matter the Director considers appropriate;
- (g) the making of progress reports to the Director;
- (h) the conduct of public meetings for the purpose of informing the public on the progress made in remediation of the contaminated site or for any other purpose the Director considers appropriate.

74G. Site management notice

- (1) The Director may issue a site management notice in respect of an area of land that is a contaminated site for the purpose of ensuring the safe management of the contaminated site and the pollutant that is polluting it.
- (2) The Director may serve a site management notice in respect of an area of land on any one or more of the following persons:

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- (a) any person the Director reasonably believes is, or is likely to be, wholly or partly responsible for causing the area of land to be a contaminated site;
 - (b) the owner, occupier or person in charge of the area of land;
 - (c) any other person if written documentation has been provided to the Director showing to the satisfaction of the Director that the person has accepted responsibility for the management of the pollution of the area of land, either specifically or as part of a more general acceptance of responsibility in relation to the pollution of the area of land.
- (3) For the purposes of subsection (2)(a) and without limiting that subsection, an owner, occupier or person in charge, or former owner, occupier or person in charge, of an area of land (the “pollutant source land”) may be taken to be responsible for causing the pollutant source land, or another area of land, in respect of which the site management notice is issued to be a contaminated site if he or she, while such an owner, occupier or person in charge, in the opinion of the Director –
- (a) knew, suspected or reasonably should have suspected that there was in, on or under the pollutant source land a pollutant in a concentration greater than the background concentration; and

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- (b) allowed, is likely to have allowed or is likely to allow the pollutant to escape or be discharged, emitted or released into, on or under the pollutant source land or that other area of land.
- (4) Without limiting the works or actions that a site management notice may require a person on whom it is served to do or take, a site management notice may require a person to do or take one or more of the following works or actions:
- (a) the erection of a fence, wall, bund or other barrier;
 - (b) testing and monitoring for the purpose of detecting any changes in the nature and extent of any risk of harm to persons or environmental harm that is or may be caused by the relevant pollutant in, on or under the contaminated site when that site is used in accordance with its existing land use or a proposed land use;
 - (c) any action the Director considers necessary to prevent or reduce the transport or escape from the contaminated site of the pollutant concerned when that area is used in accordance with its existing land use or a proposed land use;
 - (d) any action the Director considers necessary to prevent or reduce the risk of harm to persons or environmental harm

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that is or may be caused by the relevant pollutant in, on or under the contaminated site when that site is used in accordance with its existing land use or a proposed land use;

- (e) the vacation by the occupier of the whole or any part of the contaminated site;
- (f) the erection or display of a sign that does one or more of the following:
 - (i) prohibits persons from entering, or regulates the entry of persons to, the contaminated site;
 - (ii) prohibits or regulates the use of the contaminated site as specified in the sign;
 - (iii) gives directions relating to the use of the contaminated site or any other matter the Director considers appropriate;
- (g) the making of progress reports to the Director;
- (h) the conduct of public meetings for the purpose of informing the public on the management of the contaminated site or for any other purpose the Director considers appropriate.

74H. Copies of notice to be served

As soon as practicable after a notice has been served in respect of an area of land that is a contaminated site, the Director is to cause a copy of the notice to be served on each of the following persons:

- (a) an owner or occupier of the area of land who has not been served with the notice;
- (b) any other person who has an interest in the area of land that is registered or recorded on the relevant folio of the register kept under the *Land Titles Act 1980* in respect of that land;
- (c) the council of the municipal area in which that land is situated.

74I. Registration of notice

- (1) In this section, unless the contrary intention appears –

register means the register kept under the *Land Titles Act 1980*.

- (2) As soon as practicable after a notice has been served on a person in respect of an area of land, the Director is to lodge a copy of the notice, together with the particulars of title of the land, with the Recorder of Titles.
- (3) If the land to which a notice relates is not under the *Land Titles Act 1980*, the Recorder of Titles,

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as soon as practicable after the copy of the notice and particulars are lodged with him or her is to –

- (a) register the copy of the notice in the Registry of Deeds; and
 - (b) bring the land under that Act as if an application had been made in relation to that land under section 11 of that Act.
- (4) For the purposes of subsection (3), the Recorder of Titles is not bound to investigate the title of any land.
- (5) On the lodgment under subsection (2) of a copy of a notice and particulars in relation to land that is under the *Land Titles Act 1980*, the Recorder of Titles is to register the notice against the relevant folio of the register as if it were a dealing, within the meaning of that Act, lodged in accordance with that Act.
- (6) While a notice registered by the Recorder of Titles remains so registered against the relevant folio of the register, the notice –
- (a) remains in force despite any subsequent disposition of the land to which it relates or any other dealing in that land; and
 - (b) continues to bind the person on whom it was served; and
 - (c) after a disposition of the land to which it relates, also binds any person who subsequently becomes the owner or occupier of that land if the notice

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specifies that it binds any person who becomes the owner or occupier of that land after its issue; and

- (d) operates as the basis for a charge on the land, as provided by section 74V, securing payment to the Director of reasonable costs and expenses incurred in doing work or taking action if a person served with the notice fails to comply with it.
- (7) If a copy of a notice is lodged under this section for registration under the *Land Titles Act 1980* or in the Registry of Deeds by the Recorder of Titles, the Recorder is entitled to assume that all necessary pre-requisites and procedures in respect of the notice have been complied with.

74J. Amendment of notice

- (1) The Director, at any time, may amend a notice by issuing an amendment to that notice.
- (2) A person is not bound by an amendment to a notice until that person has been served with a copy of the amendment.
- (3) As soon as practicable after issuing an amendment to a notice, the Director is to lodge the amendment with the Recorder of Titles.
- (4) On the lodgment under subsection (3) of an amendment to a notice, the Recorder of Titles is to register the amendment against the relevant

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folio of the register kept under the *Land Titles Act 1980*.

74K. Revocation of notice and issue of completion certificate

- (1) The Director, at any time, may revoke a notice by issuing a further notice revoking it.
- (2) The Director may issue a completion certificate in respect of a notice if he or she is satisfied that a notice has been complied with in full by the persons bound by it.
- (3) As soon as practicable after issuing a revocation of a notice or a completion certificate in respect of a notice, the Director is to serve a copy of the revocation or completion certificate on –
 - (a) all persons who, immediately before the issue of the revocation or the completion certificate, are bound by the notice; and
 - (b) the owner and occupier of the area of land to which the notice relates and any other person who has an interest in the land that is registered or recorded on the relevant folio of the register kept under the *Land Titles Act 1980*; and
 - (c) the council of the municipal area in which the area of land is situated.
- (4) As soon as practicable after issuing a revocation of a notice or a completion certificate in respect

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of a notice, the Director is to lodge it with the Recorder of Titles.

- (5) On receiving a revocation of a notice or a completion certificate in respect of a notice, the Recorder of Titles is to cancel the registration of the notice in such manner as the Recorder considers appropriate.

74L. Caveatable interest

If the Director has determined, in writing, that a notice in relation to an area of land is to be issued or has issued such a notice, the Director is taken to have a caveatable interest in the land.

74M. Effect of section 40 of *Land Titles Act 1980*

Nothing in section 40 of the *Land Titles Act 1980* affects the validity of a notice or prejudices or affects the operation of a notice.

74N. Costs

- (1) The Director may require a person on whom a notice has been served to pay the whole or a part of the reasonable costs and expenses incurred by the Director in relation to –
 - (a) the issue and service of the notice and any amendment to the notice; and
 - (b) the issue and service of copies of the notice, and any amendment to the notice, required under this Act; and

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- (c) the lodging with the Recorder of Titles of the notice and any amendment to the notice; and
 - (d) the inspection of the contaminated site and any other action taken in respect of monitoring the compliance by the person with the notice; and
 - (e) the review of any reports and the monitoring of data required to ensure compliance with the notice.
- (2) A requirement must be in writing and must be served on the person to whom it relates.
 - (3) If the costs and expenses referred to in subsection (1) are not paid or fully paid by the person within the period specified in the requirement, the person is liable to pay interest charged at the prescribed rate on the amount unpaid.
 - (4) The Director may recover, as a debt due, the costs and expenses referred to in subsection (1), and any interest payable under subsection (3), in a court of competent jurisdiction.

740. Appeals

- (1) A person on whom a notice has been served may appeal to the Appeal Tribunal in relation to the notice.
- (2) A person who institutes proceedings for an appeal must comply with the notice unless the

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Director agrees, in writing, that no work need be done and no action need be taken by the appellant until the proceedings have been determined.

- (3) If an appeal is upheld and the appellant has done work or taken action in accordance with the notice, the appellant is entitled to be compensated by the State for any loss or damage incurred in doing that work or taking that action.
- (4) The amount of compensation payable is the amount agreed between the Director and the appellant.
- (5) If the Director and the appellant cannot agree on the amount of compensation payable, that amount is to be determined as a disputed claim for compensation under the *Land Acquisition Act 1993*.

Division 4 – Compliance with notice

74P. Duty to comply with notice

A person served with a notice must comply with it.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
- (b) an individual, a fine not exceeding 500 penalty units.

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74Q. Duty to notify if contaminated site sold

If the owner of an area of land has been served with a notice, or provided with a copy of a notice, in relation to that area of land, the owner must notify the Director, in writing, of any sale or other disposal of, or any agreement to sell or otherwise dispose of, that area of land as soon as practicable after making that sale, disposal or agreement.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 20 penalty units; or
- (b) an individual, a fine not exceeding 10 penalty units.

74R. Entry of person on land to comply with notice

- (1) A person who is required by a notice to do any work or take any action in, on or under land may enter and remain on the land with necessary vehicles and equipment if –
 - (a) it is necessary to enter on that land to do that work or take that action; and
 - (b) subject to subsection (3), the person has given both the owner and the occupier, not less than 3 days before the person enters on that land, written notification of –
 - (i) the intention to enter and remain on that land; and

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- (ii) the reason the person needs to enter and remain on the land; and
 - (iii) the details of the vehicles and equipment that the person will bring onto that land; and
 - (iv) the approximate period of time that the person will need to remain on that land.
- (2) A person who has the power to enter and remain on land under subsection (1) may enter on and cross other land with the vehicles and equipment referred to in that subsection if –
- (a) it is necessary to do so to gain entry onto that land; and
 - (b) subject to subsection (3), the person has given both the owner and the occupier of the other land, not less than 3 days before the person first enters on the other land, written notification of –
 - (i) the intention to enter on and cross the other land; and
 - (ii) the reason the person needs to enter on and cross the other land; and
 - (iii) the details of the vehicles and equipment that the person will bring onto the other land; and

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- (iv) the approximate times and days when the person will need to enter on and cross the other land.
- (3) If the notice requires the person on whom it is served to do any work or take any action in, on or under land as a matter of urgency, the person may exercise the powers under subsections (1) and (2) immediately after giving to the occupier of the land written notifications which, respectively, include the information referred to in those subsections.
- (4) The regulations may –
 - (a) grant the person exercising powers under this section further powers for the purpose of complying with the notice; and
 - (b) restrict the exercise of powers under this section.
- (5) A person who exercises powers conferred by or under this section is to do so in a manner that minimises interference with the enjoyment of land by its owner and occupier.
- (6) The powers conferred on a person by or under this section may be exercised by agents, contractors and employees authorised by the person to act on his or her behalf.
- (7) A person who exercises a power conferred by or under this section is liable to –

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- (a) make good any damage caused by the exercise of that power as soon as practicable; or
 - (b) if the owner or occupier agrees, pay reasonable compensation for that damage.
- (8) If a dispute arises as to the payment or amount of compensation payable under this section, it is to be determined in the same manner as a disputed claim for compensation under the *Land Acquisition Act 1993*.
- (9) If an owner or occupier of land has been given written notification under subsection (1) or (2), the owner or occupier must allow the person who gave the notification to exercise the powers conferred by or under this section.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

Division 5 – Action by Director if failure to comply with notice or in other circumstances

74S. Action on non-compliance with notice

- (1) The Director, by his or her agent, may do any work or take any action required by a notice if a person served with the notice fails to do that

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work or take that action in compliance with the notice –

- (a) within the period specified in the notice or a longer period allowed by the Director; or
 - (b) if no period is specified in the notice, within a period the Director considers reasonable.
- (2) For the purposes of subsection (1), section 74R applies to the agent of the Director as if the agent were a person served with a notice.

74T. Action if person to be served cannot be found

- (1) If the Director, after reasonable inquiry, cannot determine –
- (a) the whereabouts of the person on whom the notice is to be served; or
 - (b) on whom to serve a notice –

the Director, by his or her agent, may do any work or take any action that could be required by the notice.

- (2) For the purposes of subsection (1)(a), *reasonable inquiry* includes advertising in a daily newspaper circulating in the relevant region.

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74U. Recovery of cost of action under section 74S or 74T as debt due

(1) In this section –

relevant person, in relation to an area of land in respect of which a notice has been issued, means –

- (a) if the Director has taken action in respect of that area of land under section 74S, a person who has been served with that notice under section 74E, 74F or 74G; or
- (b) if the Director has taken action in respect of that area of land under section 74T, a person who could have been served with that notice under section 74E, 74F or 74G had the Director been able to determine, before taking that action, the whereabouts of the person or the person on whom that notice could have been served;

specified means specified in a requirement served under subsection (4).

(2) If the Director does any work or takes any action under section 74S or 74T in relation to an area of land in respect of which a notice has been issued, the reasonable costs of doing that work or taking that action may be recovered by the Director as a debt due in a court of competent jurisdiction –

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- (a) from the relevant person; or
 - (b) if there is more than one relevant person, from each relevant person in the same proportion as the proportion of the responsibility each relevant person bears for the pollutant's presence in, on or under that area of land and taking into account any costs each relevant person has incurred in complying with the notice.
- (3) In determining for the purposes of subsection (2)(b) the proportion of the responsibility each relevant person bears for the pollutant's presence in, on or under an area of land –
- (a) the responsibility for that pollutant's presence borne by any person who is not a relevant person is to be disregarded and the relevant persons, together, are to be taken to be wholly responsible for the pollutant's presence; and
 - (b) the following factors may be taken into account:
 - (i) the period during which each relevant person occupied or was responsible for the area of land which is the contaminated site;
 - (ii) the use to which each relevant person put the area of land;

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- (iii) the responsibility of each relevant person for any known or likely incident or circumstance which caused or contributed, or could reasonably be believed to have caused or contributed, to the presence of the pollutant in, on or under that area of land;
 - (iv) any other matter considered relevant.
- (4) If the whole or a proportion of the reasonable costs incurred by the Director are recoverable from a relevant person under this section, the Director may require the relevant person, in writing served on the relevant person, to pay that amount to the Director within the specified period of not less than 28 days after service of the requirement.
- (5) If a relevant person on whom a requirement has been served fails to pay the whole of the specified amount within the specified period, the relevant person is liable to pay interest charged at the prescribed rate on the amount unpaid.

74V. Cost of action under section 74S or 74T may be charge on land

- (1) If –
 - (a) the Director does any work or takes any action under section 74S or 74T in respect of an area of land; and

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- (b) the Director has been unable to recover the reasonable costs of doing that work or taking that action, or any part of those reasonable costs –
 - (i) because of the failure of a relevant person, within the meaning of section 74U, to pay the proportion of those reasonable costs as ordered by a court under that section; or
 - (ii) because the Director was unable to determine on whom to serve a notice or the whereabouts of a person on whom a notice was to be served –

the Director may determine that the reasonable costs of doing that work or taking that action together with any interest owing under section 74U(5) should be a charge on any land owned by the owner of that area of land.

- (2) As soon as practicable after making a determination under subsection (1), the Director is to lodge a copy of the determination, together with the particulars of the titles of all the land to be affected by the charge, with the Recorder of Titles.
- (3) If any land which will be affected by the charge is not under the *Land Titles Act 1980*, the Recorder of Titles, as soon as practicable after the determination and particulars of the land are lodged with him or her is to –

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- (a) register the determination in the Registry of Deeds; and
 - (b) bring the land under that Act as if an application had been made in relation to that land under section 11 of that Act.
- (4) For the purposes of subsection (3), the Recorder of Titles is not bound to investigate the title of any land.
- (5) On the lodgment under subsection (2) of the determination of the Director and particulars of title, the Recorder of Titles is to register the determination against the relevant folio of the register kept under the *Land Titles Act 1980* as if it were a dealing, within the meaning of that Act, lodged in accordance with that Act.
- (6) On the registration, under the *Land Titles Act 1980* by reason of subsection (5), of the determination on the land in respect of which the Director did any work or took any action under section 74S or 74T, the amount of the reasonable costs of the Director in doing that work or taking that action, as specified in the determination, together with any interest owing under section 74U(5) are a charge on that or any other land owned by that owner and that charge –
- (a) ranks equally with –
 - (i) a debt referred to in section 119 of the *Local Government Act 1993*; and

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- (ii) any other debt to a State Service Agency that is a charge on the land; and
- (b) ranks in priority to any other charge, mortgage, lien or encumbrance.
- (7) Subsection (1) does not apply if the Director was not entitled to serve a notice on the owner of the land in respect of which work was done or action was taken under section 74S or 74T.

74W. Recovery of costs by certain persons from polluter

- (1) In this section –

polluter, in relation to an area of land in respect of which a notice has been issued, means a person on whom the Director has served, or is or was entitled to serve, a notice in respect of that area of land under section 74E(2) or (5), section 74F(2) or (5) or section 74G(2)(a) or (c);

prescribed person means –

- (a) a person who has incurred costs in complying with a notice; or
- (b) a person from whom the Director has recovered costs under section 74U in respect of an area of land;

recoverable sum, in relation to a prescribed person, means –

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- (a) the reasonable costs incurred by the prescribed person in complying with a notice; or
 - (b) the costs recovered by the Director under section 74U from the prescribed person together with the reasonable costs incurred by the prescribed person in paying to the Director the costs so recovered.
- (2) A prescribed person may recover as a debt from a polluter that proportion of the recoverable sum that is the same as the proportion of the responsibility the polluter bears for the area of land in respect of which the relevant notice was issued being, or possibly being, a contaminated site.
- (3) Subsection (2) does not apply to a prescribed person who has accepted responsibility for the management of the pollution of the area of land (including responsibility for the costs of that management), either specifically or as part of a more general acceptance of responsibility in relation to the pollution of the area of land.
- (4) If –
 - (a) the prescribed person provides the polluter with a letter demanding the payment of that proportion of the recoverable sum that may be recovered from the polluter under subsection (2); and

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- (b) that proportion of the recoverable sum is not paid or fully paid by the polluter within the period specified in the letter or a longer period agreed between the prescribed person and the polluter –

the polluter is liable to pay interest charged at the prescribed rate on the amount unpaid.

- (5) For the purposes of this section, section 6 is of no effect.

74X. Sale or transfer of land if owner cannot be found

- (1) In this section –

land includes a part of land.

- (2) If the Director is entitled to serve a notice on the owner of land, has been unable to find and so serve that notice on the owner and, under section 74T, has done any work or taken any action that could have been required by the notice, the Director may –

- (a) sell the land in respect of which that work or action was done or taken as if the Director were the owner of the land –

- (i) by public auction; or

- (ii) if the proceeds of the sale are unlikely to meet the costs of the public auction, by direct sale; or

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- (b) determine that the land is to be transferred to the Crown or, if a council agrees, to that council.
- (3) For the purposes of selling or transferring land, the Director may –
- (a) cause the land to be subdivided if this is otherwise allowed by law; and
 - (b) carry out any work on the land or otherwise develop the land; and
 - (c) require an occupier of the land to vacate it; and
 - (d) do anything a mortgagee may do under the *Land Titles Act 1980* in the case of default of payment of money owing under a mortgage; and
 - (e) grant any easements or enter into covenants in respect of the land.
- (4) Not less than 90 days before the Director sells land under subsection (2)(a), makes a determination to transfer land under subsection (2)(b) or takes any action under subsection (3), the Director must cause notice that he or she intends to do so –
- (a) to be published in at least 3 newspapers published and circulating generally in Tasmania; and
 - (b) to be posted on the land.

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- (5) If land is sold by the Director under subsection (2)(a) –
- (a) the registration of a memorandum of transfer vests the title to the land in the purchaser; and
 - (b) the title vested in the purchaser is freed of –
 - (i) all mortgages and charges; and
 - (ii) any caveat that if not removed would forbid the registration of the memorandum of transfer or execution of the indenture of conveyance; and
 - (iii) any other encumbrance or interest other than an encumbrance or interest which the Director determines, in writing provided to the Recorder of Titles, should remain in force; and
 - (iv) all leases and licences; and
 - (c) the memorandum of transfer or indenture of conveyance by the Director is evidence that the requirements of this Act in relation to the sale of the land have been complied with.
- (6) Any money received on the sale of the land under subsection (2)(a) is to be applied as follows:

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- (a) firstly, in paying the costs of the sale and any other costs incurred in proceeding under this section;
 - (b) secondly, in meeting the reasonable costs incurred by the Director in doing the work or taking the action under section 74T;
 - (c) thirdly, in discharging any liabilities to the Crown or a council for rates or taxes in respect of the land;
 - (d) fourthly, in discharging any liabilities secured by registered mortgages and other encumbrances;
 - (e) fifthly, in discharging any other mortgages or other encumbrances of which the Director has notice.
- (7) If, after all disbursements referred to in subsection (6) have been paid, there remain proceeds from the sale of the land, the excess is to be paid to the Public Trustee and such payment is taken to be an order made under section 25(1) of the *Public Trustee Act 1930*.
- (8) If the reasonable attempt of the Director to sell land under subsection (2)(a) is unsuccessful, the Director may determine that the land is to be transferred to the Crown or, if a council agrees, to that council.
- (9) A determination made under subsection (2)(b) or (8), if done in a form approved by the Recorder of Titles, operates as a memorandum of transfer.

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- (10) If a determination under subsection (2)(b) or (8) is made –
- (a) the land to which the determination relates is freed of any charge against the land that exists by reason of this Act; and
 - (b) any outstanding liability to the Crown in respect of the land that exists by reason of this Act is discharged.
- (11) If land is transferred to the Crown or to a council under this section and the value of the land exceeds the total cost that the Director is entitled to recover under this Division, the Crown or council –
- (a) is to apply an amount equal to that excess as specified in subsection (6); and
 - (b) if part of that amount remains after being so applied, is to pay that remaining part to the Public Trustee and such payment is taken to be an order made under section 25(1) of the *Public Trustee Act 1930*.
- (12) If the Director, in good faith, has sold land or determined that land be transferred to the Crown or a council under this section, neither the Director, the Crown nor the council is liable to pay damages or compensation or otherwise make reparation to any person in respect of –
- (a) the sale of the land; or
 - (b) the making of the determination; or

- (c) the transfer of the land.

Division 6 – Miscellaneous

74Y. Responsibility of related body corporate

- (1) In this section –

related body corporate has the same meaning as in the Corporations Act.

- (2) Instead of, or in addition to, serving a notice on a company, the Director may serve that notice on a related body corporate if, within the immediately preceding 2 years, one or more of the following events have occurred:
- (a) the company has been wound up;
 - (b) proceedings for the winding-up of the company have been commenced;
 - (c) assets of the company have been transferred to another company.
- (3) For the purposes of this Part, if –
- (a) a company is wholly or partly responsible for the release in, on or under an area of land of the pollutant which is the cause of a notice being issued; and
 - (b) the company has been wound up or its assets have been transferred to another company; and

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- (c) a related body corporate has been served with a notice under subsection (2) –

the related body corporate which has been so served with the notice is taken to be responsible for the release of that pollutant, with the responsibility of the company for the presence of the pollutant in, on or under the area of land in respect of which the notice was served being equally divided between each such related body corporate.

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Part 7 – Miscellaneous and Supplemental

PART 7 – MISCELLANEOUS AND SUPPLEMENTAL

Division 1 – Powers of authorized officers and council officers

92. Powers of authorized officers and council officers

- (1) Subject to this Division, an authorized officer or a council officer may –
 - (a) enter and inspect any place or vehicle for any reasonable purpose connected with the administration or enforcement of this Act; and
 - (b) with the authority of a warrant issued under this Division or in circumstances in which the officer reasonably believes that serious or material environmental harm has been, or is likely to be, caused, use reasonable force to break into or open any part of, or anything in or on, any place or vehicle; and
 - (c) give directions for the stopping or movement of a vehicle as reasonably required in connection with the administration or enforcement of this Act; and
 - (d) take samples as reasonably required of any air, soil, sand, rock, water, other solid or liquid substance or any other thing from any place or vehicle for analysis in connection with the

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administration or enforcement of this Act; and

- (e) require any person to produce any documents, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required in connection with the administration or enforcement of this Act; and
- (f) examine, copy or take extracts from any documents or information so produced or require a person to provide a copy of any such document or information; and
- (g) take photographs, films or audio, video or other recordings as reasonably required in connection with the administration or enforcement of this Act; and
- (h) examine or test any plant, equipment, vehicle or other thing for the purpose of determining whether a provision of this Act is being, or has been, complied with, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing; and
- (i) seize and retain, or issue a seizure order in respect of, anything that the officer reasonably suspects has been used in, or

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may constitute evidence of, a contravention of this Act; and

- (j) require a person whom the officer reasonably suspects has committed, is committing or is about to commit a contravention of this Act or a permit or major project permit under the *Land Use Planning and Approvals Act 1993* to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
- (k) require a person whom the officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters; and
- (ka) direct, orally or in writing –
 - (i) a person whom the officer reasonably believes has committed, is committing or is likely to commit an offence under section 53; or
 - (ii) where the identity of that person cannot be readily ascertained or confirmed, the occupier or person apparently in charge of a place or vehicle at, in or in relation to which the officer reasonably believes such an offence has been

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committed, is being committed or
is likely to be committed –

to cease committing, or to not commit,
that offence; and

- (1) give any directions reasonably required in connection with the exercise of a power conferred by this subsection or otherwise in connection with the administration or enforcement of this Act.
- (1A) Without limiting the powers set out in subsection (1), an authorized officer or council officer may exercise any of those powers for the prevention or investigation of offences under this Act or the regulations.
- (2) An authorized officer or a council officer may not exercise the power of entry under this section except where –
 - (a) the occupier of the place consents to the entry; or
 - (b) the entry is authorized by a warrant; or
 - (c) in the case of a public place, the entry is made when the place is open to the public; or
 - (d) the entry is made when the officer believes on reasonable grounds that an environmentally relevant activity has been or is being carried out, or that the

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place is or may be a contaminated site,
and–

- (i) the officer has reasonable grounds for believing that an offence against this Act has been, is being or is about to be committed; or
 - (ii) the place is open for conduct of business; or
 - (iii) the place is otherwise open for entry.
- (3) If the entry is made to residential premises in the circumstances referred to in subsection (2)(d)(i), and none of the exceptions referred to in paragraph (a), (b) and (c) of subsection (2) and paragraph (d)(ii) or (iii) of that subsection apply, the entry must be made at a time that is reasonable.
- (4) An authorized officer or a council officer who is seeking to exercise powers under this Act must, when reasonably required by any person, produce evidence of identification and authorization.
- (5) Where a person whose native language is not English is suspected of having committed an offence against this Act and the person is not reasonably fluent in English –
- (a) the person is entitled to be assisted by an interpreter during any questioning conducted by an authorized officer or a

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council officer in the course of an investigation of the suspected offence; and

- (b) where it appears that the person may be entitled to be assisted by an interpreter, the officer must not proceed with any questioning, or further questioning, until the person has been informed of the right to an interpreter; and
 - (c) if the person requests the assistance of an interpreter, the officer must not proceed with any questioning, or further questioning, until an interpreter is present.
- (6) In the exercise of powers under this Act an authorized officer or a council officer may be assisted by such persons as he or she considers necessary in the circumstances.
 - (7) An authorized officer or a council officer may require an occupier of any place or a person apparently in charge of any plant, equipment, vehicle or other thing to give to the officer or a person assisting the officer such assistance as is reasonably required by the officer for the effective exercise of powers conferred by this Act.
 - (8) In this section, *residential premises* has the same meaning as in section 53.

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Part 7 – Miscellaneous and Supplemental

92A. Failure to provide name or address

A person, when required by an authorized officer or a council officer to state his or her name and address, must not –

- (a) fail or refuse to state his or her full name and residential address; or
- (b) state any name or residential address that is false.

Penalty: Fine not exceeding 2 penalty units.

92B. Power of arrest

An authorized officer who is a police officer may arrest, without warrant, any person who –

- (a) fails or refuses to state his or her full name or residential address; or
- (b) states any name or residential address that the officer has reasonable grounds for believing is false; or
- (c) without reasonable excuse, refuses or fails to comply with a direction under section 92(1)(ka).

93. Issue of warrants

- (1) Where, on the application of an authorized officer or a council officer, a justice is satisfied that there are reasonable grounds to believe –

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- (a) that a contravention of this Act has been, is being, or is about to be, committed in or on a place or vehicle; or
- (b) that something may be found in or on a place or vehicle that has been used in, or constitutes evidence of, a contravention of this Act –

the justice may issue a warrant in respect of the place or vehicle authorizing an authorized officer or a council officer, with such assistants as he or she considers necessary, to use reasonable force to break into or open any part of, or anything in or on, the place or vehicle as specified in the warrant.

- (2) The grounds of an application for a warrant must be verified by affidavit.
- (3) An application for the issue of a warrant may be made either personally or by telephone.
- (4) An application for the issue of a warrant may not be made by telephone unless in the opinion of the applicant a warrant is urgently required and there is insufficient time to make the application personally.
- (5) Where an application for the issue of a warrant is made by telephone, the following provisions apply:
 - (a) the applicant must inform the justice of his or her name and identify himself or herself as an authorized officer or a council officer, and the justice, on

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- receiving that information, is entitled to assume, without further inquiry, that the applicant is an authorized officer or a council officer;
- (b) the applicant must inform the justice of the grounds on which he or she seeks the issue of the warrant;
 - (c) if it appears to the justice from the information given by the applicant that there are proper grounds for the issue of a warrant, the justice must inform the applicant of the facts on which he or she relies as grounds for the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;
 - (d) if the applicant gives such an undertaking, the justice may then make out and sign a warrant, noting on the warrant the facts on which he or she relies as grounds for the issue of the warrant;
 - (e) the warrant will be taken to have been issued, and will come into force, when signed by the justice;
 - (f) the justice must inform the applicant of the terms of the warrant;
 - (g) the applicant must, as soon as practicable after the issue of the warrant, forward to

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the justice an affidavit verifying the facts referred to in paragraph (c).

- (6) An authorized officer or a council officer who executes a warrant must, as soon as practicable after execution of the warrant –
- (a) prepare a notice in the prescribed form containing –
 - (i) his or her name and a statement that he or she is an authorized officer or a council officer; and
 - (ii) the name of the justice who issued the warrant and the date and time of its issue; and
 - (iii) a description of the place or vehicle to which the warrant relates and of the authority conferred by the warrant; and
 - (b) give the notice to the occupier or person apparently in charge of the place or vehicle in respect of which the warrant was issued or leave it for him or her in a prominent position on the place or vehicle.
- (7) A warrant expires if it has not been executed by the end of one month after the day on which it was issued.

94. Provisions relating to seizure

- (1) A seizure order under this Division –

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- (a) must be in the form of a written notice; and
 - (b) must be served on the owner or person in control of the thing to which the order relates; and
 - (c) may be varied or revoked by written notice served on that owner or person.
- (2) Where a seizure order is issued under this Division, a person must not remove or interfere with the thing to which the order relates without the approval of –
- (a) the Director; or
 - (b) in the case of a seizure order issued by a police officer, the Commissioner; or
 - (c) in the case of a seizure order issued by a council officer, the council –

before an order is made under subsection (4) in respect of the thing, or the seizure order is discharged under subsection (5).

Penalty: Fine not exceeding 40 penalty units.

- (3) Where a thing has been seized or made subject to a seizure order under this Division, the thing must, if it has been seized, be held pending proceedings for an offence against this Act related to the thing seized unless the Director, Commissioner or the council, as the case may require, on application, authorizes its release to the person from whom it was seized,

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or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Director, Commissioner or the council thinks fit (including conditions as to the giving of security for satisfaction of an order under subsection (4)(b)).

- (4) Where proceedings for an offence against this Act relating to a thing which has been seized or made subject to a seizure order under this Division are instituted within 6 months after its seizure or the issuing of the seizure order and the defendant is convicted or found guilty of the offence, the court may –
- (a) order that it be forfeited to the Director, Commissioner or the council, as the case may require; or
 - (b) where it has been released pursuant to subsection (3) or is the subject of a seizure order, order that it be forfeited to the Director, Commissioner or the council, as the case may require, or that the person to whom it was released or the defendant pay to the Director, Commissioner or the council an amount equal to its market value at the time of its seizure or the issuing of the seizure order, as the court thinks fit.
- (5) Where–
- (a) proceedings are not instituted for an offence against this Act relating to a thing which has been seized or made

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subject to a seizure order under this Division within 6 months after its seizure or the issuing of the seizure order; or

- (b) proceedings have been so instituted and the defendant is found not guilty of the offence or the defendant is convicted or found guilty of the offence but no order for forfeiture is made under subsection (4)–

the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Director, Commissioner or the council, as the case may require, (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure and the seizure order is discharged.

95. Offence to hinder, &c., authorized officers and council officers

- (1) A person must not –
 - (a) hinder or obstruct an authorized officer or a council officer, or a person assisting an authorized officer or council officer, in the exercise of powers conferred by this Act; or
 - (b) use abusive, threatening or insulting language to an authorized officer or a council officer, or a person assisting an authorized officer or council officer; or

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- (c) refuse or fail to comply with a requirement or direction of an authorized officer or a council officer; or
- (d) when required by an authorized officer or a council officer to answer a question, refuse or fail to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represent, by words or conduct, that he or she is an authorized officer or a council officer.

Penalty: Fine not exceeding 40 penalty units.

- (2) A person must not assault an authorized officer or a council officer, or a person assisting an authorized officer or council officer, in the exercise of powers under this Act.

Penalty: Fine not exceeding 80 penalty units or imprisonment for a period not exceeding 2 years, or both.

95A. Self-incrimination

- (1) A person is not excused from a requirement under this Division to provide information or answer a question, or to produce or provide any record, document or thing, on the ground that to do so might incriminate the person or make the person liable to a penalty.
- (2) However, any information provided or answer given, or record, document or thing produced or

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provided, by a natural person in compliance with such a requirement is not admissible in evidence against that person in proceedings for an offence under any Act or for the imposition of a penalty under any Act (other than proceedings for an offence against section 43A, 92A or 95 under this Act).

96. Offences by authorized officers, &c.

An authorized officer or a council officer, or a person assisting an authorized officer or council officer, must not –

- (a) address offensive language to any other person; or
- (b) without lawful authority, hinder or obstruct or use or threaten to use force in relation to any other person; or
- (c) without lawful authority, unreasonably refuse to provide evidence of identification and authorization when so required.

Penalty: Fine not exceeding 40 penalty units.

Division 1A – Environment protection policies

Subdivision 1 – Environment Protection Policy Review Panel

96A. Environment Protection Policy Review Panel

- (1) The Environment Protection Policy Review Panel is established.

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- (2) The Panel consists of –
- (a) the chairperson who is the chairperson of the Tasmanian Planning Commission; and
 - (b) at least 3 other members with appropriate skills, qualifications and experience who are appointed by the chairperson.
 - (c - d)
- (2A) The members appointed by the chairperson under subsection (2)(b) are appointed for the duration of the assessment of the draft environment protection policy in respect of which they are appointed.
- (2B) The chairperson may delegate to another member of the Panel or to a member of the Tasmanian Planning Commission any of his or her functions or powers under this Act other than this power of delegation.
- (3) Schedule 5A has effect with respect to the membership, proceedings, meetings and hearings of the Panel.

96B. Functions and powers of Panel

- (1) The Panel has the functions imposed on it by this and any other Act.
- (2) The Panel may do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions.

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Subdivision 2 – Contents and effect of environment protection policy

96C. Reason for, and scope of, environment protection policy

- (1) An environment protection policy may be made for the purpose of furthering any of the objectives of this Act.
- (2) Without limiting subsection (1), an environment protection policy may be made in respect of any one or more of the following matters:
 - (a) a pollutant;
 - (b) an industry or activity;
 - (c) a technology or process;
 - (d) waste management;
 - (e) pollution control practice;
 - (f) land, air or water quality;
 - (g) noise;
 - (h) litter.

96D. Contents of environment protection policy

- (1) An environment protection policy must state that the policy applies to the environment generally or to an aspect or part of the environment specified in the policy.

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- (2) An environment protection policy may do one or more of the following:
- (a) state the objectives to be achieved and maintained under the policy;
 - (b) identify the environmental values to be enhanced or protected under the policy;
 - (ba) specify who is responsible for the implementation or enforcement, or both, of the whole policy or specified parts of it;
 - (c) state indicators, parameters, factors or criteria to be used in measuring or deciding any quality or condition of the environment;
 - (d) establish a program by which the stated objectives are to be achieved and maintained including, but not limited to, the following:
 - (i) quantifying ambient conditions;
 - (ii) the qualities and maximum quantities of any pollutant 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 pollutants or waste from specified sources or places;

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- (iv) measures designed to protect the environment or to minimise the possibility of environmental harm;
 - (e) provide for a performance assessment procedure in respect of that program;
 - (f) specify the emissions that are to be environmental nuisances for the purposes of paragraph (b) of the definition of “environmental nuisance” in section 3(1);
 - (g) specify maximum levels of particular pollutants for the purposes of section 55A(1);
 - (h) provide, for the purposes of section 55A(1), that compliance with specified provisions of the environment protection policy will satisfy the general environmental duty.
- (3) An environment protection policy may make provision in relation to any matter in respect of which a regulation may be made under section 102 and may provide for fees to be payable in respect of matters specified in the policy.
- (4) An environment protection policy may –
- (a) authorise any act, matter or thing in relation to which the policy may be made to be from time to time determined, applied or regulated by the Board or the Director; and

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- (b) be made subject to conditions specified in the policy; and
- (c) be made so as to apply differently according to any factors, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the policy.
- (d - f)

96E. Interpretation of environment protection policy

The *Acts Interpretation Act 1931* applies to the interpretation of an environment protection policy as if it were by-laws.

96F. Application of certain Acts

- (1) An environment protection policy is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (2) The Treasurer, by notice published in the *Gazette*, may declare an environment protection policy to be subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

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Subdivision 3 – Making of environment protection policy

96G. Notice of proposal to prepare draft environment protection policy

- (1) Before preparing a draft environment protection policy, the Minister must prepare and give notice of a proposal to prepare the draft environment protection policy.
- (2) The notice must –
 - (a) be published on 2 consecutive Saturdays –
 - (i) in a newspaper circulating generally throughout the State; and
 - (ii) if it is intended that the environment protection policy when completed will only apply to a particular area of the State, in a newspaper circulating generally in that area; and
 - (b) if it is intended that the environment protection policy when completed will only apply in respect of an aspect or part of the environment, specify that aspect or part; and
 - (c) state where copies of the proposal may be obtained; and
 - (d) invite from Government departments and agencies, public authorities, local

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government, industry organisations, interested groups and persons and members of the public the making of written submissions to the Minister on the proposal; and

- (e) specify the day by which those submissions may be made, being a day not less than 30 days after the notice is first published in a newspaper.
- (3) The Minister may extend the period referred to in subsection (2)(e) for a period not exceeding 30 days if he or she considers it necessary.
- (4) The power referred to in subsection (3) may be exercised by the Minister on one or more occasions.

96H. Preparation of draft environment protection policy

- (1) After considering all submissions made within the time specified in a notice of proposal to prepare a draft environment protection policy under section 96G(2), the Minister may prepare a draft environment protection policy.
- (2) When preparing a draft environment protection policy, the Minister must also prepare an impact statement which –
 - (a) explains the purpose and effect of the policy; and
 - (b) complies with Schedule 2 to the *Subordinate Legislation Act 1992*.

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96I. Notice of draft environment protection policy

- (1) After preparing a draft environment protection policy and the impact statement referred to in section 96H(2), the Minister must –
 - (a) give notice of the draft environment protection policy and impact statement; and
 - (b) provide a copy of that notice, the draft environment protection policy and the impact statement to the Panel.
- (2) The notice must –
 - (a) be published on 2 consecutive Saturdays –
 - (i) in a newspaper circulating generally throughout the State; and
 - (ii) if the draft environment protection policy only applies to a particular area of the State, in a newspaper circulating generally in that area; and
 - (b) if the draft environment protection policy only applies in respect of an aspect or part of the environment, specify that aspect or part; and
 - (c) state where copies of the draft environment protection policy and impact statement may be obtained; and

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- (d) invite from Government departments and agencies, public authorities, local government, industry organisations, interested groups and persons and members of the public the making of written submissions to the Panel on the draft environment protection policy and impact statement; and
 - (e) specify the day by which those submissions may be made, being a day not less than 30 days after the notice is first published in a newspaper.
- (3) The Minister may extend the period referred to in subsection (2)(e) for a period not exceeding 30 days if he or she considers it necessary.
- (4) The power referred to in subsection (3) may be exercised by the Minister on one or more occasions.

96J. Assessment of draft environment protection policy

The Panel –

- (a) must consider all submissions properly made to it in respect of the draft environment protection policy and impact statement; and
- (b) may hold hearings in respect of any submission or group of submissions; and
- (c) may modify the draft environment protection policy; and

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- (d) must, within 42 days after the completion of the consideration of submissions and the holding of all hearings, submit to the Minister –
 - (i) a report on the findings of the Panel; and
 - (ii) if the Panel has modified the draft environment protection policy, a copy of that modified draft environment protection policy; and
- (e) must publish notice of its report to the Minister in the *Gazette* and make the report and the modified draft environment protection policy, if any, available to the public.

96K. Making of environment protection policy

- (1) On receiving the report from the Panel under section 96J, the Minister may –
 - (a) refuse to recommend to the Governor the making of an environment protection policy; or
 - (b) recommend to the Governor the making of an environment protection policy.
- (2) The Governor may make an environment protection policy in accordance with a recommendation made under subsection (1)(b), and fix a day on which it will take effect.

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- (3) Within 10 sitting days after an environment protection policy is made, the Minister must cause it to be laid before each House of Parliament.
- (4) An environment protection policy takes effect on the later of the following days:
 - (a) the day specified in it as the day on which it will take effect;
 - (b) the day after it has been approved by both Houses of Parliament.
- (5) An environment protection policy is approved by a House of Parliament –
 - (a) when the House passes a motion approving the environment protection policy; or
 - (b) at the end of 5 sitting days after the environment protection policy was laid before the House if no notice of motion to disapprove it is before the House; or
 - (c) if such a notice is before the House at the end of that period, when the first of the following occurs:
 - (i) the notice is withdrawn;
 - (ii) the motion is negatived;
 - (iii) a further period of 5 sitting days ends.

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96L. Interim environment protection policy

- (1) At any time on or after the day on which notice of a draft environment protection policy is first published in a newspaper, the Governor may, by notice published in the *Gazette*, make an interim environment protection policy if the Governor is satisfied, on the recommendation of the Minister, that it is necessary that an environment protection policy should come into operation without delay.
- (2) An interim environment protection policy takes effect on the day specified in it.
- (3) The *Acts Interpretation Act 1931* applies to the interpretation of an interim environment protection policy as if it were by-laws.
- (4) An interim environment protection policy is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (5) Within 10 sitting days after an interim environment protection policy is made, the Minister must cause it to be laid before both Houses of Parliament.
- (6) An interim environment protection policy ceases to have effect –
 - (a) if the Governor revokes it by notice in the *Gazette*; or
 - (b) if either House of Parliament passes a resolution disallowing it; or

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- (c) if an environment protection policy is made as a result of the publication, consideration and assessment of the draft environment protection policy that is the basis of the interim environment protection policy; or
- (d) at the end of 12 months after it took effect.

96M. Amendment of environment protection policy

- (1) In this section,

significant change, in relation to an amendment to an environment protection policy, means an amendment to an environment protection policy that substantially alters the content or effect of the environment protection policy.

- (2) The Minister may require the Panel to determine whether a proposed amendment to an environment protection policy constitutes a significant change to the environment protection policy.
- (3) The Panel must, within 21 days after being required to make the determination or such longer period as the Minister allows –
 - (a) notify the Minister of its determination; and
 - (b) publish notice of its determination in the *Gazette*.

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- (4) The Panel must make the determination available for inspection by the public.
- (5) If the Panel determines that the amendment is not a significant change to the environment protection policy, the Minister may –
 - (a) refuse to recommend to the Governor an amendment to the environment protection policy; or
 - (b) recommend to the Governor an amendment to the environment protection policy without following the procedure set out in sections 96G, 96H, 96I and 96J.
- (6) The Governor may amend an environment protection policy in accordance with a recommendation made under subsection (5)(b), and fix a day on which it will take effect.
- (7) Section 96K does not apply to an amendment made under subsection (6).
- (8) An amendment made under subsection (6) takes effect on the day specified in it or, if no day is specified, on the day on which its making is notified in the *Gazette*.
- (9) An amendment to an environment protection policy made under subsection (6) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (10) The *Acts Interpretation Act 1931* applies to the interpretation of an amendment to an

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environment protection policy as if the amendment were by-laws.

- (11) Any amendment of an environment protection policy that the Panel has determined is a significant change is to be made in accordance with sections 96G, 96H, 96I, 96J and 96K which apply in respect of the amendment as if it were the making of a new environment protection policy.

96N. Review of environment protection policy

- (1) The Minister must review an environment protection policy at least once within each period of 10 years after it came into operation or the last review was conducted for the purposes of –
- (a) assessing the effectiveness of the environment protection policy in achieving its stated objectives; and
 - (b) assessing whether, and how effectively, the environment protection policy has furthered the objectives set out in Schedule 1; and
 - (c) assessing the social and economic impact of the policy; and
 - (d) determining whether the environment protection policy should be retained in the same form, amended or revoked.

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- (2) In conducting a review, the Minister may obtain information in the manner, and from the persons, the Minister considers appropriate.

96O.

Division 2 – Miscellaneous provisions

97. Environment Protection Fund

- (1) For the purposes of this Act, a fund called the Environment Protection Fund is established.
- (2) The Fund consists of –
- (a) such proportion of fees paid under this Act as is specifically allocated by the Board; and
 - (b) all fines paid to the Fund in respect of offences under this Act; and
 - (c) any money received by the Board by way of a financial assurance under this Act; and
 - (d) any amount paid to the Director or Commissioner, or the value of anything forfeited to the Director or Commissioner, as a result of the exercise of the power of seizure in section 92; and
 - (e) any money appropriated by Parliament for the purposes of the Fund; and

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- (f) any money received by way of grant, gift or bequest for the purposes of the Fund; and
 - (g) any income from investment of money belonging to the Fund; and
 - (h) any money received from any other source.
- (3) The Fund may be applied by the Board –
- (a) in making any payment required in connection with a financial assurance under this Act; and
 - (b) in making any payment required by the terms of an environmental agreement under this Act; and
 - (c) in making payments for or towards the cost of action taken to deal with an environmental emergency or its effects; and
 - (d) for the purposes of education and training programmes in relation to the protection, restoration or enhancement of the environment; and
 - (e) for the purposes of any investigations, research, pilot programmes or other projects relating to the protection, restoration or enhancement of the environment; and

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- (f) subject to section 99, in making grants for environmental improvement purposes.

98. Penalties

All penalties recovered in respect of offences under this Act are to be paid –

- (a) in the case of a prosecution brought by a council, to that council; or
- (b) in any other case, to the Environment Protection Fund.

98AA. Liability for payment of fees

- (1) Except as otherwise provided by the regulations, a fee payable –
 - (a) in relation to an assessment under section 24 or 25, is payable by the person who made the application for a permit under the *Land Use Planning and Approvals Act 1993* that gave rise to the assessment; and
 - (b) in relation to an assessment undertaken under section 27 on the referral of a person, is payable by the person who made the referral; and
 - (ba) in relation to an assessment undertaken under section 27AA(3) or (4), is payable by the person who made the referral, or is

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the proponent of the project, to which the assessment relates; and

(bb) in relation to an application under section 42I(1) for an environmental licence, is payable by the applicant for the licence; and

(bc) in relation to an application for –

(i) the variation under section 42N(3) of an environmental licence; or

(ii) the renewal under section 42T(1) of an environmental licence; or

(iii) the transfer under section 42W(2) of an environmental licence; or

(iv) the grant under section 42ZH(2) of an approval to surrender an environmental licence –

is payable by the holder of the environmental licence; and

(bd) in respect of an environmental licence, including an annual fee, or any other action taken by the Director or the Board in relation to an environmental licence, is payable by the holder of the environmental licence; and

(c) in relation to a permit under the *Land Use Planning and Approvals Act 1993*, is payable by the person responsible for the

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environmentally relevant activity
conducted under the permit; and

- (d) in relation to an order made under section 26 of the *State Policies and Projects Act 1993*, is payable by the person responsible for the environmentally relevant activity in respect of which the order is made; and
 - (e) in relation to an authorization under this Act, is payable by the person who applied for or holds the authorization, as the case requires; and
 - (f) in relation to an environmentally relevant activity, or an action taken by the Board, the Director or an authorized officer relating to an environmentally relevant activity, is payable by the person responsible for that activity.
- (2) If 2 or more persons are liable to pay a fee under this Act, those persons are jointly and severally liable for payment of the fee except where the regulations provide otherwise.
 - (3) If, at any time before the commencement of this section, a fee has been levied under this Act on any person, that fee is taken to have been as validly levied as if this section had been in effect at that time.

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98A. Recovery of unpaid fees

- (1) A fee not paid by the due date is recoverable from the person liable to pay it as a debt due to the Crown.
- (2) The Minister, by notice in the *Gazette*, may impose a penalty as determined by the Treasurer for the non-payment of any fee.

99. Grants for environmental improvement purposes

- (1) The Board may, with the approval of the Minister, make a grant of money to any person for environmental improvement purposes.
- (2) Environmental improvement purposes are any of the following:
 - (a) acquiring knowledge that may be of use for the purpose of improving any aspect of the environment;
 - (b) applying knowledge for that purpose;
 - (c) the training of persons to carry out research and development in respect of any aspect of the environment;
 - (d) the dissemination of information, or the provision of advice and assistance, to persons who are engaged in any activity which may have an effect on any aspect of the environment for the purpose of encouraging those persons to follow practices, or to adopt technical developments, designed or adapted to

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prevent or minimize any harmful effect on the environment;

- (e) the publication of reports, periodicals, books or papers containing information that is related to environmental research and development;
- (f) furthering an activity incidental to a purpose referred to in this section.

100. Analysts

- (1) The Secretary of the Department may, with the approval of the Board, appoint persons to be analysts for the purposes of this Act.
- (2) In any proceedings, a certificate executed by a person appointed by the Secretary as an analyst and setting out details as to an analysis carried out by or under the direction of the person and the results of the analysis constitutes proof, in the absence of proof to the contrary, of the matters so certified.

100A.

101. Protection from personal liability

- (1) An authorized officer, a council officer or any other person engaged in the administration of this Act does not incur any personal liability in respect of any act done or omitted to be done by the officer or person in good faith in the

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performance or exercise, or purported performance or exercise, of any function or power under this Act or in the administration or execution, or purported administration or execution, of this Act.

- (2) Subsection (1) does not preclude the Crown or a council from incurring liability that an authorized officer, a council officer or other person would, but for subsection (1), incur.

102. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations under this section may be made for or with respect to—
- (a) the periods within which, and the manner in which, applications under this Act may be made to the Appeal Tribunal; and
 - (b) the management of waste, including—
 - (i) the classification, generation, storage, treatment, transport, handling and disposal of waste; and
 - (ii) approvals for the removal, disposal and transport of waste; and

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- (iii) certificates for the removal, disposal and transport of waste; and
 - (iv) records in relation to any of the matters referred to in subparagraphs (i) to (iii); and
 - (v) appeals in relation to the refusal of approvals or issuing of certificates for the removal, disposal and transport of waste; and
- (c) prohibiting or regulating the emission or disposal of things that are or contain pollutants and the use and operation of places that will or may cause or increase pollution of the environment; and
- (ca) matters relating to contaminated sites, including but not limited to –
 - (i) the undertaking of independent reviews and audits in relation to the contaminated site; and
 - (ii) the accreditation of independent reviewers and auditors; and
 - (iii) the establishment of committees for purposes related to the accreditation of independent reviewers and auditors; and
 - (iv) the issue and publication of guidelines relating to the

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accreditation of independent reviewers and auditors; and

(d) the making and issuing of codes of practice and the approval or ratification of those codes by Parliament.

(3) Regulations under this section may prescribe fees for –

(a) the undertaking by the Board of an assessment of a proposed environmentally relevant activity; and

(ab) an application under section 42I(1) for an environmental licence; and

(ac) an application under section 42N(1) for a variation of an environmental licence; and

(ad) an application under section 42S(1) for the renewal of an environmental licence; and

(ae) an application under section 42W(1) for the Director to transfer an environmental licence; and

(af) an application under section 42ZH(1) for an approval to surrender an environmental licence; and

(ag) the determination by the Director as to whether to impose a condition or restriction on an environmental licence

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- and the determination of such a condition or restriction; and
 - (b) the submission to the Board of a report on an environmental audit; and
 - (c) the issue of a determination by the Board conferring the protection of section 31; and
 - (d) the issue by the Director or an authorized officer of an emergency authorization; and
 - (e) the lodgment with the Board of a financial assurance; and
 - (f)
 - (g) any of the matters specified in subsection (2)(b); and
 - (h) any other action taken by the Board, the Director or an authorized officer in the performance or exercise of any function or power under this Act.
- (3A) Regulations under this section may prescribe fees payable –
- (a) in respect of an environmental improvement programme approved by the Board under section 40; and
 - (b) in respect of an environmental improvement programme taken, under clause 5 or 6 of Schedule 6, to have been approved by the Board; and

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- (ba) an environmental licence, including an annual fee, or any other action taken by the Director or the Board in relation to an environmental licence; and
 - (c) in respect of a permit granted under the *Land Use Planning and Approvals Act 1993*; and
 - (d) in respect of a permit taken, under clause 3 of Schedule 6, to have been granted under the *Land Use Planning and Approvals Act 1993*; and
 - (e) in respect of an order made under section 26 of the *State Policies and Projects Act 1993* in relation to activities for which the Board is responsible for the enforcement of conditions; and
 - (f) in respect of independent reviews and audits relating to contaminated sites and the accreditation of independent reviewers and auditors; and
 - (g) in respect of any other matter relating to such contaminated sites.
- (4) Fees prescribed for any of the purposes or matters specified in subsection (3) or (3A) –
- (a) may be calculated by reference to the extent of any environmental harm caused or likely to be caused by the activity to which the fee relates or by reference to such other factors as may be specified in the regulations; and

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- (b) may be set at differential levels to encourage improved environmental performance; and
 - (c) need not be determined by reference to the costs associated with the provision by the Board, the Director or an authorized officer of the relevant service.
- (5) Fees prescribed in respect of an environmental improvement programme may be calculated by reference to the achievement of the objectives and timetable set out in the programme to the satisfaction of the Board.
- (6) Regulations under this section may provide that the fees payable –
 - (a) in respect of an environmental improvement programme referred to in subsection (3A)(a), are payable on the approval of the environmental improvement programme by the Board under section 40 and on each anniversary of that approval; and
 - (b) in respect of an environmental improvement programme referred to in subsection (3A)(b), are payable on the commencement of this Act and on each anniversary of the date on which the programme of works, in respect of which the environmental improvement programme is taken to have been approved, was approved by the Minister

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or the Director of Environmental Control; and

- (c) in respect of a permit referred to in subsection (3A)(c), are payable on the granting of the permit under the *Land Use Planning and Approvals Act 1993* and on each anniversary of the granting of that permit; and
 - (d) in respect of a permit referred to in subsection (3A)(d), are payable on each anniversary of that permit; and
 - (e) in respect of an order referred to in subsection (3A)(e), are payable on the making of the order and on each anniversary of the making of that order.
- (6A) Regulations under this section may make provision for or with respect to –
- (a) the collection of fees by any person in relation to any act, matter or thing done or arising under this Act; and
 - (b) the remission of, or exemption from liability for, any such fees.
- (7) Regulations under this section may –
- (a) authorize any act, matter or thing in relation to which the regulations may be made to be from time to time determined, applied or regulated by the Board or the Director; and

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- (b) be made subject to such conditions or be made so as to apply differently according to such factors as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified; and
 - (c) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (d) in respect of such an offence, provide for the imposition of a fine not exceeding 1 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day during which the offence continues.
- (8) Regulations under this section may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (9) A provision referred to in subsection (8) may, if the regulations so provide, take effect from the commencement of this Act or a later date.

103. Fees imposed by councils

In accordance with the provisions of the *Local Government Act 1993*, a council may impose fees in relation to any function or service carried out by the council under this Act.

104. Provisions relating to commencement

If Division 7 of Part 3 commences before Division 1 of Part 2, the following provisions apply:

- (a) *The amendments effected by this paragraph have been incorporated into the authorised version of the Environment Protection Act 1973.*
- (b) references in Division 7 of Part 3 to the Board are to be read as references to the Director of Environmental Control.

105. Repeal of *Environment Protection Act 1973*, &c.

Subject to section 104, the following Acts are repealed:

- (a) *Environment Protection Act 1973;*
- (b) *Environment Protection Amendment Act 1989;*
- (c) *Environment Protection Amendment Act 1991;*
- (d) *Environment Protection Amendment Act 1993;*
- (e) *Chlorofluorocarbons and other Ozone Depleting Substances Control Act 1988.*

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106. *The amendments effected by this section have been incorporated into the authorised version of the Local Government (Building and Miscellaneous Provisions) Act 1993.*

107. Transitional provisions

Schedule 6 has effect.

107A. Transitional and savings provisions consequent on *Environmental Management and Pollution Control Amendment (Environment Protection Authority) Act 2007*

Schedule 7 has effect.

107B. Transitional and savings provisions consequent on *Building and Construction (Regulatory Reform Amendments) Act (No. 2) 2020*

Schedule 8 has effect.

108. Review of Act

The Minister must ensure that this Act is reviewed within 10 years from the day on which it commenced.

109. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

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- (a) the administration of this Act is assigned to the Minister for Environment and Land Management; and
- (b) the Department responsible to the Minister for Environment and Land Management in relation to the administration of this Act is the Department of Environment and Land Management.

SCHEDULE 1 – OBJECTIVES

Sections 8, 12 and 28

**PART 1 – OBJECTIVES OF THE RESOURCE
MANAGEMENT AND PLANNING SYSTEM OF
TASMANIA**

1. The objectives of the resource management and planning system of Tasmania are –
 - (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
 - (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
 - (c) to encourage public involvement in resource management and planning; and
 - (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and
 - (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

2. In clause 1(a), *sustainable development* means managing the use, development and protection

of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

- (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

**PART 2 – OBJECTIVES OF THE ENVIRONMENTAL
MANAGEMENT AND POLLUTION CONTROL
SYSTEM ESTABLISHED BY THIS ACT**

3. The objectives of the environmental management and pollution control system established by this Act are, in support of the objectives set out in Part 1 of this Schedule –
- (a) to protect and enhance the quality of the Tasmanian environment; and
 - (b) to prevent environmental degradation and adverse risks to human and ecosystem health by promoting pollution prevention, clean production technology, reuse and recycling of materials and waste minimization programmes; and

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- (c) to regulate, reduce or eliminate the discharge of pollutants and hazardous substances to air, land or water consistent with maintaining environmental quality; and
- (d) to allocate the costs of environmental protection and restoration equitably and in a manner that encourages responsible use of, and reduces harm to, the environment, with polluters bearing the appropriate share of the costs that arise from their activities; and
- (e) to require persons engaging in polluting activities to make progressive environmental improvements, including reductions of pollution at source, as such improvements become practicable through technological and economic development; and
- (f) to provide for the monitoring and reporting of environmental quality on a regular basis; and
- (g) to control the generation, storage, collection, transportation, treatment and disposal of waste with a view to reducing, minimizing and, where practicable, eliminating harm to the environment; and
- (h) to adopt a precautionary approach when assessing environmental risk to ensure that all aspects of environmental quality,

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including ecosystem sustainability and integrity and beneficial uses of the environment, are considered in assessing, and making decisions in relation to, the environment; and

- (i) to facilitate the adoption and implementation of standards agreed upon by the State under inter-governmental arrangements for greater uniformity in environmental regulation; and
- (j) to promote public education about the protection, restoration and enhancement of the environment; and
- (k) to co-ordinate all activities as are necessary to protect, restore or improve the Tasmanian environment.

SCHEDULE 2 – LEVEL 2 ACTIVITIES

Sections 3 and 11

1. Petroleum and Chemical

- (a) Chemical Works: the conduct of works with a total processing capacity of 200 tonnes or more per year at which one or more of the following operations are carried out:
 - (i) manufacture (through chemical reaction) of any inorganic chemical, including sulphuric acid, inorganic fertilisers, sodium silicate, lime or other calcium compound;
 - (ii) manufacture (through chemical reaction) or processing of any organic chemical or chemical product or petrochemical, including the separation of such materials into different products by distillation or other means.
- (b) Coal Processing Works: the conversion of coal into a gaseous, liquid or solid product.
- (c) Oil Refineries: the conduct of works at which crude petroleum oil or shale oil is refined, at which lubricating oil is produced or at which used oil is refined or reprocessed by filtration or physical or chemical separation.

- (d) Wood Preservation Works: the conduct of works for the treatment or preservation of timber by chemicals (including chemicals containing copper, chromium, arsenic or creosote).

2. Manufacturing and Mineral Processing

- (a) Cement Works: the conduct of works for the use of argillaceous and calcareous materials in the production of cement clinker or the grinding of cement clinker.
- (b) Ceramic Works: the conduct of works for the production of any products such as bricks, tiles, pipes, pottery goods, refractories or glass that are manufactured or are capable of being manufactured in furnaces or kilns fired by any fuel, being works with a total capacity for the production of such products of 200 tonnes or more per year.
- (c) Ferrous and Non-ferrous Metal Melting: the melting of ferrous or non-ferrous metal in a furnace or furnaces that alone or in aggregate have the capacity to melt 500 kilograms or more of metal in a working day of 8 hours.
- (d) Metallurgical Works: the conduct of works at which ores are smelted or reduced to produce metal.
- (e) Mineral Works: the conduct of works for processing mineral ores, sands or earths

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processing 1 000 tonnes or more per year of raw materials.

- (f) Pulp and Paper Works: the conduct of works at which paper pulp or paper is manufactured or is capable of being manufactured.
- (g) Wood Processing Works: the conduct of works (other than works at a builders supply yard, home improvement centre or firewood depot) at which timber is sawn, cut, compressed, milled, machined or kiln-dried, being works with a total production of 1 000 cubic metres or more per year.
- (h) Textile Bleaching and Dyeing Factories: the works involving bleaching, dyeing or printing of yarns, threads, fabrics or other textiles and capable of consuming more than 100 kilolitres of water in a working day of 8 hours.
- (i) Woodchip Mills: works involving processing of trees or parts of trees to form woodchips which have a production capacity of 1 000 tonnes or more per year, but excluding:
 - (i) mobile woodchippers while operating in the same forest harvest area from which the trees or parts of trees being processed were obtained; and

(ii) mobile woodchippers which are moved regularly from sawmill to sawmill to chip sawmill residues produced by those mills.

(iii)

3. Waste Treatment and Disposal

(a) Wastewater Treatment Works: the conduct of wastewater treatment works that involve the discharge of treated or untreated sewage, septic tank effluent or industrial or commercial wastewater to land or water, being works with a design capacity to treat an average dry-weather flow of 100 kilolitres or more per day of sewage or wastewater.

(ab) Waste Tyre Storage Depots: the conduct of depots for the storage of waste tyres, being depots which are designed to store, or are likely to store, 100 tonnes or more of waste tyres.

(b) Waste Depots: the conduct of depots for the reception, storage, treatment or disposal of waste other than—

(i) temporary storage at the place at which the waste is produced while awaiting transport to another place; or

(ia) storage, treatment or disposal of clean fill; or

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- (ii) storage, treatment or disposal of domestic waste at residential premises; or
 - (iii) waste transfer stations—
and which are designed to receive, or are likely to receive, 100 tonnes or more of waste per year.
- (c) Waste Transport Business: the transport, whether or not for fee or reward, of any controlled waste to Tasmania from another State or a Territory or from Tasmania to another State or a Territory.
- (d) Resource recovery: the conduct of works for —
 - (i) the production of compost or mushroom substrate, being works with a production capacity of 100 tonnes per year or more, other than —
 - (A) backyard composting for domestic use; and
 - (B) on-farm composting for use on agricultural land having the same owner as the land on which the compost is produced; and
 - (C) works in respect of silage for use on agricultural land; or

(ii) the application to land of class 2 or class 3 biosolids, within the meaning of the Tasmanian Biosolids Re-use Guidelines 1999, as amended from time to time, where the application rate is 50 wet tonnes or more per hectare every 3 years or greater than 50% of the Nitrogen Limited Application Rate per 3 year period; or

(iii) anaerobic digesters with a production capacity of 100 or more tonnes per year of solid or liquid fertiliser product.

4. Food Production and Animal and Plant Product Processing

(a) **Abattoirs or Slaughterhouses:** the conduct of meat processing within the meaning of the *Primary Produce Safety Act 2011* for producing 100 tonnes or more of meat or meat products per year.

(b) **Breweries and Distilleries:** the conduct of works for the production of beer by infusion, boiling or fermentation, or spirits by distillation, being works with a capacity to consume 100 kilolitres or more of water in a working day of 8 hours.

(c) **Fish Processing:** the conduct of works for scaling, gilling, gutting, filleting,

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smoking, drying or otherwise processing fish for sale, other than by freezing, chilling or packing, and in which 100 tonnes or more of product per year are produced.

- (d) **Milk Processing Works:** the conduct of works at which milk is separated, evaporated or otherwise processed for the manufacture of milk powder, cheese, butter, ice cream or other similar dairy products, being works with a processing capacity of 3 000 litres or more of whole milk, skimmed milk, evaporated milk or cream in an 8 hour working day.
- (e) **Produce Processing Works:** the conduct of works for the processing of vegetables, seed, grain, fruit or any other agricultural crop material by deep fat frying or roasting or boiling or drying through application of heat, being works with a processing capacity of 50 kilograms or more per hour.
- (f) **Rendering or Fat Extraction Works:** the conduct of works at which animal, fish or grease trap wastes or other matter is processed or is capable of being processed by rendering or extraction or by some other means to produce tallow or fat or their derivatives or proteinaceous matter, being works with a total processing capacity of 50 kilograms or more per hour where a continuous

cooker is used, or 50 kilograms per batch where a batch cooker is used.

- (g) Wool Scourers, Tanneries or Fellmongeries: the conduct of works for the scouring of wool or the commercial preservation or treatment or drying of animal skins or hides and producing 100 tonnes or more per year of product.
- (h) Finfish farming.

5. Extractive Activities

- (a) Quarries: the extraction of 5,000 cubic metres or more of rock or gravel per year if the extraction –
 - (i) is the subject of, or requires, a mining lease under the *Mineral Resources Development Act 1995*; or
 - (ii) is carried out at a quarry in a State forest, within the meaning of the *Mineral Resources Development Act 1995*.
- (b) Extractive pits: the extraction of 5,000 cubic metres or more of sand or clay per year if the extraction is the subject of, or requires, a mining lease under the *Mineral Resources Development Act 1995*.

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- (c) Mines: the extraction of any minerals producing 1 000 tonnes or more of minerals per year.

6. Materials Handling

- (a) Crushing, Grinding or Milling: processing (by crushing, grinding, milling or separating into different sizes by sieving, air elutriation or in any other manner) of –
 - (i) chemicals or rubber at a rate of 200 tonnes or more per year; or
 - (ii) rock, ores or minerals at a rate in excess of 1 000 cubic metres per year.
- (b) Coal Handling and Washing: the handling or washing of coal or carbonaceous material by any means of facilities with a total handling or washing capacity of 100 tonnes or more per day.

7. Other

- (a) Fuel Burning: any process or combination of processes involving the use of fuel burning equipment or incineration and where the equipment alone or in aggregate is capable of burning combustible matter at a rate of one tonne or more per hour.

(b - c)

- (d) Pre-mix Bitumen Plants: works –
 - (i) in which crushed or ground rock aggregates are mixed, with bituminous or asphaltic materials, and heated, for the purpose of producing heated road-building mixtures; and
 - (ii) capable of producing more than 1 000 tonnes of material per year.
- (e) Conduct of Certain Activities in Waters Within the Limits of the State: the dumping of dredge spoil or the dumping or sinking of boats, aircraft, platforms or other man-made structures and the placement of artificial reefs in waters within the limits of the State.
- (f) Wind Energy Facilities: facilities for generating energy through wind with a maximum generating capacity of 30 megawatts or more.

**SCHEDULE 3 – PROVISIONS WITH RESPECT TO
MEMBERSHIP OF THE BOARD**

Section 13

1. Interpretation

In this Schedule, *appointed member* means a member of the Board referred to in section 13A(1)(a), (c), (d) or (e).

2. Term of appointment

- (1) An appointed member is to be appointed for such term, not exceeding 3 years, as is specified in the member's instrument of appointment and, if otherwise qualified, is eligible for re-appointment.
- (2) Despite subclause (1), if an appointed member has served consecutively 2 terms in office as an appointed member of the Board, the appointed member may not be appointed for a further consecutive term of office.

3. Provisions requiring devotion of whole of time to other duties

Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his or her time to the duties of office under that Act, that provision does not operate to disqualify that person from holding that office and also the office of a member of the Board.

4. Terms and conditions of appointment

- (1) Subject to subclause (2), a member of the Board is entitled to be paid such remuneration and allowances as the Governor may from time to time determine.
- (2) The Director is not entitled to remuneration under subclause (1) except with the approval of the Minister administering the *State Service Act 2000*.
- (3) An appointed member holds office on such terms and conditions not provided for in this Act as are determined by the Governor.

5. Disclosure of interests

- (1) If a member of the Board has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered or about to be considered by the Board, the member must disclose the nature of that interest at a meeting of the Board.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting of the Board and the member must not, unless the Board otherwise determines –
 - (a) be present during any deliberation of the Board with respect to that matter; or
 - (b) take part in any decision of the Board with respect to that matter.

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- (3) For the purpose of making a determination by the Board under subclause (2) in relation to a member who has made a disclosure under subclause (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not take part in the making by the Board of the determination.

6. Deputies of members

- (1) The Governor may appoint a deputy of a member of the Board other than the chairperson.
- (2) The deputy of –
 - (a)
 - (b) the Director must be nominated by the Director; and
 - (c) a member referred to in section 13A(1)(c), (d) or (e) must be a person who possesses environmental management experience nominated by the Minister.
- (3) If a member of the Board is unable for any reason to perform the duties of a member, the member's deputy may perform those duties and, when doing so, is taken to be a member.
- (3A) If the chairperson is unable for any reason to perform the duties of chairperson –
 - (a) the deputy chairperson may perform the duties of chairperson and, when doing so, is taken to be the chairperson; and

- (b) the deputy of the deputy chairperson may perform the duties of the deputy chairperson and, when doing so, is taken to be the member of the Board holding the office of deputy chairperson.
- (4) A deputy member of the Board holds office for such term, not exceeding 3 years, and on such conditions, as are specified in his or her instrument of appointment.

7. Resignation

An appointed member may resign by signed notice given to the Governor.

8. Termination of appointment

- (1) The Governor may terminate the appointment of an appointed member if the member –
 - (a) becomes mentally or physically incapable of performing satisfactorily the duties of office; or
 - (b) is convicted in Tasmania, or elsewhere, of an offence punishable by imprisonment for 2 years or longer; or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration or estate for their benefit; or

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(d) fails, without reasonable excuse, to comply with clause 5.

(2) An appointed member may be removed from office only in accordance with this clause.

9. Validity of proceedings, &c.

All acts and proceedings of the Board or of any person acting pursuant to any direction of the Board are, notwithstanding the subsequent discovery of any defect in the appointment of any member of the Board or that any person was disqualified from acting as, or incapable of being, a member of the Board, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Board had been fully constituted.

10. Presumptions

In any proceedings by or against the Board, unless evidence is given to the contrary, no proof is required of –

(a) the constitution of the Board; or

(b) any resolution of the Board; or

(c) the appointment of any member of the Board; or

(d) the presence of a quorum at any meeting of the Board.

**SCHEDULE 4 – PROVISIONS WITH RESPECT TO
MEETINGS OF THE BOARD**

Section 13

1. Convening of meetings of the Board

Meetings of the Board may be convened by the chairperson of the Board or by any 2 members of the Board.

2. Procedure at meetings

- (1) Four members of the Board of whom one must be the chairperson or deputy chairperson form a quorum at any duly convened meeting of the Board.
- (2) Any duly convened meeting of the Board at which a quorum is present is competent to transact any business of the Board.
- (3) Questions arising at a meeting of the Board are to be determined by a majority of votes of the members of the Board present and voting.
- (4) In the case of an equality of votes, the chairperson of the Board or, in the absence of the chairperson, the deputy chairperson of the Board has a casting vote.

3. General procedure

The procedure for the calling of, and for the conduct of business at, meetings of the Board is,

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subject to any procedure that is specified in this Act, to be as determined by the Board.

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**SCHEDULE 5 – CHARACTERISTICS TO BE
 CONSIDERED IN DETERMINING CLASS OF
 ASSESSMENT**

Section 27A

Class of assessment	Characteristics
1. Class 2A	Small-scale projects with environmental impacts that – <ul style="list-style-type: none"> (a) are minor in scale or consequence; and (b) are local in extent; and (c) may be readily avoided or mitigated through appropriate management; and (d) are unlikely to generate significant public interest.
2. Class 2B	Any activity that is not included in Class 2A or Class 2C
3. Class 2C	Projects that – <ul style="list-style-type: none"> (b) have a reasonable likelihood of –

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Class of assessment	Characteristics
	<ul style="list-style-type: none"> (i) requiring approval from the Commonwealth Government under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth; or (ii) generating a very high level of public interest; or (c) possess more than one of the following characteristics: <ul style="list-style-type: none"> (i) a high level of public interest; (ii) very large scale of development or potential for environmental impacts across a wide area;

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Class of assessment	Characteristics
	<p>(iii) potential to significantly increase pressure on a threatened species;</p> <p>(iv) are subject to unusual or complex factors that are likely to demand additional time during the environmental impact assessment process.</p>

**SCHEDULE 5A – MEMBERSHIP, PROCEEDINGS,
MEETINGS AND HEARINGS OF PANEL**

**PART 1 – MEMBERSHIP AND PROCEEDINGS OF
PANEL**

Section 96A

1. Disclosure of interests

- (1) If a member of the Panel has or acquires an interest (whether pecuniary or otherwise) that would or may conflict with the proper performance of the member's functions in relation to a matter being considered or about to be considered by the Panel, the member must disclose the nature of that interest to the Panel as soon as practicable after becoming aware of the conflict or possible conflict, and no later than at the next meeting of the Panel.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting of the Panel and the member must not, unless the Panel otherwise determines –
 - (a) be present during any deliberation of the Panel with respect to that matter; or
 - (b) take part in any decision of the Panel with respect to that matter.
- (3) For the purpose of making a determination by the Panel under subclause (2) in relation to a member who has made a disclosure under subclause (1), a member who has a direct or

indirect pecuniary interest in the matter to which the disclosure relates must not take part in the making by the Panel of the determination.

2. Deputies of members

- (1) For the purposes of this clause, a member of the Panel is absent if he or she –
 - (a) is absent from duty; or
 - (b) is otherwise unable to perform the functions of the office of member of the Panel.
- (2) If the chairperson of the Panel is absent, a person acting or entitled to act in the position of chairperson of the Tasmanian Planning Commission is taken to be the chairperson of the Panel.
- (3) If a member of the Panel other than the chairperson is absent, that member's deputy is taken to be a member of the Panel.

3. Validity of proceedings, &c.

All acts and proceedings of the Panel or of any person acting pursuant to any direction of the Panel are, despite the subsequent discovery that any person was disqualified from acting as, or incapable of being, a member of the Panel, as valid as if the member was qualified to act as, or capable of being, a member and as if the Panel had been fully constituted.

4. Presumptions

In any proceedings by or against the Panel, unless evidence is given to the contrary, no proof is required of –

- (a) the constitution of the Panel; or
- (b) any resolution of the Panel; or
- (c) the presence of a quorum at any meeting of the Panel.

PART 2 – MEETINGS CONDUCTED BY PANEL

5. Convening of meetings of Panel

Meetings of the Panel may be convened by the chairperson of the Panel or by any 2 members of the Panel.

6. Procedure at meetings

- (1) Three members of the Panel of whom one must be the chairperson form a quorum at any duly convened meeting of the Panel.
- (2) Any duly convened meeting of the Panel at which a quorum is present is competent to transact any business of the Panel.
- (3) Questions arising at a meeting of the Panel are to be determined by a majority of votes of the members of the Panel present and voting.

- (4) In the case of an equality of votes, the chairperson of the Panel has a casting vote.

7. General procedure

The procedure for the calling of, and for the conduct of business at, meetings of the Panel is, subject to this Act, to be as determined by the Panel.

PART 3 – HEARINGS CONDUCTED BY PANEL

8. Interpretation

In this Part,

hearing means a hearing conducted by the Panel.

9. Convening of hearing of Panel

A hearing may be convened by –

- (a) the chairperson of the Panel; or
- (b) any 2 members of the Panel.

10. Directions about hearings

- (1) The Panel may give directions about –
- (a) the times and the places of hearings; and
 - (b) matters preliminary to hearings; and

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- (c) the conduct of hearings.
- (2) The Panel may refuse to hear any person who fails to comply with a direction of the Panel.

11. Hearings

- (1) If the Panel conducts a hearing –
 - (a) the procedure of the hearing is, subject to this Part, to be determined by the Panel; and
 - (b) the Panel –
 - (i) may inform itself about any matter in any way that it considers appropriate; and
 - (ii) may receive oral or written evidence; and
 - (iii) may consult with such persons as it thinks appropriate; and
 - (iv) is not bound to act in a formal manner; and
 - (v) is not bound by the rules of evidence; and
 - (vi) must observe the rules of natural justice.
- (2) Before beginning a hearing, the Panel must give reasonable notice of the hearing in at least 2 daily newspapers published in Tasmania, of

which at least one circulates in the region in which the hearing is to be conducted.

- (3) The notice under subclause (2) is to state –
 - (a) the subject of the hearing; and
 - (b) the time when, and place at which, the hearing is to be conducted.

12. Hearings procedure generally

- (1) Subject to this clause, a hearing is to be conducted in public.
- (2) At its discretion, or on the application of a person, the Panel may take evidence in private if the Panel considers that –
 - (a) the evidence to be given at a hearing is of a confidential nature; and
 - (b) the interest in confidentiality is greater than the interest in having the evidence taken in public.
- (3) The Panel may permit or require a person who is to give evidence at a hearing to do so in writing.
- (4) At a hearing, the Panel may take evidence, or require evidence to be given, on oath or affirmation.

13. Representation at hearing

- (1) At a hearing, a party to the hearing may –

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- (a) appear in person; or
 - (b) be represented by some other person, whether or not that other person is enrolled or admitted as an Australian legal practitioner.
- (2) Despite subclause (1), the Panel may refuse to allow a party to the hearing to be represented by another person if the Panel is satisfied that another party to the hearing would be significantly disadvantaged by the representation.

14. Written evidence and submission documents to be made public

- (1) The Panel is to make available to the public, in any way it thinks appropriate –
- (a) the particulars of written evidence given at a hearing; and
 - (b) the contents of written submissions to the Panel.
- (2) Despite subclause (1), the Panel may refuse to make the particulars of written evidence, or the contents of a written submission, available to the public if the Panel considers that the evidence or submission would have been taken in private if it had been given orally at a hearing.

15. Power to obtain information and documents

- (1) The Panel, by notice in writing, may require a person to do one or more of the following:
 - (a) to appear at a hearing to give evidence;
 - (b) to produce a document specified in the notice;
 - (c) to give to the Panel, on or before a day specified in the notice –
 - (i) a statement signed by the person setting out the information specified in the notice; or
 - (ii) a document specified in the notice.
- (2) If a document is produced or given to the Panel under subclause (1), the Panel –
 - (a) may take possession of the document and make copies of, or take extracts from, it; and
 - (b) may retain possession of the document for such period as is necessary for the purposes of the hearing to which the document relates; and
 - (c) must permit the document to be inspected at all reasonable times by persons who would be entitled to inspect the document if it were not in the possession of the Panel.

16. Failure to comply with requirement

- (1) A person who has been given notice under clause 15 must not, without reasonable excuse –
- (a) refuse or fail to comply with the notice; or
 - (b) when appearing at a hearing pursuant to the notice, refuse or fail –
 - (i) to take an oath or make an affirmation, if required; or
 - (ii) to answer a question that the person presiding at the hearing requires to be answered.

Penalty: Fine not exceeding 20 penalty units.

- (2) It is a reasonable excuse for the purposes of subclause (1) if compliance with the notice or the answer to the question will incriminate the person or make the person liable to forfeiture or a penalty.
- (3) A person who has been given notice under clause 15 requiring the person to appear at a hearing must not, without reasonable excuse, refuse or fail to attend from day to day unless excused or released from further attendance by the person presiding at the hearing.

Penalty: Fine not exceeding 20 penalty units.

17. False or misleading evidence or information

- (1) A person must not –
 - (a) give to the Panel information, or a document, that the person knows to be false or misleading in a material particular; or
 - (b) give evidence, or produce a document, at a hearing that the person knows to be false or misleading in a material particular.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 6 months.

- (2) Subclause (1) does not apply to a document if, at the time when the person gives it to the Panel or produces it at a hearing, the person informs the Panel that it is false or misleading in a material particular and specifies in which respect it is, to the person's knowledge, false or misleading.

18. Allowances to persons giving evidence, &c.

- (1) A person who appears at a hearing as required by a notice under clause 15 is entitled to be paid any allowances for travelling and other expenses as are prescribed.
- (2) The Panel may pay any allowances for travelling and other expenses as are prescribed to any other person who appears at a hearing to give evidence or produce a document.

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- (3) If a person gives evidence to, or produces a document at, a hearing, the Panel may do one or more of the following:
- (a) pay for the performance of work involved in collecting and preparing the evidence or document;
 - (b) reimburse expenses reasonably incurred in the collection and preparation of the evidence or document;
 - (c) compensate for such losses as were reasonably incurred in collecting and preparing the evidence or document.
- (4) In subclause (3),
- person* includes a Government department, or a State authority, within the meaning of the *State Service Act 2000*.

19. Obstruction or improper influence of hearing

A person must not obstruct or improperly influence the conduct of a hearing of the Panel or attempt to do so.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 6 months.

20. Protection of members, &c.

- (1) A member of the Panel does not incur any personal liability in respect of any act done or

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omitted to be done by the member in good faith in the performance or exercise, or purported performance or exercise, of any function or power of the Panel or in the administration or execution, or purported administration or execution, of the Act under which the Panel is established.

- (2) A person summoned to attend or appearing before the Panel as a witness has the same protection as a witness in a proceeding in the Supreme Court.

**SCHEDULE 6 – TRANSITIONAL AND
MISCELLANEOUS PROVISIONS**

Section 107

1. Interpretation

In this Schedule –

commencement day means the day on which
Division 1 of Part 2 commences;

scheduled premises has the same meaning as
in the repealed Act;

undetermined application means an
application which has not been
determined under the repealed Act
immediately before the commencement
day.

2. Permits

Where a planning approval was granted under
the *Local Government Act 1962* and was in force
immediately before the commencement of the
first of the provisions of this Act to commence, a
permit under the *Land Use Planning and
Approvals Act 1993* is, on that commencement,
taken to have been granted on the terms and
conditions (if any) specified in the approval.

3. Registrations and licences

- (1) Where immediately before the commencement
day scheduled premises were licensed, or a

person was registered in respect of scheduled premises, under the repealed Act, a permit under the *Land Use Planning and Approvals Act 1993* is, on that day, taken to have been granted in respect of the scheduled premises on the terms and conditions (if any) specified in the registration or licence, and subject to any environmental management plan incorporated, or referred to, in the registration or licence.

- (2) For the purposes of this Act the anniversary of a permit referred to in subsection (1) is to be the anniversary of the licence or registration.
- (3) If there is an inconsistency between a condition taken to have been continued in a permit pursuant to subclause (1) and any other condition of the permit, the first-mentioned condition prevails.
- (4) A reference to the Director of Environmental Control in a condition taken to have been continued in a permit pursuant to subclause (1) is taken to be –
 - (a) in the case of a level 2 activity or premises which were declared to be scheduled premises under section 22A of the repealed Act, a reference to the Director, Environmental Protection Authority; and
 - (b) in any other case, a reference to the relevant council.

4. Enforcement of terms and conditions of registrations and licences

- (1) On and after the commencement day, the terms and conditions of a permit referred to in clause 3(1) may be enforced as if the terms and conditions were included in the permit under this Act.
- (2) The powers conferred by this Act on a council cannot be exercised by that council in respect of an activity the subject of a permit referred to in clause 3(1) where that activity is a level 2 activity.

5. Ministerial exemptions

- (1) Where under the repealed Act the Minister has exempted any person from the operation of a section of that Act, and that exemption is in force immediately before the commencement of Division 7 of Part 3 of this Act, an environmental improvement programme is, on that commencement, taken to have been approved by the Board under this Act on the terms and conditions of any proposal in relation to which the Minister is satisfied as referred to in section 17A (3) of the repealed Act.
- (2) Where a proposal under section 17A (1) of the repealed Act has not been submitted to the Minister, or where the Minister is not satisfied as referred to in section 17A (3) of the repealed Act, before the commencement of Division 7 of Part 3 of this Act, a person who has been exempted by the Minister from the operation of a

section of the repealed Act must, within 3 months after the commencement of Division 7 of Part 3 of this Act, provide the Board with a draft environmental improvement programme in accordance with section 39.

6. Programmes relating to environmental management

Where a programme relating to the environmental management of scheduled premises has been approved by the Director of Environmental Control under the repealed Act and is in force immediately before the commencement of Division 7 of Part 3 of this Act, an environmental improvement programme is, subject to the consent of the operator of the premises, taken to have been approved by the Board under this Act on the commencement of this provision on the terms and conditions of the programme approved by the Director of Environmental Control.

7. Waste transport licences

On and after the commencement day, a licence to transport waste issued to a person under the repealed Act and in force immediately before that day is taken to be an environment protection notice, containing the terms and conditions specified in the licence, served on that person under this Act.

8. Regulations

The regulations made under the repealed Act and in force immediately before the commencement day –

- (a) continue, on and after that day, to be in force as if they were made under this Act unless they are inconsistent with a State Policy or an environment protection policy; and
- (b) are, on and after that day, taken to have been made for the purposes of this Act; and
- (c) may, after that day, be altered or rescinded under this Act.

9. Authorized officers

A person, other than an employee of a council, holding office as an authorized officer under the repealed Act immediately before the commencement day is, on that day, taken to be appointed as an authorized officer under this Act.

10. Council officers

An employee of a council holding office as an authorized officer under the repealed Act immediately before the commencement day is, on that day, taken to be appointed as a council officer under this Act.

11. Delegations

A delegation by the Director of Environmental Control under the repealed Act and in force immediately before the commencement day is, on and after that day, taken to be a delegation by the Board under this Act.

12. Environment Protection Advisory Council

- (1) The Environment Protection Advisory Council as constituted by the repealed Act immediately before the commencement day is, on and after that day, taken to be a committee established by the Board under this Act.
- (2) Any committee appointed by the Environment Protection Advisory Council under the repealed Act and in existence immediately before the commencement day is, on and after that day, taken to be a sub-committee of the committee referred to in subclause (1).

13. Notice to reduce or eliminate pollution or noise

A notice to reduce or eliminate pollution or noise served on a person and in force immediately before the commencement day is, on and after that day, taken to be an environment protection notice issued and served on that person and subject to the terms and conditions specified in the first-mentioned notice.

14. Rehabilitation of land and vegetation

- (1) Where immediately before the commencement day a person is under an obligation under section 20 (2) of the repealed Act to comply with conditions attached to a licence issued under that Act, an environment protection notice containing the conditions attached to the licence is, on that day, taken to have been issued and served on the person.
- (2) The environment protection notice referred to in subclause (1) has effect for a period of 2 years after the relevant operation has ceased or for such period as is necessary to ensure that the relevant land is as free from erosion as is practicable and rehabilitation of the land is completed, whichever period is the shorter.
- (3) A notice in force under section 20 (3) of the repealed Act immediately before the commencement day is, on and after that day, taken to be an environment protection notice issued and served on the person on whom the first-mentioned notice was served and is subject to the directions specified in that notice.

15. Licences

On and after the commencement day, an undetermined application for a licence in respect of scheduled premises is to be dealt with as if this Act had not been enacted.

16. Approval in change of operation of scheduled premises

On and after the commencement day, an undetermined application for the approval of the Director of Environmental Control to a change in the operation of scheduled premises is to be dealt with as if this Act had not been enacted.

17. Transfer of licences

On and after the commencement day, an undetermined application for a transfer of a licence is to be dealt with as if this Act had not been enacted.

18. Other applications

On and after the commencement day, an undetermined application in respect of any matter not referred to in clause 15, 16 or 17 is to be dealt with as if this Act had not been enacted.

19. Fees

On and after the commencement day, section 30 of the repealed Act applies as if that Act had not been repealed to a licence granted as a result of an application referred to in clause 15.

20. Crown premises

Where under section 34 of the repealed Act an officer has been nominated to apply for and hold

a licence in respect of scheduled premises and that nomination is in force immediately before the commencement day, that officer is, on and after that day, taken to be the person to whom a permit is granted in respect of those premises.

21. Level 2 activities which are not scheduled premises under repealed Act

Where immediately before the commencement day a person is undertaking a level 2 activity which was not a scheduled premises under the repealed Act, that person may, on and after that day, continue to undertake that activity until an environment protection notice is issued and served on that person under this Act.

22. Appeals

- (1) Where on or after the commencement day an undetermined application is dealt with as if this Act had not been enacted, a person may appeal under the repealed Act against the determination of that application as if this Act had not been enacted.
- (2) An appeal instituted under the repealed Act and not finally decided by the Appeal Tribunal before the commencement day is to be dealt with as if this Act had not been enacted.
- (3) Where a person had a right to appeal under the repealed Act and did not institute an appeal within the 14 day period specified in the repealed Act, that person may, within 14 days

from the commencement day, institute an appeal as if this Act had not been enacted.

- (4) Where a right to appeal exists under the repealed Act and an application to extend the time in which to institute an appeal under that Act is made within 6 months after the commencement day, any appeal instituted as a result of that application being granted is to be dealt with as if this Act had not been enacted.

23. Analysts

- (1) A person holding office as an analyst under the repealed Act immediately before the commencement day is, on that day, taken to be appointed as an analyst under this Act.
- (2) A certificate of analysis given by an analyst under the repealed Act and in force immediately before the commencement day is, on and after that day, taken to be a certificate executed by a person appointed as an analyst under this Act.

24. Work to be done

Any work ordered or required to be done under the repealed Act before the commencement day but not commenced or completed before that day is, on and after that day, to be commenced or completed in accordance with the order or requirement.

25. Permissions, approvals and consent

Any permission, approval and consent given under the repealed Act and in force before the commencement day continues, on and after that day, to be in force until withdrawn, expired or revoked.

26. Property and rights

On the commencement day, the rights of the Director of Environmental Control vest in the Board and the liabilities and obligations of the Director of Environmental Control become the liabilities and obligations of the Board.

27. Contracts and agreements

On and after the commencement day, any contract or agreement entered into by the Director of Environmental Control and in force immediately before that day is taken to be a contract or agreement entered into by the Board.

28. Legal proceedings, &c.

- (1) On and after the commencement day, legal proceedings instituted by or against the Director of Environmental Control before, and pending immediately before, the commencement day may be continued by or against the Board.
- (2) Any legal or other proceedings which may, before the commencement day, have been instituted or continued by or against the Director

of Environmental Control may, on and after that day, be instituted or continued by or against the Board.

- (3) On and after the commencement day, a judgment or order of a court obtained in legal proceedings by or against the Director of Environmental Control may be enforced by or against the Board.

29. References to Director of Environmental Control

On and after the commencement day –

- (a) except as provided in clause 3(4), a reference to the Director of Environmental Control in any law, instrument or document is taken to be a reference to the Board or to the chairperson of the Board, as the case may require; and
- (b) a document addressed to and purporting to be served on the Director of Environmental Control is taken to be served on the Board.

30. Acts, &c., done by or to Director of Environmental Control

All acts, matters and things done or omitted to be done by, or done or suffered in relation to, the Director of Environmental Control before the commencement day have, on and after that day, the same force and effect as if they had been

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done or omitted to be done by, or done or suffered in relation to, the Board.

31. References to *Environment Protection Act 1973*

On and after the commencement day –

- (a) a reference in any Act to any section, Division, Part or Schedule of the repealed Act is taken to be a reference to the equivalent provision, if any, in the *Environmental Management and Pollution Control Act 1994*; and
- (b) a reference in any law, instrument or document to the *Environment Protection Act 1973* is taken to be a reference to the *Environmental Management and Pollution Control Act 1994*.

**SCHEDULE 7 – TRANSITIONAL AND SAVINGS
PROVISIONS CONSEQUENT ON *ENVIRONMENTAL
MANAGEMENT AND POLLUTION CONTROL
AMENDMENT (ENVIRONMENT PROTECTION
AUTHORITY) ACT 2007***

Section 107A

PART 1 – PRELIMINARY

1. Interpretation

In this Schedule –

commencement day means the day on which the *Environmental Management and Pollution Control Amendment (Environment Protection Authority) Act 2007* commences;

former Act means this Act as in force immediately before the commencement day;

former Board means the Board of Environmental Management and Pollution Control established under section 12 of the former Act;

former Director means the Director of Environmental Management holding office under section 18 of the former Act immediately before the commencement day.

PART 2 – BOARD

2. First ministerial statement of expectation

Despite section 15(1), in 2008 the Minister is to provide the Board with a ministerial statement of expectation within 3 months after the commencement of the *Environmental Management and Pollution Control Amendment (Environment Protection Authority) Act 2007*.

3. Abolition of former Board

The former Board is abolished.

4. Documents

A reference in any document to the former Board is taken, where appropriate, to be or include a reference to the Board.

5. Continuation and institution of proceedings

On and after the commencement day –

- (a) any legal or other proceedings instituted by or against the former Board before, and pending on, the commencement day may be continued by or against the Board; and
- (b) any legal or other proceedings that, immediately before the commencement day, could have been instituted by or

against the former Board may be instituted by or against the Board; and

- (c) a judgment or order of a court obtained before the commencement day by or against the former Board may be enforced by or against the Board; and
- (d) a document relating to legal or other proceedings that has been served on or by the former Board before the commencement day is taken, where appropriate, to have been served on or by the Board.

6. Actions

Any action done or omitted by the former Board is taken, where appropriate, to have been done or omitted by the Board.

PART 3 – DIRECTOR

7. Director

The person appointed, and holding office immediately before the commencement day, as Director of Environmental Management under section 18 of the former Act is taken to have been appointed as Director, Environment Protection Authority under section 18 on the same conditions and for a term expiring on the same day.

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8. Documents

A reference in any document to the former Director is taken, where appropriate, to be or include a reference to the Director.

9. Actions

Any action done or omitted by the former Director is taken, where appropriate, to have been done or omitted by the Director.

PART 4 – PANEL

10. Constitution of Panel for assessment of draft environment protection policy

- (1) If, before the commencement day, notice has been given of a draft environment protection policy in accordance with section 96I, and the Panel has not –
 - (a) commenced the process of considering any submissions received in respect of that policy in accordance with section 96J; or
 - (b) in the opinion of the chairperson, substantially progressed in that process of considering submissions –

the Panel is to be reconstituted in accordance with section 96A.

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- (2) If, before the commencement day, notice has been given of a draft environment protection policy in accordance with section 96I, and the Panel has –
- (a) commenced the process of considering any submissions received in respect of that policy in accordance with section 96J; and
 - (b) in the opinion of the chairperson, substantially progressed in that process of considering submissions –

the Panel as constituted immediately before the commencement day is to continue the process of the assessment of the relevant draft environment protection policy.

- (3) If –
- (a) a person immediately before the commencement day was a member of the Panel referred to in section 96A(2)(b), (c) or (d) of the former Act; and
 - (b) that person's membership of the Panel is continued by reason of subclause (2) –

that person is taken, for the purpose of the assessment of the draft environment protection policy in relation to which the membership is continued under subclause (2), to be a member of the Panel until the completion of that assessment.

11. Cessation of membership of Panel

A person whose membership of the Panel ceases by reason of the amendments to section 96A effected by the *Environmental Management and Pollution Control Amendment (Environment Protection Authority) Act 2007* is not entitled to any compensation or other payment in respect of the cessation of that membership.

PART 5 – AUTHORIZED OFFICERS

12. Authorized officers

A person appointed by the Secretary of the Department, and holding office immediately before the commencement day, as an authorized officer under section 20(2) or (4) of the former Act is taken to have been appointed by the Director as an authorized officer under section 20(2) or (4) on the same terms and conditions and for a term expiring on the same day.

**SCHEDULE 8 – TRANSITIONAL AND SAVINGS
PROVISIONS CONSEQUENT ON *BUILDING AND
CONSTRUCTION (REGULATORY REFORM
AMENDMENTS) ACT (NO. 2) 2020***

Section 107B

**1. Certain provisions not to apply in relation to cases
for assessment**

(1) In this Schedule –

amending Act means the *Building and
Construction (Regulatory Reform
Amendments) Act (No. 2) 2020*.

(2) The amendments to this Act made by the
amending Act do not apply, and this Act, as in
force immediately before the day on which
section 27FA is inserted by the amending Act,
applies, in relation to a case for assessment
lodged under section 27F(1) before that day.

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NOTES

The foregoing text of the *Environmental Management and Pollution Control Act 1994* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 5 November 2021 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Environmental Management and Pollution Control Amendment Act 1994</i>	No. 83 of 1994	16.12.1994
<i>Environmental Management and Pollution Control Act 1994</i>	No. 44 of 1994	1.1.1995 (ss. 1-5, 8, 10, 102-104, 107, 109, Pt. 3, Div. 7 (37-42), Scheds. 1 & 6) 1.7.1995 (Pt. 6, Sched. 5) 25.1.1996 (rest of Act)
<i>State Policies and Projects Amendment Act 1997</i>	No. 21 of 1997	1.8.1997
<i>Resource Planning and Development Commission Act 1997</i>	No. 85 of 1997	1.1.1998
<i>Land Use Planning and Approvals Amendment Act 1997</i>	No. 84 of 1997	1.1.1998
<i>Environmental Management and Pollution Control Amendment Act 2000</i>	No. 56 of 2000	14.7.2000
<i>Environmental Management and Pollution Control Amendment Act (No. 2) 2000</i>	No. 97 of 2000	13.12.2000
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Corporations (Consequential Amendments) Act 2001</i>	No. 42 of 2001	15.7.2001
<i>Environmental Management and Pollution Control Amendment Act 2001</i>	No. 88 of 2001	17.12.2001

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Act	Number and year	Date of commencement
<i>Environmental Management and Pollution Control Amendment (Fee Liability) Act 2002</i>	No. 34 of 2002	14.11.2002
<i>Environmental Management and Pollution Control Amendment Act 2002</i>	No. 56 of 2002	19.12.2002
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Environmental Management and Pollution Control Amendment (Hearings) Act 2004</i>	No. 6 of 2004	9.6.2004
<i>Environmental Management and Pollution Control Amendment (Contaminated Sites) Act 2007</i>	No. 46 of 2007	29.11.2007
<i>Environmental Management and Pollution Control Amendment Act 2007</i>	No. 45 of 2007	29.11.2007
<i>Monetary Penalties Enforcement (Transitional Arrangements and Consequential Amendments) Act 2007</i>	No. 72 of 2007	28.4.2008
<i>Monetary Penalties Enforcement (Consequential Amendments) Act 2008</i>	No. 6 of 2008	28.4.2008
<i>Environmental Management and Pollution Control Amendment (Environment Protection Authority) Act 2007</i>	No. 75 of 2007	1.7.2008
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Resource Planning and Development Commission Legislation (Miscellaneous Amendments) Act 2009</i>	No. 28 of 2009	1.9.2009
<i>Environmental Management and Pollution Control Order 2010</i>	S.R. 2010, No. 15	12.4.2010
<i>Environmental Management and Pollution Control Amendment Act 2012</i>	No. 45 of 2012	6.12.2012
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2013</i>	No. 20 of 2013	20.6.2013
<i>Primary Produce Safety Act 2011</i>	No. 36 of 2011	1.2.2015
<i>Justice and Related Legislation</i>	No. 38 of 2015	13.10.2015

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Act	Number and year	Date of commencement
<i>(Miscellaneous Amendments) Act 2015</i>		
<i>Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015</i>	No. 47 of 2015	17.12.2015
<i>Environmental Management and Pollution Control (Amendment of Schedule 2) Order 2017</i>	S.R. 2017, No. 78	8.11.2017
<i>Finfish Farming Environmental Regulation Act 2017</i>	No. 46 of 2017	4.12.2017
<i>Environmental Management and Pollution Control Order 2019</i>	S.R. 2019, No. 12	27.3.2019
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Environmental Management and Pollution Control (Amendment of Schedule 2) Order 2019</i>	S.R. 2019, No. 74	11.12.2019
<i>Land Use Planning and Approvals Amendment (Major Projects) Act 2020</i>	No. 21 of 2020	28.10.2020
<i>Building and Construction (Regulatory Reform Amendments) Act (No. 2) 2020</i>	No. 31 of 2020	30.11.2020
<i>Marine-related Incidents (MARPOL Implementation) Act 2020</i>	No. 22 of 2020	1.1.2021
<i>Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021</i>	No. 18 of 2021	5.11.2021

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Section 3	Amended by No. 56 of 2000, s. 4, No. 86 of 2000, Sched. 1, No. 42 of 2001, Sched. 1, No. 45 of 2007, s. 4, No. 46 of 2007, s. 4, No. 75 of 2007, s. 4, No. 6 of 2008, Sched. 1, No. 45 of 2012, s. 4, No. 38 of 2015, s. 28, No. 46 of 2017, s. 4 and No. 18 of 2021, s. 83
Section 5A	Inserted by No. 56 of 2000, s. 5
Section 5B	Inserted by No. 56 of 2000, s. 5
Section 5C	Inserted by No. 46 of 2017, s. 5
Section 9	Amended by No. 45 of 2007, s. 5 and No. 45 of 2012, s. 5
Section 12	Substituted by No. 75 of 2007, s. 5
Section 13	Amended by No. 56 of 2000, s. 6 Substituted by No. 75 of 2007, s. 5

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Section 14	Amended by No. 56 of 2000, s. 7 and No. 75 of 2007, s. 6
Section 15	Substituted by No. 75 of 2007, s. 7
Section 15A	Inserted by No. 75 of 2007, s. 7
Section 15B	Inserted by No. 75 of 2007, s. 7
Section 15C	Inserted by No. 75 of 2007, s. 7
Section 16	Amended by No. 86 of 2000, Sched. 1
Section 18	Amended by No. 86 of 2000, Sched. 1 Substituted by No. 75 of 2007, s. 8
Section 19	Amended by No. 86 of 2000, Sched. 1
Section 20	Amended by No. 86 of 2000, Sched. 1, No. 76 of 2003, Sched. 1 and No. 75 of 2007, s. 9
Section 20A	Inserted by No. 56 of 2000, s. 8
Section 20B	Inserted by No. 45 of 2007, s. 6
Section 21A	Inserted by No. 75 of 2007, s. 10
Section 22	Amended by No. 56 of 2000, s. 9, No. 45 of 2012, s. 6 and No. 46 of 2017, s. 6
Section 23	Amended by No. 56 of 2000, s. 10
Section 23A	Inserted by No. 56 of 2000, s. 11 Amended by No. 45 of 2007, s. 7
Section 24	Amended by No. 84 of 1997, s. 26, No. 56 of 2000, s. 12, No. 56 of 2002, s. 4, No. 45 of 2007, s. 8, No. 45 of 2012, s. 7 and No. 47 of 2015, s. 54
Section 25	Amended by No. 84 of 1997, s. 26, No. 56 of 2000, s. 13, No. 56 of 2002, s. 5, No. 45 of 2007, s. 9, No. 45 of 2012, s. 8, No. 47 of 2015, s. 55, No. 46 of 2017, s. 7, No. 21 of 2020, s. 24 and No. 31 of 2020, s. 4
Section 25A	Inserted by No. 84 of 1997, s. 26 Amended by No. 56 of 2002, s. 6, No. 45 of 2012, s. 9, No. 47 of 2015, s. 56, No. 46 of 2017, s. 8 and No. 21 of 2020, s. 25
Section 26	Amended by No. 85 of 1997, Sched. 4 and No. 28 of 2009, s. 20
Section 27	Amended by No. 56 of 2000, s. 14, No. 45 of 2007, s. 10 and No. 46 of 2017, s. 9
Section 27AA	Inserted by No. 46 of 2017, s. 10
Section 27AB	Inserted by No. 46 of 2017, s. 10 Repealed by No. 21 of 2020, s. 26
Section 27AC	Inserted by No. 46 of 2017, s. 10 Amended by No. 21 of 2020, s. 27
Section 27AD	Inserted by No. 46 of 2017, s. 10
Section 27A of Part 3	Inserted by No. 45 of 2007, s. 11
Section 27A	Substituted by No. 45 of 2012, s. 10 Amended by No. 46 of 2017, s. 11
Section 27B of Part 3	Inserted by No. 45 of 2007, s. 11
Section 27B	Amended by No. 45 of 2012, s. 11 and No. 46 of 2017, s.

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Section 27C	Amended by No. 45 of 2012, s. 12 and No. 46 of 2017, s. 13
Section 27D of Part 3	Inserted by No. 45 of 2007, s. 11
Section 27E of Part 3	Inserted by No. 45 of 2007, s. 11
Section 27E	Amended by No. 45 of 2012, s. 13
Section 27F of Part 3	Inserted by No. 45 of 2007, s. 11
Section 27F	Amended by No. 31 of 2020, s. 5
Section 27FA	Inserted by No. 31 of 2020, s. 6
Section 27G of Part 3	Inserted by No. 45 of 2007, s. 11
Section 27G	Amended by No. 46 of 2017, s. 14 and No. 31 of 2020, s. 7
Section 27H of Part 3	Inserted by No. 45 of 2007, s. 11
Section 27H	Amended by No. 46 of 2017, s. 15
Section 27I of Part 3	Inserted by No. 45 of 2007, s. 11
Section 27I	Amended by No. 45 of 2012, s. 14
Section 27J of Part 3	Inserted by No. 45 of 2007, s. 11
Section 27K of Part 3	Inserted by No. 45 of 2007, s. 11
Section 28	Amended by No. 45 of 2012, s. 15
Section 29	Amended by No. 46 of 2017, s. 16
Section 32	Substituted by No. 56 of 2000, s. 15 Amended by No. 45 of 2007, s. 12 and No. 45 of 2012, s. 16
Section 33	Repealed by No. 56 of 2000, s. 16
Section 35	Amended by No. 56 of 2000, s. 17, No. 45 of 2007, s. 13, No. 45 of 2012, s. 17, No. 46 of 2017, s. 17 and No. 21 of 2020, s. 28
Section 37	Amended by No. 56 of 2000, s. 18
Section 39	Amended by No. 21 of 1997, s. 18 and No. 56 of 2000, s. 19
Section 41A	Inserted by No. 56 of 2000, s. 20
Section 42	Amended by No. 56 of 2000, s. 21
Section 42A	Inserted by No. 56 of 2000, s. 22
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Section 42B	Amended by No. 21 of 2020, s. 29
Section 42C	Amended by No. 21 of 2020, s. 30
Subdivision 2 of Part 3	Amended by No. 46 of 2017, s. 18

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Section 42D	Amended by No. 21 of 2020, s. 31
Section 42G	Amended by No. 21 of 2020, s. 32
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Section 42K	Amended by No. 21 of 2020, s. 34
Section 42M	Amended by No. 21 of 2020, s. 35
Subdivision 4 of Part 3	Amended by No. 46 of 2017, s. 18
Section 42N	Amended by No. 21 of 2020, s. 36
Section 42Q	Amended by No. 21 of 2020, s. 37
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Subdivision 6 of Part 3	Amended by No. 46 of 2017, s. 18
Subdivision 7 of Part 3	Amended by No. 46 of 2017, s. 18
Section 42ZB	Amended by No. 21 of 2020, s. 38
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Subdivision 9 of Part 3	Amended by No. 46 of 2017, s. 18
Section 42ZJ	Amended by No. 21 of 2020, s. 39 and No. 18 of 2021, s. 84
Section 43A	Inserted by No. 45 of 2012, s. 18
Section 43B	Inserted by No. 45 of 2012, s. 19
Section 44	Amended by No. 56 of 2000, s. 23, No. 45 of 2007, s. 14, No. 45 of 2012, s. 20, No. 46 of 2017, s. 19 and No. 21 of 2020, s. 40
Section 44A	Inserted by No. 45 of 2012, s. 21
Section 45	Amended by No. 56 of 2000, s. 24 and No. 45 of 2012, s. 22
Section 45A	Inserted by No. 45 of 2012, s. 23
Section 46	Amended by No. 45 of 2007, s. 15 and No. 45 of 2012, s. 24
Section 47	Amended by No. 56 of 2000, s. 25 and No. 45 of 2003, Sched. 1
Section 48	Amended by No. 45 of 2007, s. 16, No. 46 of 2007, s. 5, No. 46 of 2017, s. 20 and No. 18 of 2021, s. 85
Section 48A	Inserted by No. 88 of 2001, s. 4
Section 49	Repealed by No. 18 of 2021, s. 86
Section 51A	Inserted by No. 56 of 2000, s. 26
Section 51B	Inserted by No. 45 of 2012, s. 25
Section 52	Amended by No. 56 of 2000, s. 27
Section 53	Amended by No. 56 of 2000, s. 28, No. 97 of 2000, s. 4 and No. 45 of 2007, s. 17
Section 53A	Inserted by No. 45 of 2007, s. 18
Section 55	Amended by No. 56 of 2000, s. 29 and No. 46 of 2007, s. 6

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Section 55A	Inserted by No. 56 of 2000, s. 30 Amended by No. 45 of 2007, s. 19, No. 45 of 2012, s. 26, No. 46 of 2017, s. 21 and No. 21 of 2020, s. 41
Section 63	Amended by No. 45 of 2007, s. 20
Section 65	Repealed by No. 56 of 2000, s. 31 Inserted by No. 45 of 2007, s. 21
Section 67	Amended by No. 56 of 2000, s. 32, No. 45 of 2007, s. 22 and No. 72 of 2007, Sched. 1
Section 68	Repealed by No. 72 of 2007, Sched. 1
Section 69	Repealed by No. 72 of 2007, Sched. 1
Section 70	Subsection (3) omitted by No. 72 of 2007, Sched. 1 Subsection (2) omitted by No. 6 of 2008, Sched. 1 Repealed by No. 45 of 2012, s. 27
Section 71	Substituted by No. 72 of 2007, Sched. 1 Amended by No. 4 of 2017, Sched. 1
Section 72	Substituted by No. 56 of 2000, s. 33 Amended by No. 22 of 2020, Sched. 2
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Section 74D	Amended by No. 45 of 2012, s. 28
Division 4	Inserted by No. 46 of 2007, s. 7
Division 5	Inserted by No. 46 of 2007, s. 7
Section 74T	Substituted by No. 45 of 2012, s. 29
Division 6	Inserted by No. 46 of 2007, s. 7
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Section 75	Amended by No. 56 of 2000, s. 34 Repealed by No. 45 of 2007, s. 23
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Section 76	Substituted by No. 56 of 2000, s. 35 Repealed by No. 45 of 2007, s. 23
Section 77	Repealed by No. 45 of 2007, s. 23
Section 78	Repealed by No. 45 of 2007, s. 23
Section 79	Repealed by No. 45 of 2007, s. 23
Section 80	Repealed by No. 45 of 2007, s. 23
Section 80A	Inserted by No. 56 of 2000, s. 36 Repealed by No. 45 of 2007, s. 23
Section 81	Repealed by No. 45 of 2007, s. 23
Section 81A	Inserted by No. 56 of 2000, s. 37 Repealed by No. 45 of 2007, s. 23
Section 81B	Inserted by No. 56 of 2000, s. 37 Repealed by No. 45 of 2007, s. 23
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Section 82	Amended by No. 56 of 2000, s. 39

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Section 83	Repealed by No. 45 of 2007, s. 23 Amended by No. 56 of 2000, s. 40 Subsection (3) substituted by No. 56 of 2000, s. 40 Amended by No. 56 of 2000, s. 40
Section 84	Repealed by No. 45 of 2007, s. 23 Amended by No. 56 of 2000, s. 41
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Section 87	Repealed by No. 45 of 2007, s. 23 Amended by No. 56 of 2000, s. 44
Section 88	Repealed by No. 45 of 2007, s. 23 Amended by No. 56 of 2000, s. 45
Section 89	Repealed by No. 45 of 2007, s. 23 Amended by No. 56 of 2000, s. 46
Section 90	Repealed by No. 45 of 2007, s. 23 Amended by No. 56 of 2000, s. 47
Section 91	Repealed by No. 45 of 2007, s. 23 Amended by No. 56 of 2000, s. 48
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Section 91B of Part 6	Inserted by No. 56 of 2000, s. 49
Section 91B	Repealed by No. 45 of 2007, s. 23
Section 91C of Part 6	Inserted by No. 56 of 2000, s. 49
Section 91C	Repealed by No. 45 of 2007, s. 23
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Section 92A	Inserted by No. 45 of 2007, s. 25
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Section 94	Amended by No. 38 of 2015, s. 29
Section 95A	Inserted by No. 45 of 2012, s. 31
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Section 96A	Amended by No. 6 of 2004, s. 4, No. 75 of 2007, s. 11 and No. 28 of 2009, s. 21
Subdivision 2 of Part 7	Amended by No. 56 of 2000, s. 50
Section 96D	Amended by No. 75 of 2007, s. 12
Subdivision 3 of Part 7	Amended by No. 56 of 2000, s. 50
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Section 96I	Amended by No. 75 of 2007, s. 14
Section 96N	Amended by No. 75 of 2007, s. 15
Section 96O	Repealed by No. 75 of 2007, s. 16
Section 97	Amended by No. 38 of 2015, s. 30
Section 98AA	Inserted by No. 34 of 2002, s. 4 Amended by No. 46 of 2017, s. 22 and No. 21 of 2020, s. 43
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Section 107A	Inserted by No. 75 of 2007, s. 17
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