



New South Wales

Environment Protection Legislation Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Protection of the Environment Operations Act 1997* and other Acts and regulations relating to environment protection for the following purposes:

- (a) to extend accreditation periods for site auditors of contaminated land,
- (b) to make it clear that additional information required to be given after notice of a pollution incident is admissible as evidence against a person,
- (c) to require written reasons to be given for refusal of a request to surrender a licence under the *Protection of the Environment Operations Act 1997*,
- (d) to clarify the operation of certain offences and to make the owners of motor vehicles and vessels liable for certain offences,
- (e) to provide for the appointment and powers of authorised officers for the purposes of the *Radiation Control Act 1990*,

- (f) to extend the powers of officers who issue penalty notices and other officers for purposes related to their functions,
- (g) to clarify the circumstances when a search warrant may be applied for,
- (h) to enable an authority that mistakenly exercises regulatory functions to continue to act as a regulatory authority if the correct authority does not direct otherwise,
- (i) to make it clear that an authority may take proceedings in the Land and Environment Court for any offence under the *Protection of the Environment Operations Act 1997* with the leave of the Court,
- (j) to make it clear that statutory notices requiring action to be taken continue to have effect until the action is taken, regardless of the expiration of time, and that failure to comply will be a continuing offence,
- (k) to vary the period within which a licence is taken to have been refused for appeal purposes,
- (l) to make it an offence to falsely represent that any goods or services are approved, provided, recommended or used by the EPA,
- (m) to set out regulation-making powers relating to licence conditions, fuel, fuel burning equipment and air impurities,
- (n) to provide for the licensing of persons to possess certain radioactive substances and apparatus,
- (o) to provide for periods of accreditation for radiation experts,
- (p) to clarify the powers of authorised officers to inspect premises and vehicles and detain vehicles used in relation to the transport of dangerous goods,
- (q) to make other amendments, consequential amendments and amendments of a savings and transitional nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Contaminated Land Management Act 1997* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Protection of the Environment Operations Act 1997* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Radiation Control Act 1990* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Road and Rail Transport (Dangerous Goods) Act 1997* set out in Schedule 4.

Clause 7 is a formal provision giving effect to the amendments to the Act and regulations set out in Schedule 5.

Schedule 1 Amendment of Contaminated Land Management Act 1997

Accreditation periods for site auditors

Currently, site auditors under the *Contaminated Land Management Act 1997* are accredited for 1 year and are required to lodge an annual return showing their site audits.

Schedule 1 [3] enables accreditation for a period specified by the EPA, being a period not exceeding 3 years.

Schedule 1 [8] makes a consequential amendment and retains the requirement for annual returns to be lodged.

Schedule 1 [1], [2], [4]–[7] and [9] make consequential amendments.

Schedule 1 [10] and [11] insert savings and transitional provisions.

Schedule 2 Amendment of Protection of the Environment Operations Act 1997

Admissibility of certain evidence

Schedule 2 [3] makes it clear that licence conditions requiring additional information to be given following notification by a person of a pollution incident may be imposed. The information will be admissible in evidence against the person who makes the notification, even though it may be self-incriminating.

Applications for surrender of licence

Schedule 2 [4] extends to applications to surrender licences the same requirements for the Environment Protection Authority (the *EPA*) to give reasons for the refusal or grant of a licence, if it is requested to do so, as apply to other licence applications.

Schedule 2 [1] and [2] make consequential amendments.

Schedule 2 [41] extends the meaning of the expression “licence application” as used in the *Protection of the Environment Operations Act 1997* (the *Principal Act*) to include applications to surrender licences. **Schedule 2 [30]** makes a consequential amendment.

Operation of, and liability for, certain offences

Schedule 2 [6] reorganises the offence of pollution of waters by combining the existing separate offences into one offence.

Schedule 2 [35] enables the regulations to make the owner of a motor vehicle or vessel liable for an offence committed with respect to or in connection with the motor vehicle or vessel, whether or not the act or omission concerned was committed or omitted to be done by the owner.

Powers of authorised officers under Radiation Control Act 1990

Schedule 2 [8] extends to authorised officers under the *Radiation Control Act 1990* the same powers as authorised officers have under the *Principal Act*.

Powers of enforcement officers and authorised officers

The *Principal Act* confers powers on authorised officers generally with respect to enforcement action under the Act but also confers power on a class of authorised officers prescribed by the regulations to issue penalty notices (*enforcement officers*). Not all authorised officers can act in respect of any matter under the Act, the functions of some are restricted to penalty notices and, in any case, the functions of authorised officers are restricted to matters for which their employer is the appropriate regulatory authority for the matter concerned.

Schedule 2 [11] confers power on authorised officers of a regulatory authority to exercise powers of authorised officers so as to determine whether the authority is the appropriate regulatory authority for the matter concerned.

Schedule 2 [14] confers the functions (including powers) of an authorised officer on enforcement officers, but only for the purposes of exercising their responsibilities or functions as enforcement officers. **Schedule 2 [12]** and **[13]** make consequential amendments.

Schedule 2 [10], [20] and [22] enable a person whose services are made use of by a regulatory authority and who is subject to the direction and control of the authority to be appointed as an authorised officer or enforcement officer of the authority.

Schedule 2 [9], [21], [23], [24], [25], [26], [28], [29] and [40] change references to authorised officers who issue penalty notices to enforcement officers, so as to avoid confusion with other authorised officers.

Search warrant powers

An authorised officer may apply for a search warrant if the officer believes on reasonable grounds that a provision of the Principal Act or regulations under that Act is being or has been contravened at any premises.

Schedule 2 [15] and [16] enable an authorised officer to apply for a search warrant if the officer believes on reasonable grounds that there is on premises matter or a thing with respect to which an offence has been committed, matter or a thing that will afford evidence of the commission of an offence or matter or a thing that was used, or is intended to be used, for the purpose of committing an offence.

Incorrect regulatory authority

Under the Principal Act, a regulatory authority generally may not take action in relation to a matter or an offence unless it is the appropriate regulatory authority for that matter or offence. Section 109A of the Principal Act currently provides a mechanism for enabling a clean-up or prevention notice issued by the incorrect regulatory authority to have effect.

Schedule 2 [17] inserts proposed sections 212C and 212D, which apply where a regulatory authority or an authorised officer of an authority, in good faith, exercises functions of the appropriate regulatory authority or of its authorised officers in relation to an activity or work. The regulatory authority must notify the appropriate authority as soon as practicable after it becomes aware of the mistake and it and its officers may continue to exercise the functions unless the appropriate regulatory authority directs otherwise or a licence is granted in respect of the activity or work

concerned. The proposed sections also set out the consequences of any such direction, including that the appropriate regulatory authority may continue to exercise the functions exercised by the other authority.

Schedule 2 [5] omits section 109A.

Proceedings for offences by regulatory authorities

The Principal Act limits the offences under the Principal Act or regulations for which various regulatory or other authorities (other than the EPA) may institute proceedings. The Principal Act also enables certain persons and authorities to institute proceedings for an offence in the Land and Environment Court if the Court grants the person leave to bring the proceedings.

Schedule 2 [18] enables an appropriate regulatory authority and various other persons and authorities to institute proceedings for an offence under the Principal Act or the regulations with the leave of the Land and Environment Court.

Schedule 2 [19] makes a consequential amendment.

Notices given under Principal Act

Under the Principal Act, notices may be given requiring clean-up of pollution incidents, requiring action to be taken to prevent environmental harm, prohibiting the carrying on of certain activities, requiring the payment of compliance costs and with respect to noise control and other matters.

Schedule 2 [27] inserts proposed Division 6 of Part 8.2 (proposed section 242) which provides that a person is guilty of a continuing offence during any period that the person fails to comply with a requirement given under the Principal Act or the regulations. The proposed section will apply only if the relevant provision of the Principal Act or the regulations provides for a penalty for a continuing offence.

Schedule 2 [33] inserts proposed section 319A which makes it clear that the obligation to comply with a notice is a continuing obligation even though the time for taking any required action may have expired. If no time is specified in the notice the obligation to comply also continues until the notice is complied with or revoked.

Deemed licence refusal

A person may appeal to the Land and Environment Court against the refusal of an appropriate authority to grant a licence application or a decision with respect to a licence. For the purposes of enabling an appeal, an application is taken to have been refused if it is not granted within 60 days after it is duly made.

Schedule 2 [31] extends that 60 day period to 90 days where the application is for a variation of a licence and the appropriate regulatory authority is required by the Principal Act to invite and consider public submissions because there will be a significant increase in the environmental impact of a licensed activity and there has not previously been environmental assessment and public consultation under the *Environmental Planning and Assessment Act 1979*. The period is also extended where development consent must be obtained for controlled development before a licence can be granted.

The amendment also makes it clear that there is no appeal against a condition imposed by the regulations. **Schedule 2 [32]** makes a consequential amendment.

False representations about EPA approval etc

Schedule 2 [34] inserts proposed section 320A which makes it an offence to knowingly make a false or misleading representation that any goods or services are approved, provided, recommended or used by the EPA.

Regulation-making powers

Schedule 2 [36] enables regulations to be made as to the prohibition or regulation of fuel burning equipment, industrial equipment, fuels and fuel tanks and other related equipment and ancillary matters. The amendment also enables regulations to be made with respect to requirements for the emission of, and testing for, air impurities.

Schedule 2 [37] enables regulations to be made that impose conditions on licences and vary or revoke licence conditions (whether or not those conditions were imposed by regulations).

Other amendments

Schedule 2 [7] removes the requirement for excessive air impurities emitted by a vehicle to be determined at a particular point.

Schedule 2 [38] and **[39]** insert savings and transitional provisions.

Schedule 3 Amendment of Radiation Control Act 1990

Possession of radioactive substances and apparatus

Currently, the *Radiation Control Act 1990* (the *Principal Act*) prohibits a person from using, selling or giving away radioactive substances or certain radiation apparatus unless the person holds a licence and is selling or giving it away to a person who has a licence to use or sell it. Consequently, these things may not be sold or given away to an institution which takes possession of them but does not itself use them, even though the use may be by persons such as researchers. The owner of a sealed radioactive source or certain radiation apparatus must also register it and may not allow it to be used unless the person who uses it is licensed to do so. A provision requiring premises on which unsealed radioactive sources are kept to be registered has not been commenced.

Schedule 3 [3] and **[4]** require a person who possesses a radioactive substance or radiation apparatus to hold a licence and enable a licensed person to sell or give away such a substance or apparatus to a person who has such a licence.

Powers of authorised officers

Schedule 3 [1], [2], [8], [9], [11], [12] and **[13]** make consequential amendments resulting from the application of the provisions of the *Protection of the Environment Operations Act 1997* relating to authorised officers to the Principal Act, including renaming inspectors as authorised officers.

Schedule 3 [7] extends the provisions of the *Protection of the Environment Operations Act 1997* relating to enforcement powers to the exercise of powers in connection with the Principal Act. The amendment also retains the current power to enter premises on a reasonable suspicion that any radioactive substance or radiation apparatus is kept or used on the premises (subject to the protections applicable to the exercise of other search powers).

Schedule 3 [10] inserts proposed section 25A which enables penalty notices to be issued by authorised officers or police officers for offences under the Principal Act or regulations under that Act, being offences prescribed by the regulations.

Accreditation of radiation experts

Schedule 3 [5] provides that the accreditation of a radiation expert is for a term to be specified by the EPA. Currently there is no specified period for which an accreditation is in force.

Schedule 3 [6] makes a consequential amendment.

Savings and transitional provisions

Schedule 3 [14] and [15] insert savings and transitional provisions.

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

Schedule 4 extends the powers of authorised officers to situations where an authorised officer believes on reasonable grounds that there may have been a contravention of the *Road and Rail Transport (Dangerous Goods) Act 1997*.

Schedule 5 Other amendments

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

Schedule 5.1 [1] makes a change consequential on the method of testing for excessive air impurities being by observation rather than by carrying out a test.

Schedule 5.1 [2] makes the owner of a motor vehicle that emits excessive air impurities guilty of an offence.

Schedule 5.1 [3] makes it a defence to a prosecution for that offence if the owner proves that at the time the offence was committed the motor vehicle was a stolen motor vehicle or was illegally taken or used.

Contaminated Land Management Regulation 1998

Schedule 5.2 revises accreditation fees for site auditors of contaminated land, as a result of the amendments made by the proposed Act to accreditation periods.

Fines Act 1996

Schedule 5.3 makes an amendment consequential on the enactment of the provision conferring power to issue penalty notices under the *Radiation Control Act 1990*.

Protection of the Environment Operations (General) Regulation 1998

Schedule 5.4 [1] and [2] make consequential amendments as a result of the requirement for statements of reasons to be provided where an application for the surrender of a licence is refused (as inserted by the proposed Act).

Protection of the Environment Operations (Noise Control) Regulation 2000

Schedule 5.5 [3] makes both the driver and owner of a motor vehicle guilty of an offence if the motor vehicle is used in a way that constitutes any one of certain offences relating to the emission of noise. The owner is not liable if the motor vehicle was stolen or illegally taken or used at the time of the offence or if the owner notifies the name and address of the person who was in charge of the motor vehicle at the time of the offence or satisfies the penalty notice officer or court that the owner does not know and could not ascertain that name and address.

Schedule 5.5 [5] makes the same provision as Schedule 5.5 [3] but in relation to both the owner and person in charge of a vessel that emits offensive noise.

Schedule 5.5 [1], [2] and [4] make consequential amendments to offences.

Protection of the Environment Operations (Penalty Notices) Regulation 1999

Schedule 5.6 [1], [2] and [3] change references to authorised officers to enforcement officers as a consequence of the change of name to enforcement officers made by the proposed Act.

Schedule 5.6 [4] inserts a savings and transitional provision.



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New South Wales

Environment Protection Legislation Amendment Bill 2002

No , 2002

A Bill for

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.

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	1
		2
	(Section 3)	3
[1]	Section 50 Accreditation as site auditor	4
	Omit “annual” from section 50 (1).	5
[2]	Section 50 (1)	6
	Omit “year”. Insert instead “period”.	7
[3]	Section 50 (1A)	8
	Insert after section 50 (1):	9
	(1A) The EPA may grant accreditation or a renewal of accreditation for a period specified by the EPA not exceeding 3 years.	10 11
[4]	Section 50 (2)	12
	Omit the subsection. Insert instead:	13
	(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.	14 15 16 17
[5]	Section 50 (3)	18
	Omit “12 months from the date it was granted or last renewed”.	19
	Insert instead “at the end of the period notified under subsection (2)”.	20
[6]	Section 50 (4) (d)	21
	Omit “annual”.	22
[7]	Section 50 (4) (d)	23
	Omit “year”. Insert instead “period”.	24

[8] Section 53 Returns and other notifications	1
Omit section 53 (1). Insert instead:	2
(1) A site auditor who is accredited for the whole or part of a	3
return period must furnish the EPA with a return showing site	4
audits commenced or completed during that period.	5
(1A) The return must be furnished not later than the 31 March next	6
following the end of the return period.	7
[9] Section 53 (4)	8
Insert at the end of section 53 (3):	9
(4) In this section:	10
<i>return period</i> means a year commencing on 1 March and	11
ending on the last day of February.	12
[10] Schedule 2 Savings and transitional provisions	13
Insert at the end of clause 1 (1):	14
<i>Environment Protection Legislation Amendment Act 2002</i> (but	15
only to the extent that it amends this Act)	16
[11] Schedule 2, clause 6	17
Insert after clause 5 of Schedule 2:	18
6 Accreditation of site auditors	19
The accreditation of a site auditor in force immediately before	20
the amendment of section 50 (1) by the <i>Environment</i>	21
<i>Protection Legislation Amendment Act 2002</i> expires (if not	22
revoked under this Act) on the date on which it would have	23
expired if the amendment had not been made and may be	24
renewed in accordance with that section as so amended.	25

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

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Schedule 2 Amendment of Protection of the Environment Operations Act 1997

	(b) the matters to be set out in a statement of reasons, and	1
	(c) the cases in which a statement of reasons is not required to be provided.	2 3
[5]	Section 109A Special provision relating to clean-up and prevention notices and related action	4 5
	Omit the section.	6
[6]	Section 120	7
	Omit the section. Insert instead:	8
	120 Prohibition of pollution of waters	9
	(1) A person who pollutes any waters is guilty of an offence.	10
	(2) In this section:	11
	<i>pollute</i> waters includes cause or permit any waters to be polluted.	12 13
[7]	Section 154 Definitions	14
	Omit “at any point specified in or” from section 154 (2) (a).	15
	Insert instead “as”.	16
[8]	Section 186 Extension of Chapter to other environment protection legislation	17 18
	Insert after section 186 (b1):	19
	(b2) <i>Radiation Control Act 1990</i> and the regulations under that Act,	20 21
[9]	Part 7.2, heading	22
	Insert “and enforcement officers” after “Authorised officers”.	23

[10] Section 187 Appointment of authorised officers	1
Insert after section 187 (2):	2
(3) In this section:	3
<i>employee</i> of an authority includes a person whose services are	4
used by the authority and who is, in respect of those services,	5
subject to the direction and control of the authority.	6
[11] Section 188 Scope of authority	7
Insert after section 188 (3):	8
(4) Despite subsection (3) and any other provision of this Chapter,	9
an authorised officer of a regulatory authority may exercise	10
powers under this Chapter (other than under Part 7.6) for the	11
purpose of determining whether a matter concerns the	12
functions of the regulatory authority.	13
[12] Section 189 Identification	14
Insert “or enforcement officer” after “authorised officer” wherever	15
occurring.	16
[13] Section 189 (3)	17
Insert after section 189 (2):	18
(3) It is sufficient compliance with subsection (2) if an	19
enforcement officer, acting in the capacity of an enforcement	20
officer, who is also an authorised officer produces his or her	21
identification card as an authorised officer.	22
[14] Section 189A	23
Insert after section 189:	24
189A Powers of enforcement officers	25
An enforcement officer has, in respect of any of the officer’s	26
responsibilities or functions as an enforcement officer under	27
this Act or the regulations, the functions of an authorised	28
officer under this Chapter (other than section 204 (2) and	29
Part 7.6) and this Chapter applies accordingly.	30

[15] Section 199 Search warrants	1
Omit section 199 (1). Insert instead:	2
(1) Application for search warrant	3
An authorised officer may apply to an authorised justice for the	4
issue of a search warrant if the authorised officer believes on	5
reasonable grounds that:	6
(a) a provision of this Act or the regulations is being or has	7
been contravened at any premises, or	8
(b) there is in or on any premises matter or a thing that is	9
connected with an offence under this Act or the	10
regulations.	11
[16] Section 199 (4)	12
Insert in alphabetical order:	13
<i>matter or a thing</i> connected with an offence means:	14
(a) matter or a thing with respect to which the offence has	15
been committed, or	16
(b) matter or a thing that will afford evidence of the	17
commission of an offence, or	18
(c) matter or a thing that was used, or is intended to be	19
used, for the purpose of committing the offence.	20
<i>offence</i> includes an offence that there are reasonable grounds	21
for believing has been, or is to be, committed.	22
[17] Sections 212C and 212D	23
Insert after section 212B:	24
212C Actions by incorrect regulatory authority	25
(1) This section applies if a regulatory authority or an authorised	26
officer of the authority, in good faith, exercises functions under	27
this Act or the regulations relating to an activity or work that:	28
(a) is not authorised or controlled by an environment	29
protection licence, and	30
(b) in relation to which the authority is not the appropriate	31
regulatory authority.	32

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| (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. | 1
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| (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: | 6
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| (a) directed to do otherwise by the appropriate regulatory authority, or | 10
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| (b) an environment protection licence is granted in respect of the activity or work concerned. | 12
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| (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. | 14
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| (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. | 21
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| (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. | 27
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212D	Appropriate regulatory authority may continue to exercise functions	1
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(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.	3
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(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.	11
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(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.	17
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(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.	22
		23
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(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).	27
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[18] Section 219 Any person or authority may institute proceedings with leave of Land and Environment Court	1 2
Insert after section 219 (1):	3
(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.	4 5 6 7 8
(1B) Nothing in section 217 or 218 limits the operation of this section.	9 10
[19] Section 219 (2) (a)	11
Insert “or authority” after “person”.	12
[20] Section 220 Officers and employees of authorities	13
Insert at the end of the section:	14
(2) In this section:	15
<i>employee</i> 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.	16 17 18
[21] Section 221 Penalty notices and related proceedings	19
Omit “authorised officer” from section 221 (3) wherever occurring.	20
Insert instead “enforcement officer”.	21
[22] Section 221 (4)	22
Insert at the end of the section:	23
(4) In this section:	24
<i>employee</i> 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.	25 26 27

[23] Section 224 Service of penalty notices	1
Omit “authorised officer” wherever occurring in section 224 (1).	2
Insert instead “enforcement officer”.	3
[24] Section 226 Enforcement officers	4
Omit “ <i>authorised officer</i> ” from section 226 (1).	5
Insert instead “ <i>enforcement officer</i> ”.	6
[25] Section 226 (2) and (3)	7
Omit “authorised officer” wherever occurring.	8
Insert instead “enforcement officer”.	9
[26] Section 228 Withdrawal of penalty notice	10
Omit “authorised officer” wherever occurring in section 228 (1).	11
Insert instead “enforcement officer”.	12
[27] Part 8.2, Division 6	13
Insert after section 241:	14
Division 6 Continuing offences	15
242 Continuing offences	16
(1) A person who is guilty of an offence because the person	17
contravenes a requirement made by or under this Act or the	18
regulations (whether the requirement is imposed by a notice or	19
otherwise) to do or cease to do something (whether or not	20
within a specified period or before a particular time):	21
(a) continues, until the requirement is complied with and	22
despite the fact that any specified period has expired or	23
time has passed, to be liable to comply with the	24
requirement, and	25
(b) is guilty of a continuing offence for each day the	26
contravention continues.	27

(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.	1 2 3
(3) This section does not apply to the extent that a requirement of a notice is revoked.	4 5
[28] Section 261 Certificate evidence of certain matters	6
Insert “or enforcement officer” after “officer” in section 261 (2) (g).	7
[29] Section 261 (3)	8
Insert “or enforcement officer” after “authorised officer” wherever occurring.	9 10
[30] Section 287 Appeals regarding licence applications and licences	11
Omit the note to section 287 (2). Insert instead:	12
Note. The Dictionary defines <i>licence application</i> to mean an application for the issue, transfer or variation of a licence or for approval of the surrender of a licence.	13 14 15
[31] Sections 287 (3)–(6)	16
Omit subsections (3) and (4). Insert instead:	17
(3) For the purposes of this section, a licence application is taken to have been refused:	18 19
(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	20 21 22 23 24
(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	25 26 27 28 29
(c) in any other case, if the application is not granted within 60 days after it is duly made.	30 31

(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.	1 2 3 4 5 6 7
(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).	8 9 10
(6) There is no appeal under this section against a condition that is imposed on a licence, or varied or revoked, by the regulations.	11 12
[32] Section 295D Licence conditions	13
Omit section 295D (3).	14
[33] Section 319A	15
Insert after section 319:	16
319A Continuing effect of notices	17
(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.	18 19 20 21 22
(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.	23 24 25
(3) This section does not apply to the extent that any requirement under a notice is revoked.	26 27
(4) Nothing in this section affects the powers of a regulatory authority with respect to the enforcement of a notice.	28 29

[34] Section 320A	1
Insert after section 320:	2
320A False representations as to EPA approval, use or recommendation	3
(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.	5
Maximum penalty:	6
(a) in the case of a corporation—200 penalty units, or	7
(b) in the case of an individual—100 penalty units.	8
(2) In this section:	9
<i>represent</i> includes cause or permit a representation to be made.	10
[35] Schedule 2 Regulation-making powers	11
Insert after clause 4 (5):	12
(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.	13
[36] Schedule 2, clauses 6A and 6B	14
Insert after clause 6:	15
6A Fuel and fuel burning equipment	16
(1) Prohibiting or regulating the sale, distribution, use, operation and maintenance of fuel burning equipment, and equipment for industrial plant, including control equipment.	17
(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.	18

(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.	1 2 3 4 5
6B Emission of air impurities	6
Requirements with respect to the emission of, and testing for, air impurities, including the methods for determining standards of concentration or rates of emission.	7 8 9
[37] Schedule 2, clause 8 (4)	10
Insert after clause 8 (3):	11
(4) Imposing conditions on licences and revoking or varying conditions on licences (whether or not the conditions have been imposed by the regulations).	12 13 14
[38] Schedule 5 Savings, transitional and other provisions	15
Insert at the end of clause 2 (1):	16
<i>Environment Protection Legislation Amendment Act 2002</i> (but only to the extent to which it amends this Act or regulations under this Act)	17 18 19
[39] Schedule 5, Part 10	20
Insert after Part 9:	21
Part 10 Provisions consequent on enactment of Environment Protection Legislation Amendment Act 2002	22 23 24
18 Definition	25
In this Part:	26
<i>2002 amending Act</i> means the <i>Environment Protection Legislation Amendment Act 2002</i> .	27 28

19	Pollution incidents	1
(1)	Section 66 (2A), as inserted by the 2002 amending Act, applies to information provided under a licence condition before its commencement.	2 3 4
(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).	5 6 7 8 9
20	Applications to surrender licences	10
	Section 80, and the definition of <i>licence application</i> 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.	11 12 13 14 15
21	Identification cards for enforcement officers	16
(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.	17 18 19 20
(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.	21 22 23 24 25 26
22	Mistaken exercise of power	27
	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.	28 29 30 31 32 33

23	Proceedings with leave of Land and Environment Court	1
	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.	2 3 4 5 6
24	Continuing offences	7
	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.	8 9 10 11 12
25	Appeals	13
	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.	14 15 16 17
26	Notices given by authorities	18
	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.	19 20 21
[40]	Dictionary	22
	Insert in alphabetical order:	23
	<i>enforcement officer</i> —see section 226.	24
[41]	Dictionary, definition of “licence application”	25
	Omit “or variation”. Insert instead “, variation or surrender”.	26

Schedule 3	Amendment of Radiation Control Act 1990	1
	(Section 5)	2
[1]	Section 4 Definitions	3
	Insert in alphabetical order in section 4 (1):	4
	<i>authorised officer</i> means a person appointed by the Authority	5
	under Part 7.2 of the <i>Protection of the Environment</i>	6
	<i>Operations Act 1997</i> as an authorised officer for the purposes	7
	of this Act.	8
[2]	Section 4 (1), definition of “inspector”	9
	Omit the definition.	10
[3]	Section 6 Restrictions on possession, use and sale etc of radioactive substances and certain radiation apparatus	11
	Insert “possess,” before “use” in section 6 (2).	13
[4]	Section 6 (3)	14
	Insert “possession,” before “use”.	15
[5]	Section 11 Term and renewal of licences, registrations and accreditations	16
	Omit section 11 (2) and (3). Insert instead:	18
	(2) An accreditation (including any renewed accreditation) remains	19
	in force for the term specified by the Authority in the	20
	accreditation, unless it is cancelled or surrendered sooner.	21
[6]	Section 11 (4)	22
	Insert “or accreditation” after “registration”.	23

[7] Sections 15 and 16	1
Omit sections 15–17. Insert instead:	2
15 Application of Chapter 7 of Protection of the Environment Operations Act 1997	3
Chapter 7 (Investigation) of the <i>Protection of the Environment Operations Act 1997</i> extends to the exercise of powers in connection with this Act and the regulations.	4
Note. Section 186 of the <i>Protection of the Environment Operations Act 1997</i> 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 <i>Protection of the Environment Operations Act 1997</i> 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.	5
16 Powers of entry	6
(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.	7
(2) Chapter 7 (Investigation) of the <i>Protection of the Environment Operations Act 1997</i> 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
[8] Section 18 Notices to take action	9
Omit “inspector” wherever occurring. Insert instead “authorised officer”.	10
[9] Section 19 Powers to deal with dangerous situations	11
Omit “inspector” from section 19 (2). Insert instead “authorised officer”.	12

[10] Section 25A	1
Insert after section 25:	2
25A Penalty notices	3
(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.	4 5 6 7 8
(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.	9 10 11 12 13
(3) A penalty notice may be served personally or by post.	14
(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.	15 16 17
(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.	18 19 20
(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.	21 22 23 24
(7) The regulations may:	25
(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and	26 27 28
(b) prescribe the amount of penalty payable for the offence if dealt with under this section, and	29 30
(c) prescribe different amounts of penalties for different offences or classes of offences.	31 32

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(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.	1 2 3 4
(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.	5 6 7
[11]	Sections 26 (2) and 27 (1)	8
	Omit “inspector” wherever occurring. Insert instead “authorised officer”.	9
[12]	Section 32 Appointment of inspectors	10
	Omit the section.	11
[13]	Section 39A Personal liability	12
	Omit “inspector” wherever occurring. Insert instead “authorised officer”.	13
[14]	Schedule 2 Savings and transitional provisions	14
	Omit “this Act” from clause 1 (1). Insert instead:	15
	this Act and the following Acts:	16
	<i>Environment Protection Legislation Amendment Act 2002</i> (but only to the extent that it amends this Act)	17 18

[15] Schedule 2, Part 3	1
Insert after Part 2:	2
 Part 3 Provisions consequent on the enactment of the Environment Protection Legislation Amendment Act 2002	 3 4 5
 3 Existing accreditations	 6
Section 11, as in force before its amendment by the <i>Environment Protection Legislation Amendment Act 2002</i> , 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.	7 8 9 10 11
 4 Existing inspectors	 12
A person who, immediately before the substitution of section 15 by the <i>Environment Protection Legislation Amendment Act 2002</i> , 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 <i>Protection of the Environment Operations Act 1997</i> .	13 14 15 16 17 18

Schedule 4	Amendment of Road and Rail Transport (Dangerous Goods) Act 1997	1 2
	(Section 6)	3
[1]	Section 18 General powers of authorised officers	4
	Insert “has been or” before “is being” where firstly occurring in section 18 (1).	5 6
[2]	Section 18 (3) and (4)	7
	Insert “has been or” before “is being” where secondly occurring.	8
[3]	Section 18 (7), (8), (10) and (11)	9
	Insert “has been or” before “is being” wherever occurring.	10

Schedule 5 Other amendments

1

(Section 7)

2

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

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

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Omit “tested” from clause 6 (2).

6

Insert instead “air impurities are determined”.

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[2] Clause 27 Motor vehicles emitting excessive air impurities

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Omit clause 27 (1). Insert instead:

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

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11

Maximum penalty:

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- (a) in the case of a corporation—400 penalty units, or

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- (b) in the case of an individual—200 penalty units.

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

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Insert after clause 30 (4):

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(5) Stolen motor vehicle

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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.

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5.2 Contaminated Land Management Regulation 1998	1
Clause 9 Accreditation fees	2
Omit clause 9 (2). Insert instead:	3
(2) For the purposes of section 50 (1) and (4) (d) of the Act the prescribed accreditation fee is as follows:	4
(a) for accreditation granted or renewed after the commencement of this subclause and on or before 31 May 2002:	5
(i) if the accreditation period is 1 year or less—\$2,900, or	6
(ii) if the accreditation period is 2 years or less but more than 1 year—\$6,400, or	7
(iii) if the accreditation period is greater than 2 years—\$9,900, or	8
(b) for accreditation granted or renewed after 31 May 2002:	9
(i) if the accreditation period is 1 year or less—\$3,500, or	10
(ii) if the accreditation period is 2 years or less but more than 1 year—\$7,000, or	11
(iii) if the accreditation period is greater than 2 years—\$10,500.	12
5.3 Fines Act 1996 No 99	13
Schedule 1 Statutory provisions under which penalty notices issued	14
Insert in appropriate order:	15
<i>Radiation Control Act 1990</i> , section 25A	16

5.4 Protection of the Environment Operations (General) Regulation 1998	1 2
[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)	3 4
Insert “or 80” after “section 61” in clause 46 (1).	5
[2] Clause 46, note	6
Omit the note. Insert instead:	7
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).	8 9 10 11 12
5.5 Protection of the Environment Operations (Noise Control) Regulation 2000	13 14
[1] Clause 14 Use of motor vehicles in places other than roads	15
Omit “or permit”.	16
[2] Clause 17 Use of motor vehicle sound systems	17
Omit “or permit”.	18
[3] Clause 20A	19
Insert after clause 20:	20
20A Owners and drivers of motor vehicles involved in excess noise offences	21 22
(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.	23 24 25 26
(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,	27 28 29

the driver or the owner), no further penalty may be imposed on or recovered from any other person. In this subclause, <i>penalty</i> includes a penalty under a penalty notice.	1 2 3
(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 5 6 7
(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:	8 9 10
(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	11 12 13
(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.	14 15 16 17 18
(5) The notice must be verified by statutory declaration and:	19
(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	20 21 22 23
(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.	24 25 26
(6) A person who gives a statement for the purposes of subclause (4) knowing that it is false is guilty of an offence.	27 28
Maximum penalty: 10 penalty units.	29
(7) This clause does not apply to or in respect of an act or omission that occurred before the commencement of this clause.	30 31
[4] Clause 30 Vessels not to emit offensive noise	32
Omit “or permit”.	33

[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.	1
Maximum penalty: 10 penalty units.	2
(7) This clause does not apply to or in respect of an act or omission that occurred before the commencement of this clause.	3
5.6 Protection of the Environment Operations (Penalty Notices) Regulation 1999	4
[1] Clause 6 Enforcement officers: section 226	5
Omit “authorised officers” from clause 6 (1).	6
Insert instead “enforcement officers”.	7
[2] Clause 6 (1)	8
Omit the note to the subclause.	9
[3] Clause 6 (2) and (3)	10
Omit “authorised officer” wherever occurring.	11
Insert instead “enforcement officer”.	12
[4] Clause 6 (7)	13
Insert at the end of clause 6:	14
(7) A person who, immediately before the amendment of this clause by the <i>Environment Protection Legislation Amendment Act 2002</i> , was duly authorised by an authority as an authorised officer is taken to be so authorised as an enforcement officer.	15
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