

PROTECTION OF THE ENVIRONMENT OPERATIONS BILL

Schedule of the amendments referred to in the Legislative Council's Message of 5 December 1997.

- No. 1 Page 2, clause 3, lines 14 and 15. Omit all words on those lines. Insert instead:
- (b) to provide increased opportunities for public involvement and participation in environment protection,
 - (c) to ensure that the community has access to relevant and meaningful information about pollution,
 - (d) to reduce risks to human health and prevent the degradation of the environment by the use of mechanisms that promote the following:
 - (i) pollution prevention and cleaner production,
 - (ii) the reduction to harmless levels of the discharge of substances likely to cause harm to the environment,
 - (iii) the reduction in the use of materials and the re-use or recycling of materials,
 - (iv) the making of progressive environmental improvements, including the reduction of pollution at source,
 - (v) the monitoring and reporting of environmental quality on a regular basis,
- No. 2 Page 4, clause 6, lines 1-3. Omit "A local authority may be so declared in respect of non-scheduled activities excluded under subsection (2)". Insert instead:
- The regulations under this subsection:
- (a) may declare a local authority to be the appropriate regulatory authority in respect of non-scheduled activities excluded under subsection (2), but
 - (b) may not declare any public authority to be the appropriate regulatory authority for premises occupied by, or activities carried on by, that public authority.
- No. 3 Page 6, clause 11 (2), line 18. After "achieved" insert ", and performance indicators by which the achievement of that goal is to be measured".
- No. 4 Page 23, clause 45. Insert after line 19:

- (1) in connection with a licence application - any public submission received by the appropriate regulatory authority under this Act or the *Environmental Planning and Assessment Act 1979*,
- No. 5 Page 27, clause 51. Insert after line 9:
- (2) A decision by the appropriate regulatory authority on whether it will issue a licence, or on the general terms of a licence it proposes to issue, in relation to integrated development is subject to the provisions of this Chapter (including section 45).
- No. 6 Page 29, clause 57. Insert after line 29:
- (2) The regulations may make provision for or with respect to the payment of annual licence fees by instalments.
- No. 7 Page 36, clause 66 (3) (e), lines 12 and 13. Omit all words on those lines. Insert instead:
- (e) the fee paid or payable in relation to the licence (including the manner of calculation of the fee or other specified aspect of the fee).
- No. 8 Page 42, clause 78. Insert after line 10:
- (2) The appropriate regulatory authority must give public notice of the licences that are to be reviewed as follows:
- (a) a notice of the review of each licence is to be published in a newspaper circulating throughout the State,
- (b) the notice is to be published not less than 1 month, and not more than 6 months, before the review of the licence is undertaken,
- (c) the notice is to specify the activity or work to which the licence relates and the address of the premises (if any) at which it is carried out.
- No. 9 Page 55, clause 93 (3), lines 15-17. Omit "The direction given in the written notice need not be in the same terms as the direction given orally."
- No. 10 Page 118, clause 208. Insert after line 24:
- (3) The maximum penalty for an offence under section 211 in connection with a requirement under this section is 30 penalty units despite anything to the contrary in that section.
- No. 11 Page 120, clause 211 (4), line 15. Omit "section 204". Insert instead "sections 204 and 208".

- No. 12 Page 143, heading to Part 8.4, line 1. Insert "**remedy or**" before "**restrain**".
- No. 13 Page 143, clause 252, lines 3-6. Omit all words on those lines. Insert instead:
- 252 Remedy or restraint of breaches of this Act or regulations**
- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations.
- No. 14 Page 143, clause 252 (3) and (4), lines 10-15 Omit all words on those lines. Insert instead:
- (3) Any such proceedings may be brought whether or not any right of the person has been or may be infringed by or as a consequence of the breach.
- (4) Any such proceedings may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or of a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (6) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.
- No. 15 Page 143, clause 253, lines 25 and 26. Omit "of this or any other Act, or any statutory rule under an Act". Insert instead "of any other Act, or any statutory rule under any other Act".
- No. 16 Page 174, clause 308. Insert after line 24:
- (j) details of convictions in prosecutions under this Act instituted by that authority,
- (k) the results of civil proceedings before the Land and Environment Court under this Act by or against that authority,
- (l) a summary of the conclusions of any audit report in connection with a mandatory environmental audit under Part 6.2 that is supplied to that authority.
- No. 17 Page 183. Insert after line 3:

318 Exercise of local authority's licensing functions by EPA

- (1) In this section:

licensing function means a function of a local regulatory authority under this Act relating to a licence, including the function of determining whether to issue, transfer, amend, suspend or revoke a licence.

local regulatory authority means a regulatory authority other than the EPA.

- (2) The Minister may, if the Minister considers that it is expedient in the public interest to do so, direct a local regulatory authority in writing to refer to the EPA a specified licensing function in respect of a particular matter that the Minister considers is of State or regional significance.
- (3) The Minister may give a direction under this section whether or not the local regulatory authority intends to exercise the licensing function in respect of the matter.
- (4) The local regulatory authority must, as soon as practicable after receiving a direction under this section:
- (a) refer to the EPA any application, report or other document or information in the possession of the authority that relates to the matter (including any document or information specified by the Minister in the direction), and
 - (b) notify the applicant or licensee concerned in the matter of the Minister's direction.
- (5) Whenever the Minister gives a direction under this section, the local regulatory authority ceases to have the licensing function in respect of the matter, unless the Minister refers the licensing function (or any aspect of that function) back to the authority.
- (6) The EPA may, after the Minister has given a direction under this section, exercise in the place of the local regulatory authority the licensing function in respect of the matter.
- (7) For the purpose of the EPA exercising a licensing function in respect of a matter:
- (a) a reference to the local regulatory authority in any document is taken to be a reference to the EPA, and
 - (b) anything done by the local regulatory authority in the matter before the direction was given may be adopted by the EPA.
- (8) The determination of the EPA in the exercise of the licensing function is taken to have been done by the local regulatory authority.

- (9) The local regulatory authority is to give effect to the decision made by the EPA pursuant to a direction under this section. However, the decision does not limit the future exercise of a licensing function by the local regulatory authority in respect of the matter.

No. 18

Page 184. Insert after line 25:

319 Disclosure of monitoring data

- (1) In this section, *monitoring data* means information supplied to the appropriate regulatory authority by the holder of a licence of the monitoring of the following aspects of the activity or work authorised or controlled by the licence:
- (a) discharges from premises,
 - (b) relevant ambient conditions prevailing on or outside premises,
 - (c) any other thing prescribed by the regulations.
- (2) The EPA or other regulatory authority may disclose monitoring data by publishing it in such manner as it considers appropriate.
- (3) The appropriate regulatory authority is to provide a person with access to any monitoring data specified by the person in a written request to the authority. Access is to be provided in the same form that access is required to be provided to documents under section 27 of the *Freedom of Information Act 1989*.
- (4) Any such access to monitoring data may be refused if:
- (a) the monitoring data is recorded in a public register under Part 9.5, or
 - (b) if the work involved in dealing with the request for access would, if carried out, substantially and unreasonably divert the authority's resources away from their use by the authority in the exercise of its functions, or
 - (c) if the monitoring data is contained in a document that is usually available for purchase.
- (5) Subsection (4) (b) does not permit an authority to refuse access to monitoring data without first endeavouring to assist the person to amend the request to enable access to be given.

No. 19

Page 191, Schedule 1. Insert after line 15:

Concrete works that produce pre-mixed concrete or concrete products and have an intended production capacity of more than 30,000 tonnes per year of concrete or concrete products.

No. 20

Page 194, Schedule 1, line 9. Omit "stockyards". Insert instead "saleyards".

No. 21

Page 203, Schedule 1, line 30. Insert "treatment" after "sewage".

No. 22

Page 222, Schedule 4.10. Insert after line 21:

[6] Section 39 Powers of Court on appeals

Insert after section 39 (6):

- (6A) Notwithstanding any other provision of this section, if an appeal relates to an application made to a consent authority within the meaning of the *Environmental Planning and Assessment Act 1979* and the application relates to integrated development within the meaning of section 91 of that Act:
- (a) the Court may determine the appeal whether or not the consent authority has obtained the general terms of approval of each relevant approval body within the meaning of section 90A of that Act, and
 - (b) the Court is not bound to refuse an application for development consent because an approval body has decided not to grant its approval or has failed to inform the consent authority whether or not it will grant its approval, and
 - (c) the Court may determine the appeal even though a development consent granted as a result of the appeal is inconsistent with the general terms of approval of an approval body.

Section 93 of that Act applies to a development consent granted as a result of the appeal.

No. 23

Page 226, Schedule 4.15. Insert after line 11:

[6] Section 6 Objectives of the Authority

Omit section 6 (2). Insert instead:

- (2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:
- (a) the precautionary principle - namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
- (ii) an assessment of the risk-weighted consequences of various options,

- (b) inter-generational equity - namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
- (c) conservation of biological diversity and ecological integrity - namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
- (d) improved valuation, pricing and incentive mechanisms - namely, that environmental factors should be included in the valuation of assets and services, such as:
 - (i) polluter pays - that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
 - (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
 - (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

No. 24 Page 239, Schedule 5, lines 28 and 29. Omit "Schedule 1 to the *Environmental Planning and Assessment Act 1979* (the EPA Act)". Insert instead "the substitution of Part 4 of the *Environmental Planning and Assessment Act 1979* (the EPA Act) by Schedule 1 to the *Environmental Planning and Assessment Amendment Act 1997*".
