



New South Wales

# Environment Protection Legislation Amendment Act 2002 No 14

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Contaminated Land Management Act 1997 No 140	2
4 Amendment of Protection of the Environment Operations Act 1997 No 156	2
5 Amendment of Radiation Control Act 1990 No 13	2
6 Amendment of Road and Rail Transport (Dangerous Goods) Act 1997 No 113	2
7 Other amendments	2
<b>Schedules</b>	
1 Amendment of Contaminated Land Management Act 1997	3
2 Amendment of Protection of the Environment Operations Act 1997	5
3 Amendment of Radiation Control Act 1990	19

Environment Protection Legislation Amendment Act 2002 No 14

Contents

---

	Page
4 Amendment of Road and Rail Transport (Dangerous Goods) Act 1997	24
5 Other amendments	25



New South Wales

# Environment Protection Legislation Amendment Act 2002 No 14

Act No 14, 2002

---

An Act to amend the *Protection of the Environment Operations Act 1997* and other Acts and regulations with respect to law enforcement and offences, the functions of regulatory authorities, accreditations and regulation-making powers; and for other purposes. [Assented to 15 May 2002]

---

**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Environment Protection Legislation Amendment Act 2002*.

**2 Commencement**

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

**3 Amendment of Contaminated Land Management Act 1997 No 140**

The *Contaminated Land Management Act 1997* is amended as set out in Schedule 1.

**4 Amendment of Protection of the Environment Operations Act 1997 No 156**

The *Protection of the Environment Operations Act 1997* is amended as set out in Schedule 2.

**5 Amendment of Radiation Control Act 1990 No 13**

The *Radiation Control Act 1990* is amended as set out in Schedule 3.

**6 Amendment of Road and Rail Transport (Dangerous Goods) Act 1997 No 113**

The *Road and Rail Transport (Dangerous Goods) Act 1997* is amended as set out in Schedule 4.

**7 Other amendments**

Each Act and Regulation specified in Schedule 5 is amended as set out in that Schedule.

---

## **Schedule 1    Amendment of Contaminated Land Management Act 1997**

(Section 3)

**[1]    Section 50 Accreditation as site auditor**

Omit “annual” from section 50 (1).

**[2]    Section 50 (1)**

Omit “year”. Insert instead “period”.

**[3]    Section 50 (1A)**

Insert after section 50 (1):

(1A) The EPA may grant accreditation or a renewal of accreditation for a period specified by the EPA not exceeding 3 years.

**[4]    Section 50 (2)**

Omit the subsection. Insert instead:

(2) The EPA must serve written notice of the granting or renewal of accreditation on a person who is granted accreditation or whose accreditation is renewed, including notice of the period for which accreditation is granted or renewed.

**[5]    Section 50 (3)**

Omit “12 months from the date it was granted or last renewed”.  
Insert instead “at the end of the period notified under subsection (2)”.

**[6]    Section 50 (4) (d)**

Omit “annual”.

**[7]    Section 50 (4) (d)**

Omit “year”. Insert instead “period”.

**[8] Section 53 Returns and other notifications**

Omit section 53 (1). Insert instead:

- (1) A site auditor who is accredited for the whole or part of a return period must furnish the EPA with a return showing site audits commenced or completed during that period.
- (1A) The return must be furnished not later than the 31 March next following the end of the return period.

**[9] Section 53 (4)**

Insert at the end of section 53 (3):

- (4) In this section:  
*return period* means a year commencing on 1 March and ending on the last day of February.

**[10] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Environment Protection Legislation Amendment Act 2002* (but only to the extent that it amends this Act)

**[11] Schedule 2, clause 6**

Insert after clause 5 of Schedule 2:

**6 Accreditation of site auditors**

The accreditation of a site auditor in force immediately before the amendment of section 50 (1) by the *Environment Protection Legislation Amendment Act 2002* expires (if not revoked under this Act) on the date on which it would have expired if the amendment had not been made and may be renewed in accordance with that section as so amended.

---

## **Schedule 2 Amendment of Protection of the Environment Operations Act 1997**

(Section 4)

### **[1] Section 60 Requirement for further information**

Insert “(other than an application for the approval of the surrender of a licence)” after “licence application” in section 60 (1).

### **[2] Section 61 Reasons to be given for grant or refusal of certain licence applications**

Insert “(other than an application for the approval of the surrender of a licence)” after “licence application” in section 61 (1).

### **[3] Section 66 Conditions requiring monitoring and certification and relating to other matters**

Insert after section 66 (2):

#### **(2A) Conditions relating to certain information**

The conditions of a licence may require the holder of a licence to supply to the appropriate regulatory authority information relating to a pollution incident to which Part 5.7 applies in addition to the information required under that Part.

### **[4] Section 80 Surrender of licence**

Insert after section 80 (1A):

- (2) If an application for the approval of the surrender of a licence is granted or refused, any person may make a written request to the appropriate regulatory authority for the reasons for the grant or refusal of the application and the appropriate regulatory authority is to provide a written statement of the reasons to the person.
- (2A) The regulations may make provision with respect to any such statement of reasons, including:
  - (a) the time within which a request for reasons must be made or within which the statement of reasons must be provided, and

- (b) the matters to be set out in a statement of reasons, and
- (c) the cases in which a statement of reasons is not required to be provided.

**[5] Section 109A Special provision relating to clean-up and prevention notices and related action**

Omit the section.

**[6] Section 120**

Omit the section. Insert instead:

**120 Prohibition of pollution of waters**

- (1) A person who pollutes any waters is guilty of an offence.
- (2) In this section:
  - pollute* waters includes cause or permit any waters to be polluted.

**[7] Section 154 Definitions**

Omit “at any point specified in or” from section 154 (2) (a).  
Insert instead “as”.

**[8] Section 186 Extension of Chapter to other environment protection legislation**

Insert after section 186 (b1):

- (b2) *Radiation Control Act 1990* and the regulations under that Act,

**[9] Part 7.2, heading**

Insert “and enforcement officers” after “Authorised officers”.

**[10] Section 187 Appointment of authorised officers**

Insert after section 187 (2):

(3) In this section:

*employee* of an authority includes a person whose services are used by the authority and who is, in respect of those services, subject to the direction and control of the authority.

**[11] Section 188 Scope of authority**

Insert after section 188 (3):

(4) Despite subsection (3) and any other provision of this Chapter, an authorised officer of a regulatory authority may exercise powers under this Chapter (other than under Part 7.6) for the purpose of determining whether a matter concerns the functions of the regulatory authority.

**[12] Section 189 Identification**

Insert “or enforcement officer” after “authorised officer” wherever occurring.

**[13] Section 189 (3)**

Insert after section 189 (2):

(3) It is sufficient compliance with subsection (2) if an enforcement officer, acting in the capacity of an enforcement officer, who is also an authorised officer produces his or her identification card as an authorised officer.

**[14] Section 189A**

Insert after section 189:

**189A Powers of enforcement officers**

An enforcement officer has, in respect of any of the officer’s responsibilities or functions as an enforcement officer under this Act or the regulations, the functions of an authorised officer under this Chapter (other than section 204 (2) and Part 7.6) and this Chapter applies accordingly.

**[15] Section 199 Search warrants**

Omit section 199 (1). Insert instead:

(1) **Application for search warrant**

An authorised officer may apply to an authorised justice for the issue of a search warrant if the authorised officer believes on reasonable grounds that:

- (a) a provision of this Act or the regulations is being or has been contravened at any premises, or
- (b) there is in or on any premises matter or a thing that is connected with an offence under this Act or the regulations.

**[16] Section 199 (4)**

Insert in alphabetical order:

*matter or a thing* connected with an offence means:

- (a) matter or a thing with respect to which the offence has been committed, or
- (b) matter or a thing that will afford evidence of the commission of an offence, or
- (c) matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

*offence* includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

**[17] Sections 212C and 212D**

Insert after section 212B:

**212C Actions by incorrect regulatory authority**

- (1) This section applies if a regulatory authority or an authorised officer of the authority, in good faith, exercises functions under this Act or the regulations relating to an activity or work that:
  - (a) is not authorised or controlled by an environment protection licence, and
  - (b) in relation to which the authority is not the appropriate regulatory authority.

- (2) A regulatory authority must, as soon as practicable after becoming aware of any such exercise of functions, notify the appropriate regulatory authority in writing of the functions so exercised and of any such functions that it proposes to continue to exercise or to cease to exercise in relation to the matter.
- (3) A regulatory authority or an authorised officer of the authority may (but is not required to), if notice is given in accordance with subsection (2), continue to exercise functions under this Act or the regulations relating to the activity or work until:
  - (a) directed to do otherwise by the appropriate regulatory authority, or
  - (b) an environment protection licence is granted in respect of the activity or work concerned.
- (4) The appropriate regulatory authority may, by notice in writing, direct a regulatory authority (including its authorised officers) not to exercise functions under this Act or the regulations in relation to an activity or work if it becomes aware that the other authority or an authorised officer of that authority is exercising, or has exercised, functions of the appropriate regulatory authority in relation to that activity or work.
- (5) A direction given by the appropriate regulatory authority or the grant of a licence does not affect any proceedings already commenced by the other regulatory authority or an officer of that authority in respect of the activity or work and, for that purpose, this section and section 212D apply as if the direction had not been given or the licence had not been granted.
- (6) For the purposes of this Act and the regulations and any proceedings, a regulatory authority or an authorised officer of that authority who exercises a function as referred to in subsection (1), or who continues to exercise a function in accordance with subsection (3), is taken to be the appropriate regulatory authority or an authorised officer of the appropriate regulatory authority in relation to the activity or work concerned and this Act applies accordingly.

**212D Appropriate regulatory authority may continue to exercise functions**

- (1) If a regulatory authority (including an authorised officer) is required to cease to exercise functions, or ceases to exercise functions, under section 212C (3) or (4), the appropriate regulatory authority or an authorised officer of that authority may continue to exercise any functions commenced by the other regulatory authority or an authorised officer, as if the functions had been exercised by the appropriate regulatory authority or an authorised officer of that authority.
- (2) For the purposes of this Act and the regulations and any proceedings, any function previously exercised by the other regulatory authority (including an authorised officer) relating to the activity or work concerned is taken to have been exercised by the appropriate regulatory authority (or an authorised officer of that authority) and this Act applies accordingly.
- (3) Without limiting subsection (2), any notice or direction given by the other authority or an authorised officer of the authority may be enforced, or varied or revoked, as if it had been given by the appropriate regulatory authority or an authorised officer of that authority.
- (4) A notice issued by the other authority or an authorised officer of the authority is taken to be varied, to the extent of any inconsistency, if a subsequent inconsistent notice is issued by or on behalf of the appropriate regulatory authority or an authorised officer of that authority.
- (5) Nothing in this section affects the right of the other regulatory authority to recover a fee, charge or cost under this Act in relation to a notice given while exercising functions as referred to in section 212C (1) or (3).

**[18] Section 219 Any person or authority may institute proceedings with leave of Land and Environment Court**

Insert after section 219 (1):

(1A) An appropriate regulatory authority (other than the EPA) and any person or authority referred to in section 218 may institute proceedings in the Land and Environment Court for an offence against this Act or the regulations, if the Court grants the authority leave to bring the proceedings.

(1B) Nothing in section 217 or 218 limits the operation of this section.

**[19] Section 219 (2) (a)**

Insert “or authority” after “person”.

**[20] Section 220 Officers and employees of authorities**

Insert at the end of the section:

(2) In this section:

*employee* of an authority includes a person whose services are used by the authority and who is, in respect of those services, subject to the direction and control of the authority.

**[21] Section 221 Penalty notices and related proceedings**

Omit “authorised officer” from section 221 (3) wherever occurring.

Insert instead “enforcement officer”.

**[22] Section 221 (4)**

Insert at the end of the section:

(4) In this section:

*employee* of an authority includes a person whose services are used by the authority and who is, in respect of those services, subject to the direction and control of the authority.

**[23] Section 224 Service of penalty notices**

Omit “authorised officer” wherever occurring in section 224 (1).  
Insert instead “enforcement officer”.

**[24] Section 226 Enforcement officers**

Omit “*authorised officer*” from section 226 (1).  
Insert instead “*enforcement officer*”.

**[25] Section 226 (2) and (3)**

Omit “authorised officer” wherever occurring.  
Insert instead “enforcement officer”.

**[26] Section 227 Penalty payable**

Omit “\$1,500 nor” from section 227 (2).

**[27] Section 228 Withdrawal of penalty notice**

Omit “authorised officer” wherever occurring in section 228 (1).  
Insert instead “enforcement officer”.

**[28] Part 8.2, Division 6**

Insert after section 241:

**Division 6 Continuing offences**

**242 Continuing offences**

- (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
  - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and

(b) is guilty of a continuing offence for each day the contravention continues.

- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

**[29] Section 261 Certificate evidence of certain matters**

Insert “or enforcement officer” after “officer” in section 261 (2) (g).

**[30] Section 261 (3)**

Insert “or enforcement officer” after “authorised officer” wherever occurring.

**[31] Section 287 Appeals regarding licence applications and licences**

Omit the note to section 287 (2). Insert instead:

**Note.** The Dictionary defines *licence application* to mean an application for the issue, transfer or variation of a licence or for approval of the surrender of a licence.

**[32] Sections 287 (3)–(6)**

Omit subsections (3) and (4). Insert instead:

- (3) For the purposes of this section, a licence application is taken to have been refused:
- (a) in the case of an application for a variation of a licence about which the appropriate regulatory authority is required to invite and consider public submissions under section 58 (6), if the application is not granted within 90 days after it is duly made, or
- (b) in the case of an application for a licence relating to controlled development, if the application is not granted within 60 days after it is duly made or within 30 days after development consent is granted for the controlled development, whichever is the later, or
- (c) in any other case, if the application is not granted within 60 days after it is duly made.

- (4) The period commencing when an applicant is duly required under this Act to provide additional information within a specified period for the purposes of determining a licence application and ending when that information is provided or the specified period ends (whichever occurs first) is not to be taken into account in determining whether a licence application is taken to have been refused.
- (5) Nothing in this section prevents the determination of a licence application under this Act after the end of a period referred to in subsection (3).
- (6) There is no appeal under this section against a condition that is imposed on a licence, or varied or revoked, by the regulations.

**[33] Section 295D Licence conditions**

Omit section 295D (3).

**[34] Section 319A**

Insert after section 319:

**319A Continuing effect of notices**

- (1) A notice given under this Act or the regulations that specifies a time by which, or period within which, the notice must be complied with continues to have effect until the notice is complied with even though the time has passed or the period has expired.
- (2) A notice that does not specify a time by which, or period within which, the notice must be complied with continues to have effect until the notice is complied with.
- (3) This section does not apply to the extent that any requirement under a notice is revoked.
- (4) Nothing in this section affects the powers of a regulatory authority with respect to the enforcement of a notice.

**[35] Section 320A**

Insert after section 320:

**320A False representations as to EPA approval, use or recommendation**

- (1) A person is guilty of an offence if the person, knowing it to be false or misleading, represents that any goods or services are approved, provided, recommended or used by the EPA.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or  
(b) in the case of an individual—100 penalty units.

- (2) In this section:

*represent* includes cause or permit a representation to be made.

**[36] Schedule 2 Regulation-making powers**

Insert after clause 4 (5):

- (6) The liability of an owner of a motor vehicle or vessel for an offence under the regulations where an offence is committed with respect to or in connection with the motor vehicle or vessel (whether or not the act or omission concerned is committed or omitted by the owner), including the circumstances in which the owner is not liable.

**[37] Schedule 2, clauses 6A and 6B**

Insert after clause 6:

**6A Fuel and fuel burning equipment**

- (1) Prohibiting or regulating the sale, distribution, use, operation and maintenance of fuel burning equipment, and equipment for industrial plant, including control equipment.
- (2) Prohibiting or regulating the storage, sale, distribution or use of fuels and the sale, distribution, use, operation and maintenance of fuel tanks and other equipment used in connection with the sale or distribution of fuels.

- (3) Other matters incidental to or necessary for prohibiting or regulating the matters referred to in subclauses (1) and (2), including requirements with respect to the quality and composition of fuels, the emission of excessive air impurities and the fitting and control of pollution control devices.

**6B Emission of air impurities**

Requirements with respect to the emission of, and testing for, air impurities, including the methods for determining standards of concentration or rates of emission.

**[38] Schedule 2, clause 8 (4)**

Insert after clause 8 (3):

- (4) Imposing conditions on licences and revoking or varying conditions on licences (whether or not the conditions have been imposed by the regulations).

**[39] Schedule 5 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Environment Protection Legislation Amendment Act 2002* (but only to the extent to which it amends this Act or regulations under this Act)

**[40] Schedule 5, Part 10**

Insert after Part 9:

**Part 10 Provisions consequent on enactment of Environment Protection Legislation Amendment Act 2002**

**18 Definition**

In this Part:

*2002 amending Act* means the *Environment Protection Legislation Amendment Act 2002*.

**19 Pollution incidents**

- (1) Section 66 (2A), as inserted by the 2002 amending Act, applies to information provided under a licence condition before its commencement.
- (2) A licence condition of a kind referred to in section 66 (2A), as inserted by the 2002 amending Act, being a condition imposed before the commencement of section 66 (2A), is, for the purposes of section 66, taken to have been imposed under section 66 (2A).

**20 Applications to surrender licences**

Section 80, and the definition of *licence application* in the Dictionary, as amended by the 2002 amending Act, do not apply to or in respect of any application for the approval of the surrender of a licence made before the commencement of this clause.

**21 Identification cards for enforcement officers**

- (1) Section 189, as amended by the 2002 amending Act, does not apply to an enforcement officer or the authority that appointed the enforcement officer for a period of 6 months commencing on the commencement of the amendment.
- (2) It is sufficient compliance with section 189 (2), as amended by the 2002 amending Act, if an enforcement officer (acting in the capacity of an enforcement officer) who was, immediately before the commencement of the amendment of that section by the 2002 amending Act, an authorised officer produces the person's identification card as an authorised officer.

**22 Mistaken exercise of power**

Sections 212C and 212D, as inserted by the 2002 amending Act, apply to or in respect of a function exercised by an authority or an authorised officer before those sections commenced except where the exercise of the function relates to an offence for which proceedings commenced before that commencement.

**23 Proceedings with leave of Land and Environment Court**

The provisions of section 219 (1A) and (1B), as inserted by the 2002 amending Act, do not apply to or in respect of an offence arising out of an act or omission that occurred before the commencement of those provisions if proceedings for the offence are commenced before that commencement.

**24 Continuing offences**

Section 242, as inserted by the 2002 amending Act, applies to or in respect of an offence arising out of a contravention of a requirement made before the commencement of that section if proceedings for the offence are commenced on or after that commencement.

**25 Appeals**

The provisions of section 287 (3)–(6), as inserted by the 2002 amending Act, do not apply to or in respect of licence applications made before the commencement of those provisions.

**26 Notices given by authorities**

Section 319A, as inserted by the 2002 amending Act, does not apply to or in respect of a notice issued before the commencement of that section.

**[41] Dictionary**

Insert in alphabetical order:

*enforcement officer*—see section 226.

**[42] Dictionary, definition of “licence application”**

Omit “or variation”. Insert instead “, variation or surrender”.

---

## **Schedule 3 Amendment of Radiation Control Act 1990**

(Section 5)

### **[1] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*authorised officer* means a person appointed by the Authority under Part 7.2 of the *Protection of the Environment Operations Act 1997* as an authorised officer for the purposes of this Act.

### **[2] Section 4 (1), definition of “inspector”**

Omit the definition.

### **[3] Section 6 Restrictions on possession, use and sale etc of radioactive substances and certain radiation apparatus**

Insert “possess,” before “use” in section 6 (2).

### **[4] Section 6 (3)**

Insert “possession,” before “use”.

### **[5] Section 11 Term and renewal of licences, registrations and accreditations**

Omit section 11 (2) and (3). Insert instead:

(2) An accreditation (including any renewed accreditation) remains in force for the term specified by the Authority in the accreditation, unless it is cancelled or surrendered sooner.

### **[6] Section 11 (4)**

Insert “or accreditation” after “registration”.

**[7] Sections 15 and 16**

Omit sections 15–17. Insert instead:

**15 Application of Chapter 7 of Protection of the Environment Operations Act 1997**

Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* extends to the exercise of powers in connection with this Act and the regulations.

**Note.** Section 186 of the *Protection of the Environment Operations Act 1997* provides that Chapter 7 of that Act extends to the exercise of certain powers in connection with certain other legislation, including this Act. Chapter 7 of the *Protection of the Environment Operations Act 1997* deals with such matters as the appointment of authorised officers, powers to require information and records, powers of entry and search, powers to question and to identify persons and powers with respect to certain things such as vehicles.

**16 Powers of entry**

- (1) Without limiting section 15, an authorised officer may, at any time, enter premises if the authorised officer reasonably suspects that any radioactive substance or radiation apparatus is kept or used on the premises.
- (2) Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* applies to the exercise of functions by an authorised officer under this section in the same way as it applies to the exercise of other powers to enter premises under that Chapter.

**[8] Section 18 Notices to take action**

Omit “inspector” wherever occurring. Insert instead “authorised officer”.

**[9] Section 19 Powers to deal with dangerous situations**

Omit “inspector” from section 19 (2). Insert instead “authorised officer”.

**[10] Section 25A**

Insert after section 25:

**25A Penalty notices**

- (1) An authorised officer or police officer may serve a penalty notice on a person if it appears to the authorised officer or police officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) The regulations may authorise a penalty notice also to be served by leaving the notice on a vehicle or at other premises in respect of which the offence was committed.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim or proceeding arising out of the same occurrence.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.

- (8) The amount of a penalty prescribed under this section for an offence is not to exceed \$1,500 or the maximum amount of penalty that could be imposed for the offence by a court, whichever is the lesser.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

**[11] Sections 26 (2) and 27 (1)**

Omit “inspector” wherever occurring. Insert instead “authorised officer”.

**[12] Section 32 Appointment of inspectors**

Omit the section.

**[13] Section 39A Personal liability**

Omit “inspector” wherever occurring. Insert instead “authorised officer”.

**[14] Schedule 2 Savings and transitional provisions**

Omit “this Act” from clause 1 (1). Insert instead:

this Act and the following Acts:

*Environment Protection Legislation Amendment Act 2002* (but only to the extent that it amends this Act)

**[15] Schedule 2, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on the enactment of  
the Environment Protection Legislation  
Amendment Act 2002**

**3 Existing accreditations**

Section 11, as in force before its amendment by the *Environment Protection Legislation Amendment Act 2002*, continues to apply in respect of an accreditation of a person as a radiation expert if the accreditation was in force immediately before the commencement of that amendment.

**4 Existing inspectors**

A person who, immediately before the substitution of section 15 by the *Environment Protection Legislation Amendment Act 2002*, held office as an inspector is taken to have been appointed as an authorised officer for the purposes of this Act under Chapter 7 of the *Protection of the Environment Operations Act 1997*.

**Schedule 4 Amendment of Road and Rail Transport  
(Dangerous Goods) Act 1997**

(Section 6)

**[1] Section 18 General powers of authorised officers**

Insert “has been or” before “is being” where firstly occurring in section 18 (1).

**[2] Section 18 (3) and (4)**

Insert “has been or” before “is being” where secondly occurring.

**[3] Section 18 (7), (8), (10) and (11)**

Insert “has been or” before “is being” wherever occurring.

## Schedule 5 Other amendments

(Section 7)

### 5.1 Clean Air (Motor Vehicles and Motor Vehicle Fuels) Regulation 1997

#### [1] Clause 6 Visible emissions: diesel and spark-ignition vehicles

Omit “tested” from clause 6 (2).

Insert instead “air impurities are determined”.

#### [2] Clause 27 Motor vehicles emitting excessive air impurities

Omit clause 27 (1). Insert instead:

- (1) An owner of a motor vehicle is guilty of an offence if the vehicle emits excessive air impurities while being used.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or  
(b) in the case of an individual—200 penalty units.

#### [3] Clause 30 Defences to prosecutions for offences under clause 27, 28 or 29

Insert after clause 30 (4):

(5) **Stolen motor vehicle**

It is a defence to a prosecution for an offence under clause 27 if the owner proves that the motor vehicle was at the time of the commission of the offence a stolen motor vehicle or a motor vehicle illegally taken or used.

## 5.2 Contaminated Land Management Regulation 1998

### Clause 9 Accreditation fees

Omit clause 9 (2). Insert instead:

- (2) For the purposes of section 50 (1) and (4) (d) of the Act the prescribed accreditation fee is as follows:
  - (a) for accreditation granted or renewed after the commencement of this subclause and on or before 31 May 2002:
    - (i) if the accreditation period is 1 year or less—\$2,900, or
    - (ii) if the accreditation period is 2 years or less but more than 1 year—\$6,400, or
    - (iii) if the accreditation period is greater than 2 years—\$9,900, or
  - (b) for accreditation granted or renewed after 31 May 2002:
    - (i) if the accreditation period is 1 year or less—\$3,500, or
    - (ii) if the accreditation period is 2 years or less but more than 1 year—\$7,000, or
    - (iii) if the accreditation period is greater than 2 years—\$10,500.

## 5.3 Fines Act 1996 No 99

### Schedule 1 Statutory provisions under which penalty notices issued

Insert in appropriate order:

*Radiation Control Act 1990*, section 25A

#### **5.4 Protection of the Environment Operations (General) Regulation 1998**

**[1] Clause 46 Matters to be set out in statement of reasons for grant or refusal of licence applications: secs 61 (2) (b), 80 (2A) (b)**

Insert “or 80” after “section 61” in clause 46 (1).

**[2] Clause 46, note**

Omit the note. Insert instead:

**Note.** Sections 61 and 80 of the Act require statements of reasons to be provided, on written request by any person, of the reasons for the grant or refusal of licence applications (namely, an application for the issue, transfer or variation of a licence or for the approval of the surrender of a licence).

#### **5.5 Protection of the Environment Operations (Noise Control) Regulation 2000**

**[1] Clause 14 Use of motor vehicles in places other than roads**

Omit “or permit”.

**[2] Clause 17 Use of motor vehicle sound systems**

Omit “or permit”.

**[3] Clause 20A**

Insert after clause 20:

**20A Owners and drivers of motor vehicles involved in excess noise offences**

- (1) If a motor vehicle or the sound system of a motor vehicle is used contrary to clause 14 or 17, the driver and owner of the motor vehicle are each taken to be guilty of an offence under that provision.
- (2) Subclause (1) does not affect the liability of the actual offender but, if a penalty has been imposed or recovered from any person in relation to the offence (whether the actual offender,

the driver or the owner), no further penalty may be imposed on or recovered from any other person. In this subclause, *penalty* includes a penalty under a penalty notice.

- (3) Subclause (1) does not apply to the owner of a motor vehicle if the motor vehicle was at the time of the commission of the offence a stolen motor vehicle or a motor vehicle illegally taken or used.
- (4) Subclause (1) does not apply to the owner of a motor vehicle if the owner was not in the motor vehicle at the relevant time and:
  - (a) gives notice in accordance with subclause (5) of the name and address of the person who was in charge of the motor vehicle at the relevant time, or
  - (b) satisfies the officer who gave the penalty notice for the offence or the court dealing with the offence (as the case requires) that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.
- (5) The notice must be verified by statutory declaration and:
  - (a) if a penalty notice has been given for the offence—the notice must be given to an officer specified in the penalty notice for the purpose within 28 days after service of the penalty notice, and
  - (b) if a court is dealing with the offence—the notice must be given to the informant within 28 days after service of the summons for the offence.
- (6) A person who gives a statement for the purposes of subclause (4) knowing that it is false is guilty of an offence.  
Maximum penalty: 10 penalty units.
- (7) This clause does not apply to or in respect of an act or omission that occurred before the commencement of this clause.

**[4] Clause 30 Vessels not to emit offensive noise**

Omit “or permit”.

**[5] Clause 30A**

Insert after clause 30:

**30A Liability of owner of vessel**

- (1) If a vessel is used contrary to clause 30, the person in charge and owner of the vessel are each taken to be guilty of an offence under that clause.
- (2) Subclause (1) does not affect the liability of the actual offender but, if a penalty has been imposed or recovered from any person in relation to the offence (whether the actual offender, the person in charge or the owner), no further penalty may be imposed on or recovered from any other person. In this subclause, *penalty* includes a penalty under a penalty notice.
- (3) Subclause (1) does not apply to the owner of a vessel if the vessel was at the time a stolen vessel or a vessel illegally taken or used.
- (4) Subclause (1) does not apply to the owner of a vessel if the owner was not in the vessel at the relevant time and:
  - (a) gives notice in accordance with subclause (5) of the name and address of the person who was in charge of the vessel at the relevant time, or
  - (b) satisfies the officer who gave the penalty notice for the offence or the court dealing with the offence (as the case requires) that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.
- (5) The notice must be verified by statutory declaration and:
  - (a) if a penalty notice has been given for the offence—the notice must be given to an officer specified in the penalty notice for the purpose within 28 days after service of the penalty notice, and
  - (b) if a court is dealing with the offence—the notice must be given to the informant within 28 days after service of the summons for the offence.

(6) A person who gives a statement for the purposes of subclause (4) knowing that it is false is guilty of an offence.

Maximum penalty: 10 penalty units.

(7) This clause does not apply to or in respect of an act or omission that occurred before the commencement of this clause.

## **5.6 Protection of the Environment Operations (Penalty Notices) Regulation 1999**

### **[1] Clause 6 Enforcement officers: section 226**

Omit “authorised officers” from clause 6 (1).  
Insert instead “enforcement officers”.

### **[2] Clause 6 (1)**

Omit the note to the subclause.

### **[3] Clause 6 (2) and (3)**

Omit “authorised officer” wherever occurring.  
Insert instead “enforcement officer”.

### **[4] Clause 6 (7)**

Insert at the end of clause 6:

(7) A person who, immediately before the amendment of this clause by the *Environment Protection Legislation Amendment Act 2002*, was duly authorised by an authority as an authorised officer is taken to be so authorised as an enforcement officer.

[Second reading speech made in—  
Legislative Assembly on 13 March 2002  
Legislative Council on 10 April 2002]

BY AUTHORITY