



New South Wales

Protection of the Environment Legislation Amendment Bill 2014

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Contaminated Land Management Act 1997*:
 - (i) to increase the penalties for certain offences against the Act, and
 - (ii) to enable the Environment Protection Authority (the *EPA*) to require a person to whom a management order is directed to provide financial assurance to secure or guarantee funding for or towards the carrying out of an action required by or under the order, and
 - (iii) to enable certain court orders to be made against a convicted offender in connection with the offence against the Act that the offender committed (including an order for the payment of an additional penalty based on a monetary benefit derived by the offender), and
 - (iv) to enable the regulations under the Act to prescribe different amounts of penalties for a penalty notice based on the number of times that an offender has been convicted of, or paid a penalty notice for, the same offence within a 5-year period, and
 - (v) to provide for the liability of offenders for continuing offences and the continuing effect of notices, orders and conditions under the Act and the regulations under the Act, and
- (b) to amend the *Protection of the Environment Operations Act 1997*:
 - (i) to enable clean-up notices to be given to owners of premises as well as occupiers, and

- (ii) to clarify the obligations of occupiers of premises from which point source emissions or non-point source emissions occur in connection with the prevention or minimisation of such emissions, and
 - (iii) to enable certain court orders to be made in connection with offences requiring the offender to undertake restorative justice activities agreed to by the offender and to enable the EPA to accept undertakings to carry out such activities, and
 - (iv) to enable the EPA to require persons who transport waste to ensure that approved GPS tracking devices are installed, used and maintained on motor vehicles used to transport their waste, and
 - (v) to provide that an appeal against a decision to suspend or revoke a licence does not operate to stay the decision, and
 - (vi) to remove the requirement to provide a person with a notice of intention to suspend or revoke a licence and remove certain other outdated provisions of the Act, and
- (c) to amend the *Radiation Control Act 1990*:
- (i) to enable certain court orders to be made against a convicted offender in connection with the offence against the Act that the offender committed (including an order for the payment of an additional penalty based on a monetary benefit derived by the offender), and
 - (ii) to enable the EPA to accept undertakings to carry out restorative justice activities, and
 - (iii) to enable the regulations under the Act to prescribe different amounts of penalties for a penalty notice based on the number of times that an offender has been convicted of, or paid a penalty notice for, the same offence within a 5-year period, and
 - (iv) to enable persons to apply for orders from the Supreme Court to remedy or restrain a breach of the Act or the regulations under the Act, and
- (d) to amend the *Protection of the Environment Administration Act 1991* to provide for certain fees and charges under legislation administered by the EPA to be paid into the Environment Protection Authority Fund, and
- (e) to make consequential amendments to the *Land and Environment Court Act 1979* and *Protection of the Environment Operations (General) Regulation 2009*.

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.

Schedule 1 Amendments concerning contaminated land management

1.1 Contaminated Land Management Act 1997 No 140

Financial assurances for actions required by management orders

Schedule 1.1 [2] amends the *Contaminated Land Management Act 1997* to enable the EPA to require a person to whom a management order is directed to provide financial assurance to secure or guarantee funding for or towards the carrying out of an action required by or under the order.

Schedule 1.1 [4] inserts provisions based on Part 9.4 (Financial assurances) of the *Protection of the Environment Operations Act 1997* concerning the procedure to be followed in connection with requiring such assurances.

Penalty increases

Schedule 1.1 [3], [5]–[10] and [16] increase the maximum penalties for certain offences against sections 14, 48, 57, 60, 89 and 103 of the *Contaminated Land Management Act 1997*. Schedule 1.1 [3] also clarifies the circumstances in which a person will be treated as failing to comply with a management order.

Schedule 1.1 [11] enables the regulations under the Act to prescribe different amounts of penalties for a penalty notice based on the number of times that an offender has been convicted of, or paid a penalty notice for, the same offence within a 5-year period.

Court orders in connection with offences (including for restorative justice)

Schedule 1.1 [12] inserts provisions that:

- (a) enable the Land and Environment Court to order an offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount that represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence, and
- (b) enable court orders to be made requiring an offender:
 - (i) to publicise the offence and its consequences, or
 - (ii) to notify persons of the offence and its consequences, or
 - (iii) to carry out a project for the restoration or enhancement of the environment, or
 - (iv) to provide a financial assurance in proceedings to which the EPA is a party.

Schedule 1.1 [12] also enables the Land and Environment Court to require an offender to carry out a restorative justice activity that the offender has agreed to carry out. A **restorative justice activity** is a social or community activity for the benefit of the community or persons that are adversely affected by the offence. **Schedule 1.1 [1]** makes a consequential amendment.

Enforcement of undertakings

Schedule 1.1 [14] enables the EPA to accept and enforce a written undertaking given by a person for the purposes of the proposed section in connection with a matter in relation to which the EPA has a function under the Act, including undertakings to carry out restorative justice activities. The provision is based on section 253A of the *Protection of the Environment Operations Act 1997*. **Schedule 1.1 [13]** makes a consequential amendment.

Continuing offences

Schedule 1.1 [15] provides for the liability of offenders for continuing offences. The provision is based on section 242 of the *Protection of the Environment Operations Act 1997*.

Notices, orders and conditions

Schedule 1.1 [17] provides for the continuing effect of notices, orders and conditions under the Act and the regulations under the Act. The provision is based on section 319A of the *Protection of the Environment Operations Act 1997*.

Savings and transitional provisions

Schedule 1.1 [18] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of any Act that amends the *Contaminated Land Management Act 1997*, including the proposed Act.

Schedule 1.1 [19] omits a reference to an obsolete set of guidelines.

Schedule 1.1 [20] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

1.2 Land and Environment Court Act 1979 No 204

Schedule 1.2 [1] and [2] amend the *Land and Environment Court Act 1979* to allocate the following kinds of proceedings in exercise of new jurisdiction to be conferred by Schedule 1.1 to Class 4 of the jurisdiction of the Land and Environment Court:

- (a) proceedings to resolve disputes about claiming on or realising financial assurances under the *Contaminated Land Management Act 1997*,
- (b) proceedings for the enforcement of undertakings under the *Contaminated Land Management Act 1997*.

Schedule 1.2 [3] makes a consequential amendment.

Schedule 2 Amendments concerning protection of environment operations

2.1 Protection of the Environment Operations Act 1997 No 156

Removal of outdated procedural provisions

Schedule 2.1 [1] amends the *Protection of the Environment Operations Act 1997* to provide that the appropriate regulatory authority is not required (as is currently the case) to give the holder of a licence notice of the authority's intention to suspend or revoke the licence (whether with or without conditions) before giving a notice of that suspension or revocation.

Schedule 2.1 [6] and [7] remove the exception for odours from certain requirements to report pollution incidents.

Schedule 2.1 [8] removes certain requirements concerning the affixing of labels on vehicles about the giving of notices.

Clean-up notices to owners

Schedule 2.1 [2] enables an appropriate regulatory authority to give the owner of premises (as well as the occupier of premises) a clean-up notice under section 91 of the *Protection of the Environment Operations Act 1997*.

Pollution mitigation obligations for point source and non-point source emissions

Schedule 2.1 [3] and [4] seek to clarify the operation of section 128 (Standards of air impurities not to be exceeded) of the *Protection of the Environment Operations Act 1997* following the decision of the Land and Environment Court in *Environment Protection Authority v Ravensworth Operations Pty Ltd* [2013] NSWLEC 92.

In that case, the Land and Environment Court held that concentration standards prescribed under section 128 could extend to non-point source emissions (such as emissions of dust from mining) as well as to point source emissions (such as emissions from chimneys, pipes and vents). However, concentrations of non-point source emissions cannot be measured by currently available methodologies.

The result of the decision is that section 128 cannot be used to deal with non-point source emissions because it is not currently possible to prescribe concentration standards or emission rates for them.

The amendments made by Schedule 2.1 [3] and [4] confirm that:

- (a) concentration standards and emission rates prescribed under section 128 apply only to point source emissions, and
- (b) the occupier of premises emitting non-point source emissions must carry on any activity, or operate any plant, in or on the premises by such practicable means as may be necessary to prevent or minimise air pollution from such emissions.

Approved GPS tracking devices for waste transportation vehicles

Schedule 2.1 [5] enables the EPA, by notice in writing, to require a person who is engaged in the transportation of waste to ensure that:

- (a) approved GPS tracking devices are installed, used and maintained, in the manner specified in the notice, on any motor vehicles that are used by the person (or an employee, subcontractor or agent of the person) to transport waste, and
- (b) such devices are not tampered with.

A failure to comply with such a notice will be an offence with a maximum penalty of 200 penalty units (currently, \$22,000) for a corporation and 100 penalty units (currently, \$11,000) for an individual. **Schedule 2.1 [12]** makes a consequential amendment.

Restorative justice activities

Schedule 2.1 [9] enables the Land and Environment Court to require an offender to carry out a restorative justice activity that the offender has agreed to carry out. **Schedule 2.1 [14]** makes a consequential amendment.

Schedule 2.1 [10] enables the EPA to accept a written undertaking to carry out restorative justice activities.

Appeals against decisions to suspend or revoke licences

Schedule 2.1 [11] provides that an appeal against a decision to suspend or revoke a licence does not operate to stay the decision.

Savings and transitional provisions

Schedule 2.1 [13] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

2.2 Protection of the Environment Operations (General) Regulation 2009

Schedule 2.2 makes amendments to the *Protection of the Environment Operations (General) Regulation 2009* concerning penalty notices that are consequential on the amendments made to the *Protection of the Environment Operations Act 1997*.

Schedule 3 Amendment of Radiation Control Act 1990 No 13

Court orders in connection with offences (including for restorative justice)

Schedule 3 [2] amends the *Radiation Control Act 1990* to insert provisions that:

- (a) enable the Supreme Court to order an offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount that represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence, and
- (b) enable court orders to be made requiring an offender:
 - (i) to publicise the offence and its consequences, or
 - (ii) to notify persons of the offence and its consequences, or
 - (iii) to carry out a project for the restoration or enhancement of the environment, or
 - (iv) to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course, or
 - (v) to establish training courses for employees and contractors, or
 - (vi) to provide a financial assurance in proceedings to which the EPA is a party.

Schedule 3 [2] also enables the Supreme Court to require an offender to carry out a restorative justice activity that the offender has agreed to carry out. **Schedule 3 [1]** makes a consequential amendment.

Enforcement provisions

Schedule 3 [3] enables the EPA to accept a written undertaking to carry out restorative justice activities.

Schedule 3 [4] enables the regulations under the *Radiation Control Act 1990* to prescribe different amounts of penalties for a penalty notice based on the number of times that an offender has been convicted of, or paid a penalty notice for, the same offence within a 5-year period.

Schedule 3 [5] enables persons to apply for orders from the Supreme Court to remedy or restrain a breach of the Act or the regulations under the Act. The provision is based on section 253 of the *Protection of the Environment Operations Act 1997*, which confers a corresponding jurisdiction on the Land and Environment Court.

Savings and transitional provisions

Schedule 3 [6] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of any Act that amends the *Radiation Control Act 1990*, including the proposed Act.

Schedule 3 [7] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 4 Amendment of Protection of the Environment Administration Act 1991 No 60

Schedule 4 [1] amends the *Protection of the Environment Administration Act 1991* to provide for certain fees and charges under legislation administered by the EPA to be paid into the Environment Protection Authority Fund.

Schedule 4 [2] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of any Act that amends the *Protection of the Environment Administration Act 1991*, including the proposed Act.



New South Wales

Protection of the Environment Legislation Amendment Bill 2014

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New South Wales

Protection of the Environment Legislation Amendment Bill 2014

No. , 2014

A Bill for

An Act to amend the *Contaminated Land Management Act 1997*, *Protection of the Environment Operations Act 1997* and *Radiation Control Act 1990* to increase certain penalties for offences and strengthen and align the enforcement provisions of those Acts; to amend the *Protection of the Environment Administration Act 1991* with respect to payments into the Environment Protection Authority Fund; and to make consequential amendments to other legislation.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Protection of the Environment Legislation Amendment Act 2014</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendments concerning contaminated land management	1 2
1.1	Contaminated Land Management Act 1997 No 140	3
[1]	Section 4 Definitions	4
	Insert in alphabetical order in section 4 (1):	5
	<i>restorative justice activity</i> —see section 95B (2).	6
[2]	Section 14 Management orders	7
	Insert after section 14 (1):	8
	(1A) A management order may, in accordance with Division 6A, require the person to whom the order is directed to provide financial assurance to secure or guarantee funding for or towards the carrying out of an action required by or under the order.	9 10 11 12
[3]	Section 14 (6)	13
	Omit the subsection. Insert instead:	14
	(6) A person (other than a public authority that is not an interested person with respect to the relevant land) served with a management order must not, without reasonable excuse, fail to comply with any direction or other requirement specified by the order within the time specified by the order.	15 16 17 18
	Maximum penalty:	19
	(a) in the case of a corporation—\$1,000,000 (if responsible for the contamination) or \$137,500 (in any other case) and, in the case of a continuing offence, a further penalty of \$66,000 for each day the offence continues, or	20 21 22 23
	(b) in the case of an individual—\$250,000 (if responsible for the contamination) or \$66,000 (in any other case) and, in the case of a continuing offence, a further penalty of \$33,000 for each day the offence continues.	24 25 26 27
[4]	Part 3, Division 6A	28
	Insert after Division 6:	29
	Division 6A Financial assurances for actions required by management orders	30 31
42A	Application of Division	32
	(1) This Division applies with respect to requirements under management orders to provide financial assurance to secure or guarantee funding for or towards the carrying out of actions required by or under such orders.	33 34 35
	(2) A financial assurance is not to operate as a mere penalty for a contravention of this Act, the regulations or a management order.	36 37
42B	Restriction on requiring financial assurance	38
	The EPA cannot require a person to provide a financial assurance unless it is satisfied that the requirement is justified having regard to:	39 40
	(a) the degree of risk of environmental harm associated with the activities of the person, or	41 42

	(b) the remediation work that may be required because of activities of the person, or	1 2
	(c) the environmental record of the person, or	3
	(d) any other matters prescribed by the regulations.	4
42C	Form of financial assurance	5
	(1) A financial assurance may be in one or more of the following forms:	6
	(a) a bank guarantee,	7
	(b) a bond,	8
	(c) another form of security that the EPA considers appropriate and specifies in the management order.	9 10
	(2) A management order may provide for the procedures under which the financial assurance may be claimed on or realised.	11 12
42D	Amount of financial assurance	13
	(1) The amount of a financial assurance is to be as determined by the EPA.	14
	(2) However, the EPA must not require financial assurances of an amount that exceeds the total cost of carrying out the relevant action. That total cost is the amount that, in the EPA's opinion, represents a reasonable estimate of the total likely costs and expenses that may be incurred in carrying out the action required by or under the management order for which the financial assurance is required, including the likely costs and expenses of the EPA in directing and supervising the carrying out of the action.	15 16 17 18 19 20 21
	(3) The EPA may require the person who is required to provide a financial assurance to provide to the EPA an independent assessment of the cost of the relevant action for which the assurance is required.	22 23 24
42E	Guidelines about financial assurances	25
	The regulations may make provision for or with respect to guidelines to be observed in relation to the content of requirements in management orders for financial assurances and in relation to the calculation of the amount of financial assurances required.	26 27 28 29
42F	Carrying out of action when assurer fails to do so	30
	(1) The EPA may carry out, or direct or supervise the carrying out by another person of, any action covered by any financial assurance required by a management order if the person to whom the order is directed fails, in the opinion of the EPA, to carry out that action in accordance with the order.	31 32 33 34
	(2) The EPA may do so by the use of contractors, consultants or otherwise.	35
	(3) The EPA may enter, or authorise any other person to enter, the premises concerned to carry out the action.	36 37
42G	Claim on or realising of financial assurance	38
	(1) The EPA may recover or fund the reasonable costs or expenses of the EPA or other person in carrying out any action (including the likely costs or expenses of the EPA in directing and supervising the carrying out of the action) by making a claim on or realising the financial assurance or part of it.	39 40 41 42

(2)	Before making the claim on or realising the financial assurance or part of it, the EPA must give to the person who was required to provide the assurance a written notice under this section.	1 2 3
(3)	The notice must:	4
(a)	state details of the action carried out or proposed to be carried out, and	5
(b)	state the amount of the financial assurance to be claimed or realised, and	6
(c)	invite the person to make representations to the EPA to show why the financial assurance should not be claimed or realised as proposed, and	7 8
(d)	state the period (at least 30 days after the notice is given to the person) within which representations may be made.	9 10
(4)	The representations must be made in writing.	11
(5)	After the end of the period stated in the notice, the EPA must consider any representations properly made by the person.	12 13
(6)	If the EPA decides to make a claim on or realise the financial assurance or part of it, the EPA must immediately give written notice to the person of its decision and the reasons for the decision.	14 15 16
(7)	The EPA must return any excess amounts to the person or that person's successors.	17 18
(8)	If the amount of financial assurance claimed or realised by the EPA is not sufficient to cover all the costs or expenses concerned, the EPA may recover the excess from the person as a debt in any court of competent jurisdiction.	19 20 21
42H	Lapsing of financial assurance	22
	The requirement to provide financial assurance lapses and no longer binds the person who was required to provide it if the EPA:	23 24
(a)	is satisfied that the action for which the financial assurance was required has been satisfactorily carried out, and	25 26
(b)	has given the person written notice of the lapsing of the financial assurance.	27 28
42I	Liability of EPA, State and others	29
(1)	Anything done by or at the direction, or under the supervision, of the EPA under section 42F (1) is taken to have been done by the person who was required to provide the financial assurance.	30 31 32
(2)	The State, the Minister, the EPA, the members of the Board of the EPA, any members of the staff of the EPA and any persons engaged by or otherwise acting with the authority of the EPA (or any of them):	33 34 35
(a)	are not liable for anything done or omitted to be done in good faith in connection with a requirement to which this Division applies or in carrying out or giving effect to this Division, and	36 37 38
(b)	without affecting the generality of the above, are taken, for the purposes of sections 98 and 98A, not to be involved in the management of a corporation when doing or omitting to do anything in connection with such a requirement or when carrying out or giving effect to this Division.	39 40 41 42 43

42J	Financial assurance not to affect other action	1
	A financial assurance may be claimed on or realised, despite and without affecting:	2
		3
	(a) any liability of the person who was required to provide the assurance to any penalty for an offence for a contravention to which the assurance relates, and	4
		5
		6
	(b) any other action that might be taken or is required to be taken in relation to any contravention or other circumstances to which the assurance relates.	7
		8
		9
42K	Disputes regarding claim on or realisation of financial assurance	10
	The Land and Environment Court has jurisdiction to determine disputes about claiming on or realising a financial assurance.	11
		12
[5]	Section 48 Statutory site audits	13
	Omit “600 penalty units” from section 48 (1). Insert instead “\$120,000”.	14
[6]	Section 48 (2)	15
	Omit “1,250 penalty units”. Insert instead “\$250,000”.	16
[7]	Section 57 Holding out	17
	Omit “600 penalty units” wherever occurring in section 57 (1) and (1A).	18
	Insert instead “\$120,000”.	19
[8]	Section 57 (2)	20
	Omit “1,250 penalty units”. Insert instead “\$250,000”.	21
[9]	Section 60 Duty to report contamination	22
	Omit paragraphs (a) and (b) from the maximum penalty at the end of section 60 (1).	23
	Insert instead:	24
	(a) in the case of a corporation—\$1,000,000, and in the case of a continuing offence, a further penalty of \$77,000 for each day the offence continues, or	25
		26
		27
	(b) in the case of an individual—\$250,000, and in the case of a continuing offence, a further penalty of \$33,000 for each day the offence continues.	28
		29
[10]	Section 89 Offences	30
	Omit paragraphs (a) and (b) from the maximum penalty at the end of the section.	31
	Insert instead:	32
	(a) in the case of a corporation—\$1,000,000, and in the case of a continuing offence, a further penalty of \$66,000 for each day the offence continues, or	33
		34
		35
	(b) in the case of an individual—\$250,000, and in the case of a continuing offence, a further penalty of \$33,000 for each day the offence continues.	36
		37

[11] Section 92A Penalty notices	1
Insert at the end of section 92A (6) (c):	2
, and	3
(d) prescribe different amounts of penalties based on the number of times that an offender has been convicted of, or paid a penalty notice for, the same offence within a 5-year period.	4 5 6
[12] Part 10, Division 2A	7
Insert after Division 2:	8
Division 2A Court orders in connection with offences	9
95A Orders regarding monetary benefits	10
(1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.	11 12 13 14 15
(2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.	16 17
(3) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the offender or accrued or accruing to the offender.	18 19 20
(4) In this section:	21
<i>monetary benefits</i> means monetary, financial or economic benefits.	22
<i>the court</i> does not include the Local Court.	23
95B Additional orders	24
(1) Orders	25
The court may do any one or more of the following:	26
(a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its environmental and other consequences and any other orders made against the person,	27 28 29
(b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its environmental and other consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),	30 31 32 33 34 35 36
(c) order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,	37 38 39
(d) if the EPA is a party to the proceedings, order the offender to provide a financial assurance, of a form and amount specified by the court, to the EPA, if the court orders the offender to carry out a specified work or program for the restoration or enhancement of the environment.	40 41 42 43
The Local Court is not authorised to make an order referred to in paragraph (c) or (d).	44 45

(2)	Without limiting subsection (1) (c), the court may order the offender to carry out any social or community activity for the benefit of the community or persons that are adversely affected by the offence (a <i>restorative justice activity</i>) that the offender has agreed to carry out. However, the Local Court is not authorised to make an order under this subsection.	1 2 3 4 5
(3)	Machinery The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.	6 7 8 9
(4)	Failure to publicise or notify If the offender fails to comply with an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify: (a) the original contravention, its environmental and other consequences, and any other penalties imposed on the offender, and (b) the failure to comply with the order.	10 11 12 13 14 15 16 17
(5)	Cost of publicising or notifying The reasonable cost of taking action referred to in subsection (4) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.	18 19 20 21
(6)	Financial assurances Sections 42F–42K apply to a financial assurance provided by an offender under an order made under this section in the same way as they apply to a financial assurance provided by a person to whom a management order is directed.	22 23 24 25 26
[13]	Part 10, Division 3, heading Omit the heading. Insert instead:	27 28
	Division 3 Civil proceedings to remedy or restrain breaches of Act or harm to environment or to enforce undertakings	29 30
[14]	Section 96A Insert after section 96:	31 32
	96A Enforcement of undertakings	33
	(1) The EPA may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the EPA has a function under this Act.	34 35 36
	(2) Without limiting subsection (1), an undertaking that the EPA may accept under that subsection includes an undertaking to carry out a restorative justice activity.	37 38 39
	(3) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the EPA. The consent of the EPA is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.	40 41 42 43

(4)	The EPA may apply to the Land and Environment Court for an order under subsection (5) if the EPA considers that the person who gave the undertaking has breached any of its terms.	1 2 3
(5)	The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking:	4 5
(a)	an order directing the person to comply with that term of the undertaking,	6 7
(b)	an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,	8 9 10 11
(c)	any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,	12 13 14
(d)	an order suspending or revoking any environment protection licence under the <i>Protection of the Environment Operations Act 1997</i> held by the person,	15 16 17
(e)	an order requiring the person to prevent, control, abate or mitigate any actual or likely harm to the environment caused by the breach,	18 19
(f)	an order requiring the person to make good any actual or likely harm to the environment caused by the breach,	20 21
(g)	any other order the Court considers appropriate.	22
[15]	Section 100	23
	Insert after section 99:	24
100	Continuing offences	25
(1)	A person who is guilty of an offence because the person contravenes a direction or other requirement made by or under this Act or the regulations (whether the direction or other 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):	26 27 28 29 30
(a)	continues, until the direction or other 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 direction or other requirement, and	31 32 33
(b)	is guilty of a continuing offence for each day the contravention continues.	34 35
(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.	36 37
(3)	This section does not apply to the extent that a direction or other requirement is revoked.	38 39
[16]	Section 103 False or misleading information	40
	Omit paragraphs (a) and (b) from the maximum penalty at the end of section 103 (1).	41
	Insert instead:	42
(a)	in the case of a corporation—\$1,000,000 (in relation to a requirement under section 10, 14, 28 or 53B) or \$137,500 (in relation to any other requirement), or	43 44 45

(b)	in the case of an individual—\$250,000 (in relation to a requirement under section 10, 14, 28 or 53B) or \$66,000 (in relation to any other requirement).	1 2 3
[17]	Section 108A	4
	Insert after section 108:	5
108A	Continuing effect of notices, orders and conditions	6
(1)	A notice or order that is given, made or issued, or a condition that is imposed, under this Act or the regulations that specifies a time by which, or period within which, a direction or other requirement of the notice, order or condition must be complied with continues to have effect until the direction or other requirement is complied with even though the time has passed or the period has expired.	7 8 9 10 11 12
(2)	A notice or order that does not specify a time by which, or period within which, a direction or other requirement of the notice or order must be complied with continues to have effect until the direction or other requirement is complied with.	13 14 15 16
(3)	This section does not apply to the extent that any direction or other requirement of a notice, order or condition is revoked.	17 18
(4)	Nothing in this section affects the powers of the EPA with respect to the enforcement of a notice, order or condition.	19 20
[18]	Schedule 2 Savings and transitional provisions	21
	Insert at the end of clause 1 (1):	22
	any other Act that amends this Act	23
[19]	Schedule 2, clause 5	24
	Omit clause 5 (a).	25
[20]	Schedule 2	26
	Insert at the end of the Schedule with appropriate Part and clause numbering:	27
Part	Provisions consequent on enactment of Protection of the Environment Legislation Amendment Act 2014	28 29 30
	Definition	31
	In this Part:	32
	<i>amending Act</i> means the <i>Protection of the Environment Legislation Amendment Act 2014</i> .	33 34
	Financial assurances for actions required by management order	35
	Section 14 (1A) and Division 6A of Part 3, as inserted by the amending Act, apply with respect to management orders made on or after the commencement of those provisions.	36 37 38
	Penalty notices for repeat offenders	39
	Section 92A (6) (d), as inserted by the amending Act, extends to convictions and payments of penalty notices that occurred before its commencement for	40 41

the purposes of counting the number of offences for which an offender was convicted, or has paid a penalty notice, within a 5-year period referred to in that paragraph.	1 2 3
Court orders in connection with offences	4
(1) Division 2A of Part 10, as inserted by the amending Act, extends to proceedings that were initiated, but not determined, before the commencement of the Division.	5 6 7
(2) Proceedings are not determined for the purposes of subclause (1) even if all that remains to be completed is the sentencing of an offender.	8 9
Continuing offences	10
Section 100, as inserted by the amending Act, extends to a direction or other requirement given or made before the commencement of that section, but only if the contravention of the direction or requirement began on or after that commencement.	11 12 13 14
Notices, orders and conditions	15
Section 108A, as inserted by the amending Act, applies to notices and orders given, made or issued, or conditions imposed, under this Act or the regulations on or after the commencement of that section.	16 17 18
1.2 Land and Environment Court Act 1979 No 204	19
[1] Section 20 Class 4—environmental planning and protection and development contract civil enforcement	20 21
Omit “Division 6” from section 20 (1) (caa). Insert instead “Divisions 6 and 6A”.	22
[2] Section 20 (1) (caa)	23
Omit “section 96”. Insert instead “Division 3 of Part 10”.	24
[3] Section 21 Class 5—environmental planning and protection summary enforcement	25
Insert “Divisions 1, 2, 2A and 4 of” before “Part 10” in section 21 (faa).	26

Schedule 2	Amendments concerning protection of environment operations	1 2
2.1	Protection of the Environment Operations Act 1997 No 156	3
[1]	Section 79 Suspension or revocation of licence by appropriate regulatory authority	4
	Omit section 79 (4). Insert instead:	5
	(4) The appropriate regulatory authority is not required to give the holder of a licence notice of the authority’s intention to suspend or revoke the licence (whether with or without conditions imposed under section 81) before giving a notice under subsection (2).	6 7 8 9
[2]	Section 91 Clean-up by owners, occupiers or polluters	10
	Insert “owner or” before “occupier” in section 91 (1) (a).	11
[3]	Section 128 Standards of air impurities not to be exceeded	12
	Insert after section 128 (1):	13
	(1A) Subsection (1) applies only to emissions (<i>point source emissions</i>) released from a chimney, stack, pipe, vent or other similar kind of opening or release point.	14 15 16
[4]	Section 128 (2)	17
	Omit the subsection. Insert instead:	18
	(2) The occupier of any premises must carry on any activity, or operate any plant, in or on the premises by such practicable means as may be necessary to prevent or minimise air pollution if:	19 20 21
	(a) in the case of point source emissions—neither a standard of concentration nor a rate has been prescribed for the emissions for the purposes of subsection (1), or	22 23 24
	(b) the emissions are not point source emissions.	25
[5]	Section 144AC	26
	Insert after section 144AB:	27
144AC	Use of approved GPS tracking device required by EPA for waste transportation vehicles	28 29
	(1) The EPA may, by notice in writing, require a person who is engaged in the transportation of waste to ensure that:	30 31
	(a) approved GPS tracking devices are installed, used and maintained, in the manner specified in the notice, on any motor vehicles that are used by the person (or an employee, subcontractor or agent of the person) to transport waste, and	32 33 34 35
	(b) such devices are not tampered with.	36
	(2) A person who does not comply with a notice given to the person under subsection (1) is guilty of an offence.	37 38
	Maximum penalty:	39
	(a) in the case of a corporation—200 penalty units, or	40
	(b) in the case of an individual—100 penalty units.	41

(3)	In this section:	1
	<i>approved GPS tracking device</i> means a device of a kind approved by the EPA that uses the Global Positioning System to keep track of the location of a motor vehicle.	2 3 4
[6]	Section 148 Pollution incidents causing or threatening material harm to be notified	5
	Omit section 148 (7).	6
[7]	Section 151A EPA may require other notification of pollution incidents	7
	Omit section 151A (7).	8
[8]	Section 161 Notices	9
	Omit section 161 (5), (6) (b) and (7).	10
[9]	Section 250 Additional orders	11
	Insert after section 250 (1):	12
	(1A) Without limiting subsection (1) (c), the court may order the offender to carry out any social or community activity for the benefit of the community or persons that are adversely affected by the offence (a <i>restorative justice activity</i>) that the offender has agreed to carry out. However, the Local Court is not authorised to make an order under this subsection.	13 14 15 16 17
[10]	Section 253A Enforcement of undertakings	18
	Insert after section 253A (1):	19
	(1A) Without limiting subsection (1), an undertaking that the EPA may accept under that subsection includes an undertaking to carry out a restorative justice activity.	20 21 22
[11]	Section 287 Appeals regarding licence applications and licences	23
	Omit section 287 (1A). Insert instead:	24
	(1A) The lodging of an appeal:	25
	(a) in the case of an appeal against a decision to suspend or revoke a licence (whether with or without conditions)—does not operate to stay the decision appealed against, and	26 27 28
	(b) in the case of an appeal against any other decision—does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the decision appealed against.	29 30 31
	(1B) For the avoidance of doubt, the Land and Environment Court has no jurisdiction to make an order staying a decision referred to in subsection (1A) (a).	32 33 34
[12]	Section 289A	35
	Insert after section 289:	36
	289A Appeals regarding notices under section 144AC relating to use of approved GPS tracking devices	37 38
	(1) A person given a notice under section 144AC may, within 21 days (or such other period as is prescribed instead by the regulations) after being given the notice, appeal to the Land and Environment Court against the notice.	39 40 41

(2)	The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the notice appealed against.	1 2 3
[13]	Schedule 5 Savings, transitional and other provisions	4
	Insert at the end of the Schedule with appropriate Part and clause numbering:	5
	Part Provisions consequent on enactment of Protection of the Environment Legislation Amendment Act 2014	6 7 8
	Definition	9
	In this Part:	10
	<i>amending Act</i> means the <i>Protection of the Environment Legislation Amendment Act 2014</i> .	11 12
	Orders for restorative justice	13
(1)	Section 250, as amended by the amending Act, extends to proceedings that were initiated, but not determined, before the commencement of the amendment to that section.	14 15 16
(2)	Proceedings are not determined for the purposes of subclause (1) even if all that remains to be completed is the sentencing of an offender.	17 18
	Stay of decisions on appeal	19
	Section 287 (1A), as in force before its substitution by the amending Act, continues to apply to appeals lodged before that substitution.	20 21
[14]	Dictionary	22
	Insert in alphabetical order of definitions:	23
	<i>restorative justice activity</i> —see section 250 (1A).	24
2.2	Protection of the Environment Operations (General) Regulation 2009	25
[1]	Schedule 6 Penalty notice offences	26
	Insert after the matters relating to section 144AA (1) of the <i>Protection of the Environment Operations Act 1997</i> :	27 28
	Section 144AC (2) 2 \$1,000 \$2,000	
[2]	Schedule 6	29
	Omit the matter relating to section 161 (7) of the <i>Protection of the Environment Operations Act 1997</i> .	30 31

Schedule 3	Amendment of Radiation Control Act 1990 No 13	1
[1] Section 4 Definitions		2
	Insert in alphabetical order in section 4 (1):	3
	<i>restorative justice activity</i> —see section 23B (2).	4
[2] Sections 23A and 23B		5
	Insert after section 23:	6
23A Orders regarding monetary benefits		7
(1)	The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.	8 9 10 11 12
(2)	The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.	13 14
(3)	The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the offender or accrued or accruing to the offender.	15 16 17
(4)	In this section: <i>monetary benefits</i> means monetary, financial or economic benefits. <i>the court</i> does not include the Local Court.	18 19 20
23B Additional orders		21
(1) Orders		22
	The court may do any one or more of the following:	23
(a)	order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its environmental and other consequences and any other orders made against the person,	24 25 26
(b)	order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its environmental and other consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),	27 28 29 30 31 32 33
(c)	order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,	34 35 36
(d)	order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court,	37 38 39
(e)	order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,	40 41
(f)	if the Authority is a party to the proceedings, order the offender to provide a financial assurance, of a form and amount specified by the court, to the Authority, if the court orders the offender to carry out a	42 43 44

specified work or program for the restoration or enhancement of the environment.	1 2
The Local Court is not authorised to make an order referred to in paragraph (c) or (f).	3 4
(2) Without limiting subsection (1) (c), the court may order the offender to carry out any social or community activity for the benefit of the community or persons that are adversely affected by the offence (a <i>restorative justice activity</i>) that the offender has agreed to carry out. However, the Local Court is not authorised to make an order under this subsection.	5 6 7 8 9
(3) Machinery	10
The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.	11 12 13
(4) Failure to publicise or notify	14
If the offender fails to comply with an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:	15 16 17 18
(a) the original contravention, its environmental and other consequences, and any other penalties imposed on the offender, and	19 20
(b) the failure to comply with the order.	21
(5) Cost of publicising or notifying	22
The reasonable cost of taking action referred to in subsection (4) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.	23 24 25
(6) Financial assurances	26
Sections 28G–28K apply to a financial assurance provided by an offender under an order made under this section in the same way as they apply to a financial assurance provided by a holder of a licence under a condition of a licence under Part 3A.	27 28 29 30
[3] Section 24A Enforcement of undertakings	31
Insert after section 24A (1):	32
(1A) Without limiting subsection (1), an undertaking that the Authority may accept under that subsection includes an undertaking to carry out a restorative justice activity.	33 34 35
[4] Section 25A Penalty notices	36
Insert at the end of section 25A (7) (c):	37
, and	38
(d) prescribe different amounts of penalties based on the number of times that an offender has been convicted of, or paid a penalty notice for, the same offence within a 5-year period.	39 40 41

[5] Section 25B	1
Insert after section 25A:	2
25B Remedy or restraint of breaches of this Act or regulations	3
(1) Any person may bring proceedings in the Supreme Court for an order to remedy or restrain a breach of this Act or the regulations.	4 5
(2) Any such proceedings may be brought whether or not proceedings have been instituted for an offence against this Act or the regulations.	6 7
(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.	8 9
(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.	10 11 12 13
(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.	14 15 16
(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.	17 18 19
(7) Without limiting the powers of the Court under this section, an order under this section may suspend any licence.	20 21
(8) In this section: <i>breach</i> includes a threatened or apprehended breach.	22 23
[6] Schedule 2 Savings and transitional provisions	24
Insert at the end of clause 1 (1): any other Act that amends this Act	25 26
[7] Schedule 2	27
Insert at the end of the Schedule with appropriate Part and clause numbering:	28
Part Provisions consequent on enactment of Protection of the Environment Legislation Amendment Act 2014	29 30 31
Definition	32
In this Part: <i>amending Act</i> means the <i>Protection of the Environment Legislation Amendment Act 2014</i> .	33 34 35
Court orders in connection with offences	36
(1) Sections 23A and 23B, as inserted by the amending Act, extend to proceedings that were initiated, but not determined, before the commencement of the sections.	37 38 39
(2) Proceedings are not determined for the purposes of subclause (1) even if all that remains to be completed is the sentencing of an offender.	40 41

Penalty notices for repeat offenders

Section 25A (7) (d), as inserted by the amending Act, extends to convictions and payments of penalty notices that occurred before its commencement for the purposes of counting the number of offences for which an offender was convicted, or has paid a penalty notice, within a 5-year period referred to in that paragraph.

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Schedule 4	Amendment of Protection of the Environment Administration Act 1991 No 60	1
		2
[1] Section 34A Environment Protection Authority Fund		3
Omit section 34A (3) (b). Insert instead:		4
(b) any fees payable to the Authority under the following Acts:		5
(i) the <i>Contaminated Land Management Act 1997</i> ,		6
(ii) the <i>Dangerous Goods (Road and Rail Transport) Act 2008</i> ,		7
(iii) the <i>Environmental Planning and Assessment Act 1979</i> ,		8
(iv) the <i>Environmentally Hazardous Chemicals Act 1985</i> ,		9
(v) the <i>Pesticides Act 1999</i> ,		10
(vi) the <i>Radiation Control Act 1990</i> , and		11
(b1) amounts payable to the Authority specified in notices given under section 34 of the <i>Contaminated Land Management Act 1997</i> and section 28 of the <i>Pesticides Act 1999</i> , and		12
		13
		14
[2] Schedule 4 Savings, transitional and other provisions		15
Insert at the end of clause 1 (1):		16
any Act that amends this Act		17