

**ENVIRONMENTAL OFFENCES AND PENALTIES
(AMENDMENT) ACT 1990 No. 84**

NEW SOUTH WALES



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**ENVIRONMENTAL OFFENCES AND PENALTIES
(AMENDMENT ACT 1990 No. 84)**

NEW SOUTH WALES



Act No. 84, 1990

An Act to amend the Environmental Offences and Penalties Act 1989 and certain other Acts so as to consolidate provisions creating offences concerning the pollution of the environment and to make further provision with respect to the procedures for enforcing the provisions of those Acts. [Assented to 7 December 1990]

Environmental Offences and Penalties (Amendment) 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Environmental Offences and Penalties (Amendment) Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Environmental Offences and Penalties Act 1989 No. 150

3. The Environmental Offences and Penalties Act 1989 is amended as set out in Schedule 1.

Consequential amendment of other Acts

4. Each Act referred to in Schedule 2 is amended as set out in that Schedule.

Transitional

5. (1) Pending the commencement of the amendments to be effected to the Justices Act 1902 in relation to appeals to the Land and Environment Court in respect of environmental offences, the provisions of that Act in relation to appeals to the District Court continue to apply in respect of those offences.

(2) The provisions referred to in subsection (1) are the amendments effected by items (4), (5), (6) and (7) of the provisions of Schedule 2 that relate to the Justices Act 1902.

**SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989**

(Sec. 3)

(1) Section 3 (**Object of the Act**):

(a) From section 3 (1) (b) (ii), omit “\$150,000”, insert instead “\$250,000”.

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(b) At the end of section 3 (1) (c), insert:

; and

(d) by punishing contraventions of those other laws as offences under this Act; and

(e) by establishing common procedures for the enforcement of those other laws.

(2) Section 4 (**Definitions**):

Insert in section 4 (1), in alphabetical order, the following definitions:

“environment” includes all aspects of the surroundings of human beings, including:

(a) the physical factors of those surroundings, such as the land, the waters and the atmosphere; and

(b) the biological factors of those surroundings, such as the animals, plants and other forms of life; and

(c) the aesthetic factors of those surroundings, such as their appearance, sounds, smells, tastes and textures;

“harm”, in relation to the environment, includes any direct or indirect alteration of the environment that has the effect of degrading the environment and, without limiting the generality of the foregoing, includes:

(a) any act or omission that results in air pollution, within the meaning of the Clean Air Act 1961; and

(b) any act or omission that results in the pollution of any waters, within the meaning of the Clean Waters Act 1970;

(3) Section 4A:

After section 4, insert:

Extra-territoriality

4A. A person is guilty of an offence against this Act in respect of any act or omission done or omitted by the person outside New South Wales:

(a) if the act or omission causes any substance to come within New South Wales; and

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SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
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- (b) if the substance causes harm or is likely to cause harm to the environment; and
- (c) if (apart from this section) the act or omission would have constituted an offence against this Act had it been done or omitted within New South Wales.

(4) Part 2, Division 1, heading:

After the heading to Part 2, insert:

Division 1—Tier 1 offences

(5) Section 5:

Omit the section, insert instead:

Disposal of waste without lawful authority

5. (1) If a person, without lawful authority, wilfully or negligently disposes of waste in a manner which harms or is likely to harm the environment:

- (a) the person; and
 - (b) if the person is not the owner of the waste, the owner,
- are each guilty of an offence.

(2) In this section, a reference to the owner of waste includes, in relation to waste that has been disposed of, a reference to the person who was the owner of the waste immediately before the waste was disposed of.

(6) Section 6:

Omit the section, insert instead:

Leaks, spillages etc.

6. (1) If a person, without lawful authority, wilfully or negligently causes any substance to leak, spill or otherwise escape (whether or not from a container) in a manner which harms or is likely to harm the environment:

- (a) the person; and
- (b) if the person is not the owner of the substance, the owner,

are each guilty of an offence.

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SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
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(2) If:

- (a) the person in possession of the substance at the time of the leak, spill or other escape; or
- (b) the owner of any such container; or
- (c) the owner of the land on which the substance or any such container was located at the time of the leak, spill or other escape; or
- (d) the occupier of the land on which the substance or any such container was located at the time of the leak, spill or other escape,

wilfully or negligently, in a material respect, caused or contributed to the conditions which gave rise to the commission of the offence under subsection (1), the person is guilty of an offence.

(3) In this section, “**container**” includes any thing for the purpose of storing, transporting or handling the substance.

(7) Section 6A (as to be inserted by the Ozone Protection Act 1989):

Omit the section, insert instead:

Emission of ozone depleting substances etc.

6A. (1) If a person wilfully or negligently causes any controlled substance (within the meaning of the Ozone Protection Act 1989) to be emitted into the atmosphere in contravention of the regulations under that Act and in a manner which harms or is likely to harm the environment:

- (a) the person; and
- (b) if the person is not the owner of the substance, the owner,

are each guilty of an offence.

(2) In this section, a reference to the owner of a substance includes, in relation to a substance that has been emitted into the atmosphere, a reference to the person who was the owner of the substance immediately before the substance was so emitted.

(8) Section 6B:

Before section 7, insert:

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SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
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Ancillary offences

6B. A person who:

- (a) aids, abets, counsels or procures another person to commit; or
- (b) attempts to commit; or
- (c) conspires to commit,

an offence against section 5, 6 or 6A is guilty of an offence.

(9) Section 7:

Omit the section, insert instead:

Defence

7. It is a defence to any proceedings against a person for an offence against a provision of this Division for the person to prove:

- (a) that the commission of the offence was due to causes over which the person had no control; and
- (b) that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

(10) Section 8 (**Penalty for Tier 1 offences**):

- (a) Omit “Act”, insert instead “Division”.
- (b) Omit “\$150,000”, insert instead “\$250,000”.

(11) Part 2, Division 2:

After section 8, insert:

Division 2—Tier 2 offences

Offences under the Clean Air Act 1961

8A. (1) Any person who (by virtue of any provision of the Clean Air Act 1961) is guilty of an offence against this Act is liable:

- (a) in the case of a corporation—to a penalty not exceeding \$125,000 and, in the case of a continuing offence, to a further penalty not exceeding \$60,000 for each day the offence continues; or

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SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL OFFENCES AND PENALTIES ACT 1989—*continued*

(b) in the case of an individual—to a penalty not exceeding \$60,000 and, in the case of a continuing offence, to a further penalty not exceeding \$30,000 for each day the offence continues.

(2) Any person who (by virtue of any provision of the Clean Air Act 1961) is guilty of an offence specified in Part 1 of Schedule 1 is liable to a penalty not exceeding the amount specified in that Part in respect of that offence and is not liable to any penalty under subsection (1).

(3) A regulation under the Clean Air Act 1961 may impose a penalty not exceeding:

- (a) \$10,000 in the case of an individual; or
- (b) \$20,000 in the case of a corporation,

in respect of a contravention of the regulation.

Offences under the Clean Waters Act 1970

8B. (1) Any person who (by virtue of any provision of the Clean Waters Act 1970) is guilty of an offence against this Act is liable:

- (a) in the case of a corporation—to a penalty not exceeding \$125,000 and, in the case of a continuing offence, to a further penalty not exceeding \$60,000 for each day the offence continues; or
- (b) in the case of an individual—to a penalty not exceeding \$60,000 and, in the case of a continuing offence, to a further penalty not exceeding \$30,000 for each day the offence continues.

(2) Any person who (by virtue of any provision of the Clean Waters Act 1970) is guilty of an offence specified in Part 2 of Schedule 1 is liable to a penalty not exceeding the amount specified in that Part in respect of that offence and is not liable to any penalty under subsection (1).

(3) A regulation under the Clean Waters Act 1970 may impose a penalty not exceeding:

- (a) \$10,000 in the case of an individual; or
- (b) \$20,000 in the case of a corporation,

in respect of a contravention of the regulation.

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL OFFENCES AND PENALTIES ACT 1989—*continued***Offences under the Noise Control Act 1975**

8C. (1) Any person who (by virtue of any provision of the Noise Control Act 1975) is guilty of an offence against this Act is liable:

- (a) in the case of a corporation—to a penalty not exceeding \$30,000 and, in the case of a continuing offence, to a further penalty not exceeding \$3,000 for each day the offence continues; or
- (b) in the case of an individual—to a penalty not exceeding \$15,000 and, in the case of a continuing offence, to a further penalty not exceeding \$300 for each day the offence continues.

(2) Any person who (by virtue of any provision of the Noise Control Act 1975) is guilty of an offence specified in Part 3 of Schedule 1 is liable to a penalty not exceeding the amount specified in that Part in respect of that offence and is not liable to any penalty under subsection (1).

(3) A regulation under the Noise Control Act 1975 may impose a penalty not exceeding:

- (a) \$10,000 in the case of an individual; or
- (b) \$20,000 in the case of a corporation,

in respect of a contravention of the regulation.

Offences under the State Pollution Control Commission Act 1970

8D. (1) Any person who (by virtue of any provision of the State Pollution Control Commission Act 1970) is guilty of an offence against this Act is liable:

- (a) in the case of a corporation—to a penalty not exceeding \$125,000 (or, in the case of an offence relating exclusively to the emission of noise, \$30,000) and, in the case of a continuing offence, to a further penalty not exceeding \$60,000 (or, in the case of an offence relating exclusively to the emission of noise, \$3,000) for each day the offence continues; or
- (b) in the case of an individual—to a penalty not exceeding \$60,000 (or, in the case of an offence relating exclusively to the emission of noise, \$15,000) and, in the case of a continuing offence, to a further

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penalty not exceeding \$30,000 (or, in the case of an offence relating exclusively to the emission of noise, \$300) for each day the offence continues.

(2) Any person who (by virtue of any provision of the State Pollution Control Commission Act 1970) is guilty of an offence specified in Part 4 of Schedule 1 is liable to a penalty not exceeding the amount specified in that Part in respect of that offence and is not liable to any penalty under subsection (1).

(3) A regulation under the State Pollution Control Commission Act 1970 may impose a penalty not exceeding:

- (a) \$10,000 in the case of an individual; or
- (b) \$20,000 in the case of a corporation,

in respect of a contravention of the regulation.

Failure to comply with sec. 14 (1) orders

8E. Any person who fails to comply with an order under section 14 (1) is guilty of an offence and liable:

- (a) in the case of a corporation—to a penalty not exceeding \$60,000 for each day during which the non-compliance continues; and
- (b) in the case of an individual—to a penalty not exceeding \$30,000 for each day during which the non-compliance continues.

Littering

8F. (1) A person who, without lawful authority, deposits any refuse in a public place is guilty of an offence and liable to a penalty not exceeding \$300.

(2) A person is to be regarded as having deposited refuse in a public place with lawful authority:

- (a) if the person has deposited the refuse:
 - (i) in a receptacle provided by the relevant public authority for the depositing of refuse; and
 - (ii) in accordance with any conditions specified by that authority, by means of a notice displayed on or in the vicinity of the receptacle, in relation to the depositing of refuse in the receptacle; or

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- (b) if the person has placed a receptacle containing the refuse in that place for the purpose of the refuse being removed in the course of a refuse removal service provided by the relevant public authority; or
 - (c) if the person has deposited the refuse in that place:
 - (i) pursuant to an invitation contained in a notice published by the relevant public authority; and
 - (ii) in accordance with any conditions specified in the notice in relation to the depositing of refuse in that place; or
 - (d) if the person has deposited the refuse in that place with the consent of the relevant public authority; or
 - (e) if the person has deposited the refuse in that place pursuant to an authority conferred by or under this or any other Act.
- (3) In this section:
- (a) a reference to a public place includes a reference to:
 - (i) a public road; and
 - (ii) a public reserve within the meaning of the Local Government Act 1919; and
 - (iii) a State forest or a flora reserve within the meaning of the Forestry Act 1916; and
 - (iv) a national park, state recreation area, historic site, nature reserve, state game reserve or Aboriginal area within the meaning of the National Parks and Wildlife Act 1974; and
 - (b) a reference to the relevant public authority, in relation to a public place, is a reference to the public authority or other person in whom that place is vested or who has the care, control or management of that place.

(12) Part 2, Division 3:

After Division 2 of Part 2, insert:

Division 3—Tier 3 offences

Penalty notices

8G. (1) An authorised officer may serve a penalty notice on a person if it appears to the authorised officer that the person has committed an offence referred to in Schedule 2.

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SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
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(2) For the purposes of this or any other Act, such an offence is, in any information, complaint, summons, warrant, notice, order or other document, to be regarded as being sufficiently stated or described if it is stated or described by the use of:

- (a) the expression set out in Schedule 2 in relation to the offence; or
- (b) an expression that is substantially the same as that expression,

but nothing in this subsection affects any other method of stating or describing such an offence.

(3) If a choice of words is indicated in the short description of an offence specified in Schedule 2, the appropriate words for the circumstances of the offence must be used in any such information, complaint, summons, warrant, notice, order or other document.

(4) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay:

- (a) within the time (being 28 days from the date on which the notice was served) specified in the notice; and
- (b) to the person specified in the notice,

the penalty specified by Schedule 2 for the offence.

(5) If the penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.

(6) If the person served elects to have the matter dealt with by a court, the maximum penalty that may be imposed on the person in respect of the offence is:

- (a) 3 times the amount payable under the penalty notice; or
- (b) the maximum penalty that may be imposed for the offence if dealt with otherwise than by way of a penalty notice,

whichever is the lesser.

(7) Payment in accordance with this section is not to be regarded as an admission of liability for the purposes of, nor is it in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
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(8) An authorised officer belonging to the same class of officers as the authorised officer by whom a penalty notice has been served:

- (a) may withdraw the notice within 28 days from the date on which the notice was served; and
- (b) must withdraw the notice immediately if directed to do so by the State Pollution Control Commission.

(9) The power of the State Pollution Control Commission to give a direction under subsection (8) (b) must be exercised by the Commission and not by a delegate of the Commission.

(10) The following provisions have effect if a penalty notice is withdrawn in accordance with subsection (8):

- (a) the amount that was payable under the notice ceases to be payable;
- (b) any amount that has been paid under the notice is repayable to the person by whom it was paid;
- (c) any election made under subsection (6) ceases to have effect;
- (d) subsections (5) and (6) cease to apply to the alleged offence the subject of the notice;
- (e) further proceedings in respect of the alleged offence the subject of the notice may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.

(11) This section does not limit the operation of this or any other Act in relation to proceedings that may be taken in respect of offences.

(12) In this section, a reference to an authorised officer, in relation to an offence, is a reference to a person belonging to a class of officers specified in Schedule 2 in relation to that offence.

(13) Notwithstanding subsection (12), a person who is an officer or employee of a public authority is not to be taken to be an authorised officer in relation to an offence alleged to have been committed by the authority.

(14) The regulations may amend Schedule 2 so as to insert, omit or vary any matter identifying or describing an

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authorised officer or any matter relating to an offence against this Act.

(15) The maximum penalty that the regulations may insert in Schedule 2 in respect of an offence against this Act is \$600.

(13) Part 2, Division 4, heading:

Before section 9, insert:

Division 4—Miscellaneous

(14) Section 10 (**Offences by corporations**):

After section 10 (3), insert:

(4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention at that time.

(15) Section 10A:

After section 10, insert:

Onus of proof concerning lawful authority

10A. The onus of proving that a person had lawful authority (as referred to in sections 5, 6 and 8F) lies with the defendant.

(16) Section 11 (**Nature of proceedings for Tier 1 offences**):

- (a) From section 11 (1), omit “against this Act”, insert instead “arising under Division 1 of Part 2”.
- (b) Omit section 11 (1) (a).
- (c) Omit section 11 (2).
- (d) From section 11 (3), omit “\$150,000”, insert instead “\$250,000”.

(17) Section 11A:

After section 11, insert:

Nature of proceedings for Tier 2 offences

11 A (1) Proceedings for an offence arising under Division 2 of Part 2 may be dealt with:

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- (a) summarily before a Local Court constituted by a Magistrate sitting alone; or
- (b) summarily before the Land and Environment Court in its summary jurisdiction.

(2) If proceedings are brought in a Local Court, the maximum penalty that the Local Court may impose for the offence is, notwithstanding any other provision of this Act, \$10,000.

(18) Section 12:

Omit the section, insert instead:

Time within which proceedings dealt with summarily may be commenced

12. Notwithstanding the provisions of the Justices Act 1902 or any other Act:

- (a) proceedings for an offence (being proceedings that are to be dealt with summarily) arising under:
 - (i) Division 1 of Part 2; or
 - (ii) section 16 of the Clean Air Act 1961; or
 - (iii) section 19 of the Clean Waters Act 1970; or
 - (iv) section 27 of the Noise Control Act 1975,

may be commenced not later than 3 years after the date alleged to be the date on which the offence was committed; and

- (b) proceedings for an offence (being proceedings that are to be dealt with summarily) arising under Division 2 of Part 2 (other than an offence referred to in paragraph (a) (ii), (iii) or (iv)) may be commenced not later than 12 months after the date alleged to be the date on which the offence was committed.

(19) Section 13 (**Consent to institution of proceedings**):

- (a) Omit section 13 (1) (a) and (b).
- (b) After section 13 (2), insert:

(3) Subsection (1) does not apply to the institution of proceedings for an offence arising under the Clean Air Act 1961:

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SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
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- (a) by an employee of a council of a local government area:
- (i) if the offence was committed in relation to premises other than scheduled premises within the meaning of that Act; and
 - (ii) if the proceedings are instituted with the consent of the council or with the written consent of such member or employee of the council as may be authorised by the council for the purposes of this subsection; or
- (b) in the case of an offence prescribed under section 18B (1) (e) of the Traffic Act 1909, whether or not the offence has been dealt with under section 18B of that Act—by a police officer.
- (4) Subsection (1) does not apply to the institution of proceedings arising under the Clean Waters Act 1970, other than proceedings for an offence referred to in section 19 of that Act:
- (a) by an employee of a council of a local government area—if the proceedings are instituted with the consent of the council or with the written consent of such member or employee of the council as may be authorised by the council for the purposes of this subsection; or
 - (b) by any other person—if the proceedings are instituted with the consent of the Water Board, the Hunter Water Board or a Water Supply Authority (within the meaning of the Water Supply Authorities Act 1987) or with the written consent of such person as may be authorised by such a Board or Authority for the purposes of this subsection.
- (5) Subsection (1) does not apply to the institution of proceedings arising under the Noise Control Act 1975:
- (a) by an employee of a council of a local government area:
 - (i) if the offence was committed otherwise than in relation to scheduled premises or vessels in navigable waters within the meaning of that Act; and

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- (ii) if the proceedings are instituted with the consent of the council or with the written consent of such member or employee of the council as may be authorised by the council for the purposes of this subsection; or
- (b) by an officer or employee of the Maritime Services Board:
 - (i) if the offence was committed in relation to vessels in navigable waters within the meaning of that Act; and
 - (ii) if the proceedings are instituted with the consent of the Board or with the written consent of such officer or employee of the Board as may be authorised by the Board for the purposes of this Subsection.
- (20) Sections 14, 15, 16, 21, 22:
Omit “against this Act” wherever occurring, insert instead “arising under Division 1 or 2 of Part 2”.
- (21) Section 14 (**Orders for restoration, prevention and compensation**):
After “of the offence” in section 14 (1), insert “or to prevent the continuance or recurrence of the offence”.
- (22) Section 31:
After section 30, insert:
Savings, transitional and other provisions
31. Schedule 3 has effect.
- (23) Schedules 1–3:
At the end of the Act, insert:

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**SCHEDULE 1—PENALTIES FOR
TIER 2 OFFENCES**

(Secs. 8A, 8B, 8C, 8D)

*Part 1—Offences arising under the Clean
Air Act 1961*

<i>Provision of Act</i>	<i>Nature of offence</i>	<i>Penalty</i>
Section 17 (6)	Failing to furnish reports in accordance with notice	\$3,000
Section 20 (7)	Failing to furnish reports in accordance with notice	\$3,000
Section 21EA (3)	Using motor vehicle if direction to install anti-pollution device not complied with	\$3,000
Section 21EA (6)	Removing, obliterating or interfering with prescribed label affixed to motor vehicle	\$3,000
Section 21G (3) (a)	Corporation failing to furnish information as required in connection with motor vehicle	\$10,000
Section 21G (3) (b)	Individual failing to furnish information as required in connection with motor vehicle	\$5,000

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SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
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*Part 1—Offences arising under the Clean
Air Act 1961—continued*

<i>Provision of Act</i>	<i>Nature of offence</i>	<i>Penalty</i>
Section 23 (3) (a)	Corporation failing to furnish information as required generally	\$10,000
Section 23 (3) (b)	Individual failing to furnish information as required generally	\$5,000
Section 23A (4) (a)	Corporation failing to measure air pollution as required	\$30,000
Section 23A (4) (b)	Individual failing to measure air pollution as required	\$10,000
Section 24A	Contravening general order prohibiting the burning of fires	\$1,500
Section 24B	Contravening particular order to extinguish fire or not to light fire	\$1,500
Section 27 (5) (d)	Corporation obstructing authorised officer in exercise of powers generally	\$10,000
Section 27 (5) (e)	Individual obstructing authorised officer in exercise of powers generally	\$5,000

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*Part 1—Offences arising under the Clean
Air Act 1961—continued*

<i>Provision of Act</i>	<i>Nature of offence</i>	<i>Penalty</i>
Section 27A (3)	Obstructing authorised officer in exercise of powers to sample tanker loads	\$15,000

*Part 2—Offences arising under the Clean
Waters Act 1970*

<i>Provision of Act</i>	<i>Nature of offence</i>	<i>Penalty</i>
Section 27A	Failing to clean up pollution as required by notice	\$15,000
Section 28 (2) (a)	Corporation failing to furnish information as required	\$10,000
Section 28 (2) (b)	Individual failing to furnish information as required	\$5,000
Section 29 (4)	Obstructing authorised officer in exercise of powers generally	\$10,000
Section 29A	Obstructing authorised officer in exercise of powers to sample tanker loads	\$15,000

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SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
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*Part 3—Offences arising under the Noise
Control Act 1975*

<i>Provision of Act</i>	<i>Nature of offence</i>	<i>Penalty</i>
Section 53	Contravening noise abatement order	\$1,500
Section 60 (1)	Contravening noise abatement direction under section 59 (a)	\$1,500
Section 60 (2)	Contravening noise abatement direction under section 59 (b)	\$1,500
Section 61A (3)	Failing to furnish name and address as required	\$1,500
Section 61A (4)	Furnishing false or misleading information	\$1,500
Section 74 (4)	Failing to furnish information as required	\$5,000
Section 76 (6)	Obstructing authorised officer in exercise of powers	\$5,000

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*Part 4—Offences arising under the State Pollution
Control Commission Act 1970*

<i>Provision of Act</i>	<i>Nature of offence</i>	<i>Penalty</i>
Section 23 (4)	Failing to comply with requirements of notice	\$5,000
Section 23 (5)	Furnishing false or misleading information	\$5,000
Section 24 (2)	Obstructing authorised officer in exercise of powers	\$5,000
Section 25 (2)	Failing to furnish information as required	\$5,000
Section 26 (1)	Unlawfully disclosing information obtained under Act	\$10,000

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

SCHEDULE 2—PENALTY NOTICES

(Sec. 8G)

PART 1—AUTHORISED OFFICERS

1. In this Schedule, a number included in Part 2 under the heading “Officer” is a reference to an officer or employee of a class identified by that number.

2. For the purposes of this Schedule:

- (a) a class 1 officer means an employee of a council of a local government area; and
- (b) a class 2 officer means an officer or employee of the State Pollution Control Commission; and
- (c) a class 3 officer means an officer or employee of the Waste Management Authority; and
- (d) a class 4 officer means an officer or employee of the National Parks and Wildlife Service; and
- (e) a class 5 officer means an officer or employee of the Maritime Services Board; and
- (f) a class 6 officer means a police officer; and
- (g) a class 7 officer means an officer or employee of the Water Board, of the Hunter Water Board or of a Water Supply Authority within the meaning of the Water Supply Authorities Act 1987; and
- (h) a class 8 officer means an officer or employee of the Forestry Commission,

being an officer or employee who is duly authorised, by the authority of which he or she is such an officer or employee, to exercise the functions of an authorised officer under section 8G.

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

**PART 2—OFFENCES FOR WHICH PENALTY
NOTICES MAY BE ISSUED**

Environmental Offences and Penalties Act 1989

<i>Provision of Act</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Section 8F (1): Deposit refuse in a public place without lawful authority	Deposit refuse in a public place without lawful authority	1, 2, 4, 5, 8	\$200

Clean Air Act 1961

<i>Provision of Act</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Section 24A (5): Neglect or fail to comply with an order under section 24A	Neglect/fail to comply with general fire ban order	1, 2, 3, 4	\$200
Section 24B (3) (a): Neglect or fail to comply with direction to extinguish fire	Neglect/fail to comply with direction to extinguish fire	1, 2, 3, 4	\$200
Section 24B (3) (b): Light or maintain a fire or suffer a fire to be lit or maintained in contravention of direction to extinguish fire	Light/maintain fire/suffer fire to be lit/ maintained in contravention of direction to extinguish fire	1, 2, 3, 4	\$200

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

*Clean Air (Control of Refuse Burning) Regulation
1988*

<i>Provision of Regulation</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Clause 4 (2): Burn refuse in a Schedule 1 area otherwise than as permitted	Burn refuse in a Schedule 1 area	1, 2, 3, 4	\$200
Clause 5 (2): Burn refuse in a home unit incinerator during a bush fire period in a Schedule 2 area otherwise than as permitted	Burn refuse in incinerator during bush fire period in Schedule 2 area	1, 2, 3, 4	\$200
Clause 5 (3): Burn refuse in open fire during a bush fire period in a Schedule 2 area otherwise than as permitted	Burn refuse in open fire during bush fire period in Schedule 2 area	1, 2, 3, 4	\$200

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

*Clean Air (Control of Refuse Burning) Regulation
1989—continued*

<i>Provision of Regulation</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Clause 5 (4): Burn refuse otherwise than during bush fire period in a Schedule 2 area otherwise than as permitted	Burn refuse otherwise than during bush fire period in Schedule 2 area	1, 2, 3, 4	\$200
Clause 6 (2): Burn refuse in open fire in a Schedule 3 area otherwise than as permitted	Burn refuse in open fire in Schedule 3 area	1, 2, 3, 4	\$200
Clause 8: Burn matter otherwise than by such means as prevent or minimise air pollution	Burn matter otherwise than so as to prevent/ minimise air pollution	1, 2, 3, 4	\$200

*Environmental Offences and Penalties (Amendment) 1990*SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued**Clean Waters Act 1970*

<i>Provision of Act</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Section 16 (1): Pollute waters	Pollute waters	2, 5, 7	\$600
Section 16 (3): Cause waters to be polluted, whether intentionally or not	Cause waters to be polluted	2, 5, 7	\$600
Section 16 (4): Permit waters to be polluted	Permit waters to be polluted	2, 5, 7	\$600
Section 17 (1): Being a person in whom land is vested, or who has the care, control and manage- ment of land or who is the occupier of land, from which a drain discharges, or is likely to be used for discharging, pollutants into classified waters	Being owner/ occupier of land from which drain discharges/is likely to discharge pollutants into classified waters	2	\$600

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

Clean Waters Regulations 1972

<i>Provision of Regulation</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Regulation 21 (3): Being the occupier of premises, fail to comply with the requirements of a notice served under Regulation 21 (1) or such a notice as varied under Regulation 21 (1A)	Fail to comply with requirements of notice/notice as varied	1, 2	\$300
Regulation 22 (2): Fail to comply with a provision of a notice published under Regulation 22 (1)	Fail to comply with notice published under Regulation 22 (1)	2	\$300

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

Noise Control Act 1975

<i>Provision of Act</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Section 60 (1) (a): Fail to cause emission of noise from premises to cease in accordance with noise abatement direction	Fail to cause noise emission to cease in accordance with noise abatement direction	1, 2, 5, 6	\$200
Section 60 (1) (b): Cause or permit or allow noise to be emitted from premises within 6 hours after noise abatement direction is given	Cause/permit/allow noise emission within 6 hours after noise abatement direction is given	1, 2, 5, 6	\$200
Section 60 (2) (a): Fail to cease making or contributing to the making of noise in accordance with noise abatement direction	Fail to cease making/contributing to the making of noise in accordance with noise abatement direction	1, 2, 5, 6	\$200

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

Noise Control Act 1975—continued

<i>Provision of Act</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Section 60 (2) (b): Make or contribute to the making of noise emitted from premises within 6 hours after noise abatement direction is given	Make/contribute to the making of noise within 6 hours after noise abatement direction is given	1, 2, 5, 6	\$200

Noise Control Regulation 1975

<i>Provision of Regulation</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Clause 12 (3): Contravene clause 12 (2) and, after having been informed of contravention, fail to cease contravention or again contravene within 12 hours after having been informed	Continue contravention of/re-contravene clause 12 (2) after having been informed of contravention	1, 2, 5, 6	\$150

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

Noise Control Regulation 1975—continued

<i>Provision of Regulation</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Clause 12A (2): Permit the use on premises of an intruder alarm which emits noise that is audible outside the premises	Permit use of noisy intruder alarm	1, 2, 5, 6	\$150
Clause 19 (1) (a): Being the owner of a motor vehicle that does not comply with Part 6, use or operate the vehicle	Use/operate vehicle that does not comply with Part 6	2	\$150
Clause 19 (1) (b): Being the owner of a motor vehicle that does not comply with Part 6, cause, permit or allow the vehicle to be used or operated	Cause/permit/ allow motor vehicle that does not comply with Part 6 to be used/operated	2	\$150

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

Noise Control Regulation 1975—continued

<i>Provision of Regulation</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Clause 22 (1): Remove or render ineffective absorbing material, shielding panel or other noise control equipment	Remove/render ineffective absorbing material/ shielding panel/noise control equipment	2, 6	\$150
Clause 22 (2): Being the owner of a motor vehicle to which any absorbing material, shielding panel or other noise control equipment has been fitted, fail to ensure that the absorbing material, shielding panel or noise control equipment is kept in place and maintained in good order and condition	Fail to ensure that absorbing material/ shielding panel/noise control equipment is kept in place and in good order and condition	2, 6	\$150

*Environmental Offences and Penalties (Amendment) 1990*SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued**Noise Control Regulation 1975—continued*

<i>Provision of Regulation</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Clause 22 (3): Use or operate a motor vehicle knowing, or having reasonable cause to suspect, that any absorbing material, shielding panel or other noise control equipment has been removed, is missing or has been rendered ineffective	Use/operate motor vehicle knowing/having reasonable cause to suspect that absorbing material/ shielding panel/noise control equipment has been removed/is missing/has been rendered ineffective	2, 6	\$150
Clause 22 (5): Being the owner of a motor vehicle, fail to ensure that the exhaust system of the vehicle is kept free of defects	Fail to ensure that motor vehicle exhaust system is free of defects	2, 6	\$150

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989— *continued*

Noise Control Regulation 1975—continued

<i>Provision of Regulation</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Clause 24 (4): Being the occupier of premises on whom a notice under clause 22 (2) has been served, cause, permit or allow a dog ordinarily kept on the premises to make any noise in the premises which is an offensive noise	Cause/permit/ allow dog to make offensive noise while notice under clause 24 (2) has effect	1, 2, 6	\$150

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

Noise Control Regulation 1975—continued

<i>Provision of Regulation</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Clause 33E (1): Being the owner of a motor vehicle, use or operate, or cause, permit or allow to be operated, a motor vehicle which has a motor vehicle intruder alarm or sounding device of a prescribed class that has or is a sounding device operable by use of a panic or over-ride switch	Use/operate motor vehicle/ cause/permit/ allow motor vehicle to be operated where vehicle has alarm/device that has/is a device operable by panic/ over-ride switch	1, 2, 6	\$150

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

Noise Control Regulation 1975—continued

<i>Provision of Regulation</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Clause 33E (2): Being the owner of a motor vehicle, sound, or cause, permit or allow to be sounded, a motor vehicle intruder alarm or sounding device continuously or intermittently for more than 90 seconds after alarm or device has first sounded	Sound alarm/device/cause/permit/allow alarm/device to be sounded continuously/intermittently for more than 90 seconds	1, 2, 6	\$150

State Pollution Control Commission Act 1970

<i>Provision of Act</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Section 17D (9): Contravene condition of licence issued in relation to Pollution Control Acts	Contravene condition of licence relating to Pollution Control Acts	2	\$500

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

*State Pollution Control Commission Act 1970—
continued*

<i>Provision of Act</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Section 17K (5): Contravene condition attached to a pollution control approval	Contravene condition attached to pollution control approval	2	\$500
Section 24 (2) (a): Wilfully delay or obstruct, or fail to comply with requirement made by, an authorised officer exercising functions under the Act	Wilfully delay/obstruct/ fail to comply with requirement made by authorised officer	2	\$300
Section 24 (2) (b) (i): Being the occupier of premises, refuse to permit or to assist an authorised officer to do any matter or thing that the authorised officer is authorised to do	Refuse to permit/to assist authorised officer to do authorised things	2	\$300

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
OFFENCES AND PENALTIES ACT 1989—*continued*

*State Pollution Control Commission Act 1970—
continued*

<i>Provision of Act</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Section 24 (2) (b) (ii): Being the occupier of premises, refuse to provide such assistance and facilities as may be prescribed for the purpose of enabling an authorised officer to exercise functions under the Act	Refuse to provide prescribed assistance and facilities to authorised officer	2	\$300
Section 24 (2) (b) (iii): Being the occupier of premises, refuse to comply with requirement to provide assistance and facilities specified in notice under section 24 (1D)	Refuse to provide assistance and facilities specified in section 24 (1D) notice	2	\$300

*Environmental Offences and Penalties (Amendment) 1990***SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL OFFENCES AND PENALTIES ACT 1989—*continued****State Pollution Control Commission Act 1970—
continued*

<i>Provision of Act</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Section 25 (2): Neglect or fail to comply with direction to furnish information to Commission	Neglect/fail to furnish information to Commission	2	\$200

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 31)

PART 1—PRELIMINARY**Regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Environmental Offences and Penalties (Amendment) Act 1990

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL OFFENCES AND PENALTIES ACT 1989—*continued***PART 2—PROVISIONS CONSEQUENTIAL ON THE ENACTMENT OF THE ENVIRONMENTAL OFFENCES AND PENALTIES (AMENDMENT) ACT 1990****Definitions**

2. In this Part:

“**amending Act**” means the Environmental Offences and Penalties (Amendment) Act 1990;

“**appointed day**”, in relation to a provision of this Part, means the day appointed under section 2 of the amending Act in relation to the commencement of that provision;

“**associated Act**” means:

- (a) the Clean Air Act 1961; or
- (b) the Clean Waters Act 1970; or
- (c) the Noise Control Act 1975; or
- (d) the State Pollution Control Commission Act 1970.

Current proceedings unaffected by sec. 7 amendments

3. Any proceedings commenced, but not finally disposed of, before the appointed day are to be disposed of as if the amendments to section 7 made by the amending Act had not been made.

Effect of consolidation of offences on current proceedings

4. (1) For the purposes of any proceedings (whether commenced before, on or after the appointed day) in respect of an offence alleged to have been committed before that day, an offence against an associated Act is to be regarded as an offence against this Act.

(2) Subclause (1) does not affect the operation of section 55 (Alteration of penalties) of the Interpretation Act 1987 to offences the subject of any such proceedings.

Penalty notices

5. A penalty notice issued before the appointed day under an associated Act, or under section 289C of the Local Government Act 1919, is to be enforced as if the amendments to those Acts made by the amending Act had not been made.

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL OFFENCES AND PENALTIES ACT 1989—*continued***Certain proceedings before Local Courts**

6. Proceedings commenced before a Local Court before the appointed day in respect of an offence arising under Division 1 of Part 1 may be disposed of as if the amendments to section 11 made by the amending Act had not been made.

Proceedings commenced with consent of Minister etc.

7. Proceedings commenced before the appointed day pursuant to a consent referred to in section 13 (1) (a) or (b) may be disposed of as if those paragraphs had not been repealed by the amending Act.

Preventative orders

8. An order may be made under section 14, as amended by the amending Act, in respect of offences committed before the appointed day as well as in respect of offences committed on or after that day.

Civil enforcement of unpaid enforcement orders

9. Sections 87 and 87A of the Justices Act 1902, as amended by the amending Act, apply to enforcement orders issued before the appointed day as well as to enforcement orders issued on or after that day.

Appeals to the Land and Environment Court

10. The provisions of sections 121B (2) and 131AB (5) and Division 4B of Part 5 of the Justices Act 1902, as amended by the amending Act, do not apply to any conviction or order made before the appointed day.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER ACTS**Clean Air Act 1961 No. 69**

(Sec. 4)

- (1) Sections 10 (**Scheduled premises to be licensed**), 21O (**Licensing**), 21Q (**Construction of scheduled equipment**):

Omit “against this Act” wherever occurring, insert instead “against the Environmental Offences and Penalties Act 1989”.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued*

- (2) Sections 14 (**Occupiers to maintain and operate control equipment etc.**), 19B (**Operation of fuel burning equipment and industrial plant**):
After “guilty of an offence?” wherever occurring, insert “against the Environmental Offences and Penalties Act 1989”.
- (3) Section 16 (**Certain work not to be carried out on scheduled premises except in accordance with a pollution control approval**):
Omit section 16 (10).
- (4) Section 17 (**Commission to require work on scheduled premises**):
From section 17 (6), omit “Penalty: \$1,000.”.
- (5) Section 20 (**Control of trades, industries, processes, fuel burning equipment and industrial plant**):
From section 20 (7), omit “Penalty: \$1,000.”.
- (6) Section 21EA (**Notices to repair etc. prescribed anti-pollution devices**):
(a) From section 21EA (3), omit “Penalty: \$1,000.”.
(b) From section 21EA (6), omit “Penalty for an offence under this subsection: \$1,000.”.
- (7) Section 21G (**Power to require owner of motor vehicle to furnish information**):
Omit section 21G (3).
- (8) Section 23 (**Power to require information to be furnished**):
Omit section 23 (3).
- (9) Section 23A (**Measurement of pollution**):
Omit section 23A (4).
- (10) Section 24A (**Burning of refuse etc.—general orders**):
From section 24A (5), omit “Penalty: \$500.”.
- (11) Section 24B (**Burning of refuse etc.—particular directions**):
From section 24B (3), omit “Penalty: \$500.”.

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued*

(12) Section 24C (**Penalty notices**):

Omit the section.

(13) Section 27 (**Powers of authorised officers**):

From section 27 (5), omit:

against this Act and is liable:

(d) where the offence was committed by a corporation—to a penalty not exceeding \$4,000; or

(e) where the offence was committed by any other person—to a penalty not exceeding \$2,000.

insert instead:

against the Environmental Offences and Penalties Act 1989.

(14) Section 27A (**Sampling of tanker loads etc. for pollutants**):

(a) From section 27A (2), omit “against this Act”, insert instead “against the Environmental Offences and Penalties Act 1989”.

(b) From section 27A (3), omit “against this Act and liable to a penalty not exceeding \$2,000”, insert instead “against the Environmental Offences and Penalties Act 1989”.

(15) Section 32 (**Penalties**):

(a) From section 32 (1), omit “against this Act”, insert instead “against the Environmental Offences and Penalties Act 1989”.

(b) Omit section 32 (3).

(16) Sections 32A (**Power to order contravention to be remedied**), 33 (**Proceedings for offences**), 33A (**Orders for restoration and compensation**):

Omit the sections.

(17) Section 34 (**Regulations**):

Omit section 34 (4), insert instead:

(4) Any person who contravenes a provision of a regulation is guilty of an offence against the Environmental Offences and Penalties Act 1989 and is liable to the penalty imposed by the regulation in accordance with the Environmental Offences and Penalties Act 1989.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued*

Clean Waters Act 1970 No. 78

(1) Section 5 (**Definitions**):

From the definition of “authorised officer”, omit “or 32A”.

(2) Section 16 (**Prohibition of pollution of waters**):

(a) From section 16 (6), omit “against this Act”.

(b) Omit section 16 (7), insert instead:

(7) Any person who contravenes the provisions of this section is guilty of an offence against the Environmental Offences and Penalties Act 1989.

(3) Section 17 (**Licences in respect of certain drains**):

(a) From section 17 (1), omit “this Act”, insert instead “the Environmental Offences and Penalties Act 1989”.

(b) Omit section 17 (5).

(4) Section 18 (**Postponement of operation of sections 16 and 17**):

Omit “against this Act”.

(5) Section 19 (**Certain apparatus etc. not to be installed etc. except in accordance with a pollution control approval**):

Omit section 19 (6) and (7), insert instead:

(6) Any person who contravenes the provisions of subsection (1) is guilty of an offence against the Environmental Offences and Penalties Act 1989.

(6) Section 20 (**Maintenance and operation of certain control equipment**):

(a) From the definition of “control equipment” in section 20 (1), omit “waters.”, insert instead “waters or to regulate or monitor the pollution of waters.”.

(b) Omit section 20 (3), insert instead:

(3) Any person who contravenes this section is guilty of an offence against the Environmental Offences and Penalties Act 1989.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued*

(7) Section 26 (**Minister’s emergency powers**):

(a) From section 26 (2), omit “against this Act”.

(b) From section 26 (3), omit:

against this Act and is liable:

(a) where the offence was committed by a corporation—to a penalty not exceeding \$40,000 and to a further penalty not exceeding \$20,000 for each day the offence continues; or

(b) where the offence was committed by any other person—to a penalty not exceeding \$20,000 and to a further penalty not exceeding \$10,000 for each day the offence continues.

insert instead:

against the Environmental Offences and Penalties Act 1989.

(8) Section 27A (**Notice to clean up pollution**):

From section 27A (3), omit “against this Act and liable to a penalty not exceeding \$5,000”, insert instead “against the Environmental Offences and Penalties Act 1989”.

(9) Section 28 (**Occupier may be required to supply information**):

Omit section 28 (2), insert instead:

(2) A person who neglects or fails to comply with any requirement made under this section is guilty of an offence against the Environmental Offences and Penalties Act 1989.

(10) Section 29 (**Powers of authorised officers**):

From section 29 (4), omit “against this Act and is liable to a penalty not exceeding \$4,000”, insert instead “against the Environmental Offences and Penalties Act 1989”.

(11) Section 29A (**Sampling of tanker loads etc. for pollutants**):

(a) From section 29A (2), omit “against this Act”, insert instead “against the Environmental Offences and Penalties Act 1989”.

(b) From section 29A (3), omit “against this Act and liable to a penalty not exceeding \$5,000”, insert instead “against the Environmental Offences and Penalties Act 1989”.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued*

- (12) Sections 32A (**Penalty notices**), 33 (**Proceedings for offences**), 33A (**Orders for restoration and compensation**), 34 (**Power to order contravention to be remedied**):

Omit the sections.

- (13) Section 36 (**Regulations**):

Omit section 36 (3), insert instead:

(3) Any person who contravenes a provision of a regulation is guilty of an offence against the Environmental Offences and Penalties Act 1989 and is liable to the penalty imposed by the regulation in respect of the offence in accordance with the Environmental Offences and Penalties Act 1989.

Criminal Appeal Act 1912 No. 16

Section 5BA:

After section 5B, insert:

Case stated from Land and Environment Court

5BA. A Judge of the Land and Environment Court may submit any question of law arising on any appeal to the Land and Environment Court in its environmental offences appeals jurisdiction coming before the Judge to the Court of Criminal Appeal for determination, and the Court of Criminal Appeal may make any such order or give any such direction to the Land and Environment Court as it thinks fit.

Environmentally Hazardous Chemicals Act 1985 No. 14

Section 54 (**Penalties**):

- (a) From section 54 (a), omit “\$40,000”, insert instead “\$125,000”.
- (b) From section 54 (b), omit “\$20,000”, insert instead “\$60,000”.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued*

Justices Act 1902 No. 27

(1) Section 87 (**Warrant of commitment for non-payment**):

After section 87 (9), insert:

(10) This section does not apply to or in respect of an enforcement order (within the meaning of Part 4B) that relates to an offence to which section 87A applies.

(2) Section 87A:

After section 87, insert:

Certain orders to be enforceable as civil debts

87A. (1) This section applies to all offences against the Environmental Offences and Penalties Act 1989, including any offence against that Act arising under the provisions of:

- (a) the Clean Air Act 1961; or
- (b) the Clean Waters Act 1970; or
- (c) the Noise Control Act 1975; or
- (d) the State Pollution Control Commission Act 1970; or
- (e) a regulation under any of those Acts.

(2) An enforcement order (within the meaning of Part 4B) that relates to an offence to which this section applies is enforceable as a civil debt due to the Crown and may be recovered as such in any court of competent jurisdiction.

(3) Any amount recovered in consequence of proceedings under subsection (2) is to be dealt with in the same way as if the amount had been recovered in consequence of a conviction.

(3) Section 100I (**Definitions**):

- (a) In paragraph (a) of the definition of “penalty notice” in section 100I (1), insert (in alphabetical order):
Environmental Offences and Penalties Act 1989, section 8G;
- (b) From the matter relating to the Local Government Act 1919 in paragraph (a) of the definition of “penalty notice” in section 100I (1), omit “or 289C (1)”.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued*

- (4) Section 111 (**Persons appealing under this Division not to appeal to the District Court or Land and Environment Court**):

After “District Court” in section 111 (l), insert “or to the Land and Environment Court”.

- (5) Section 121B (**No appeal in certain cases**):

At the end of section 121B, insert:

(2) Notwithstanding section 122, there is no appeal to the District Court in relation to any order made on the conviction of a person in respect of an environmental offence within the meaning of Division 4B.

- (6) Section 131AB (**Appeal by Crown to District Court against sentence**):

After section 131AB (4), insert:

(5) There is no appeal to the District Court under this section in relation to any sentence imposed by a Justice or Justices in proceedings for an environmental offence within the meaning of Division 4B.

- (7) Part 5, Division 4B:

After Division 4A of Part 5, insert:

Division 4B—Environmental offences

Definitions

131AD. In this Division, a reference to an environmental offence is a reference to an offence against the Environmental Offences and Penalties Act 1989, including any offence against that Act arising under the provisions of:

- (a) the Clean Air Act 1961; or
- (b) the Clean Waters Act 1970; or
- (c) the Noise Control Act 1975; or
- (d) the State Pollution Control Commission Act 1970; or
- (e) a regulation under any of those Acts.

Appeal by convicted persons

131AE. (1) Any person who is convicted under this Act in respect of an environmental offence is entitled to appeal to the Land and Environment Court against the conviction or against any order made as a consequence of the conviction.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
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(2) The provisions of Division 4 (section 131A excepted) apply to and in respect of an appeal, and an application for leave to appeal, under this section in the same way as they apply to and in respect of an appeal, and an application for leave to appeal, under section 122.

(3) In the application of those provisions to or in respect of an appeal, or an application for leave to appeal, under this section:

- (a) a reference to the District Court is to be construed as a reference to the Land and Environment Court; and
- (b) a reference to a Judge is to be construed as a reference to a Judge of the Land and Environment Court; and
- (c) a reference to a registrar is to be construed as a reference to the registrar of the Land and Environment Court; and
- (d) a reference to a proclaimed place is to be construed as a reference to any place within New South Wales.

Appeal by Crown to Land and Environment Court against sentence

131AF. (1) The Director of Public Prosecutions may appeal to the Land and Environment Court against any sentence imposed by a Justice or Justices in proceedings for an environmental offence that has been dealt with summarily if those proceedings have been instituted or carried on by the Director of Public Prosecutions.

(2) The provisions of Division 4A apply to and in respect of an appeal under this section in the same way as they apply to and in respect of an appeal under section 131AB.

(3) In the application of those provisions to an appeal under this section:

- (a) a reference to the District Court is to be construed as a reference to the Land and Environment Court; and
- (b) a reference to a Judge is to be construed as a reference to a Judge of the Land and Environment Court; and
- (c) a reference to a proclaimed place is to be construed as a reference to any place within New South Wales; and

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
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- (d) a reference to the criminal procedure rules of the District Court is to be construed as a reference to the rules of the Land and Environment Court with respect to its environmental offences appeals jurisdiction.

Land and Environment Court Act 1979 No. 204

- (1) Section 16 (**Jurisdiction of the Court generally**):
From section 16 (2), omit “5”, insert instead “6”.
- (2) Section 21 (**Class 5—environmental planning and protection summary enforcement**):
After “6” in section 21 (ca), insert “, 6A, 6B”.
- (3) Section 21A:
After section 21, insert:
Class 6—appeals from convictions relating to environmental offences
21A. The Court has jurisdiction (referred to in this Act as “Class 6” of its jurisdiction) to hear and dispose of appeals under sections 131AE and 131AF of the Justices Act 1902.
- (4) Section 26 (**Divisions of the Court**):
(a) From section 26 (d), omit “and” where lastly occurring.
(b) At the end of section 26 (e), insert:
; and
(f) the Environmental Offences Appeals Division.
- (5) Section 28 (**Distribution of business among the Divisions**):
After section 28 (5), insert:
(6) Proceedings in Class 6 of the Court’s jurisdiction shall be assigned to the Environmental Offences Appeals Division.
- (6) Section 33 (**Exercise of jurisdiction in the Divisions**):
From section 33 (2), omit “4 and 5”, insert instead “4, 5 and 6”.
- (7) Section 56 (**Nature of decision of the Court**):
After “5” in section 56 (b), insert “or 6”.

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SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued*

(8) Section 63 (**Right of appearance**):

After “5”, insert “or 6”.

(9) Section 69 (**Costs**):

From section 69 (9), omit “in the summary jurisdiction of the Court”, insert instead “in Class 5 or 6 of the Court’s jurisdiction”.

Local Government Act 1919 No. 41

(1) Part 10, Division 5A (**Depositing litter prohibited**):

Omit the Division.

(2) Section 303 (**Ordinances**):

Omit section 303 (1) (r).

(3) Section 644 (**Demanding name of offender**):

From section 644 (1), omit “or in respect of any offence under Division 5A of Part 10 or any ordinance made for the purposes of that Division”.

Noise Control Act 1975 No. 35

(1) Section 18 (**Scheduled premises to be licensed**):

From section 18 (1), omit “this Act”, insert instead “the Environmental Offences and Penalties Act 1989”.

(2) Section 26 (**Occupiers to maintain and operate noise control equipment etc.**):

After “offence” wherever occurring, insert “against the Environmental Offences and Penalties Act 1989”.

(3) Sections 53, 60, 61A:

Omit “Penalty: \$500.” wherever occurring.

(4) Section 64 (**Regulations**):

After section 64 (3), insert:

(4) Any person who contravenes a provision of a regulation is guilty of an offence against the Environmental Offences and Penalties Act 1989 and is liable to the penalty imposed by the regulation in accordance with the Environmental Offences and Penalties Act 1989.

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SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
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- (5) Section 66 (**Offences against the regulations**):
Omit the section.
- (6) Section 74 (**Power to require information**):
From section 74 (4), omit “Penalty: \$1,000.”.
- (7) Section 76 (**Powers of authorised officers**):
- (a) From section 76 (2) (b) (i), omit “offending against this Act”, insert instead “committing an offence arising under this Act”.
 - (b) From section 76 (6), omit “against this Act and liable to a penalty not exceeding \$1,000”, insert instead “against the Environmental Offences and Penalties Act 1989”.
- (8) Sections 79 (**Offences**), 80 (**Penalties**):
Omit the sections, insert instead:
Offences
79. Any person who:
- (a) contravenes any provision of this Act, other than the regulations; or
 - (b) neglects or fails to comply with any requirement, order or direction made or given under this Act,
- is guilty of an offence against the Environmental Offences and Penalties Act 1989.
- (9) Sections 81 (**Power to order contravention to be remedied**), 82 (**Proceedings for offences**):
Omit the sections.

State Pollution Control Commission Act 1970 No. 95

- (1) Section 17D (**Licences**):
Omit section 17D (9), insert instead:
- (9) Any person who, being the holder of a licence, contravenes any condition of the licence is guilty of an offence against the Environmental Offences and Penalties Act 1989.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued*

- (2) Section 17K (**Pollution control approvals**):
Omit section 17K (5), insert instead:
(5) Any person who contravenes any condition attached to a pollution control approval is guilty of an offence against the Environmental Offences and Penalties Act 1989.
- (3) Section 17P (**Effect of false or misleading particulars supplied by licensees etc.**):
(a) From section 17P (1), omit “the offence”, insert instead “an offence against the Environmental Offences and Penalties Act 1989”.
(b) From section 17P (2), omit “against”, insert instead “arising under”.
- (4) Section 23 (**Inquiries**):
Omit “Penalty: One thousand dollars.” wherever occurring.
- (5) Section 24 (**Power of entry**):
From section 24 (2), omit “against this Act and liable to a penalty not exceeding \$1,000”, insert instead “against the Environmental Offences and Penalties Act 1989”.
- (6) Section 25 (**Persons may be required to furnish information**):
Omit “Penalty: One thousand dollars.”.
- (7) Section 24 (**Disclosure of information**):
From section 26 (1), omit “against this Act and liable to a penalty not exceeding \$4,000”, insert instead “against the Environmental Offences and Penalties Act 1989”.
- (8) Section 27A (**Evidence of documents and certificate evidence**):
(a) From section 27A (3) (m), omit “against”, insert instead “arising under”.
(b) Omit section 27A (4) and (5).
- (9) Section 27B (**Evidence of occupation of premises and ownership of equipment**):
From section 27B (1), (2) and (3), omit “against” wherever occurring, insert instead “arising under”.

Environmental Offences and Penalties (Amendment) 1990

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACT—*continued*

(10) Section 29A:

After section 29, insert:

Offences

29A. Any person who:

- (a) contravenes any provision of this Act; or
- (b) neglects or fails to comply with any requirement, order or direction under this Act,

is guilty of an offence against the Environmental Offences and Penalties Act 1989.

(11) Sections 30 (**Power to order contravention to be remedied**), 30A (**Orders for restoration and compensation**), 30B (**Offences by corporations**), 31 (**Proceedings for offences**):

Omit the sections.

(12) Section 30C (**Prosecutions in the name of the Commission**):

After “against”, insert “the Environmental Offences and Penalties Act 1989 in respect of a matter arising under”.

(13) Section 32 (**Regulations**):

Omit section 32 (4), insert instead:

(4) Any person who contravenes a provision of a regulation is guilty of an offence against the Environmental Offences and Penalties Act 1989 and is liable to the penalty imposed by the regulation in respect of the offence in accordance with the Environmental Offences and Penalties Act 1989.

[Minister’s second reading speech made in—

Legislative Assembly on 20 November 1990

Legislative Council on 28 November 1990]