



New South Wales

Protection of the Environment Legislation Miscellaneous Amendments Bill 2017

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Contaminated Land Management Act 1997* to extend the application of Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* to the exercise of powers by authorised officers under the *Contaminated Land Management Act 1997*. Chapter 7 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,
- (b) to amend the *Protection of the Environment Administration Act 1991* to abolish Environment Protection Community Consultation Forums and the New South Wales Council on Environmental Education, and to make consequential amendments,
- (c) to amend the *Protection of the Environment Operations Act 1997*:
 - (i) to require notices of reviews of licences to be published on the EPA's website and to provide for the dates of publication of the notices to be recorded in public registers, and
 - (ii) to provide for licences to transport trackable waste to expire after a specified period not longer than 5 years and to provide that these licences can be renewed, and
 - (iii) to repeal supervisory licences in respect of putrescible waste facilities, and
 - (iv) to give the EPA the power to require that GPS tracking devices be fitted to trailers, and

- (v) to permit authorised officers to enter premises by means of an unmanned vehicle, vessel or aircraft (such as a drone) but only if it is operated by or under the authority of an authorised officer, and
- (vi) to increase the time within which proceedings for certain offences may be commenced,
- (d) to amend the *Radiation Control Act 1990*:
 - (i) to give the Land and Environment Court, instead of the District Court, jurisdiction to hear appeals against decisions of the EPA and, instead of the Supreme Court, jurisdiction to hear proceedings for offences under the Act or the regulations and proceedings for orders to remedy or restrain breaches of the Act or regulations, and
 - (ii) to provide that offences may be prosecuted by the EPA or persons acting on behalf of the EPA, without the need for the Minister's consent, and
 - (iii) to increase the maximum penalties that may be imposed by the Local Court for offences, and
 - (iv) to increase the time within which proceedings for offences may be commenced,
- (e) to make consequential amendments to the *Land and Environment Court Act 1979* to allow the Land and Environment Court:
 - (i) to hear appeals against the serving of a notice under section 18 of the *Radiation Control Act 1990* to remedy or avoid a contravention of that Act or appeals against certain decisions of the EPA under section 36A of that Act, and
 - (ii) to hear proceedings for offences against the *Radiation Control Act 1990*.

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 the date of assent to the proposed Act, except for certain provisions amending the *Protection of the Environment Operations Act 1997*, which will commence on a day or days to be appointed by proclamation.

Schedule 1 **Amendment of Contaminated Land Management Act 1997 No 140**

Schedule 1 [7] extends the application of Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* to the exercise of powers by authorised officers under the *Contaminated Land Management Act 1997*. **Schedule 1 [1]** is a consequential amendment that changes the definition of **authorised officer** to mean a person appointed by the EPA under Part 7.2 of the *Protection of the Environment Operations Act 1997* as an authorised officer for the purposes of the *Contaminated Land Management Act 1997*. **Schedule 1 [5]** makes a consequential amendment providing for the admissibility in evidence of certain certified matters. **Schedule 1 [6]** makes a consequential amendment omitting Part 9 (Authorised officers).

Schedule 1 [8] updates the methods for service of documents.

Schedule 1 [9] inserts savings and transitional provisions preserving the appointment of authorised officers appointed under Part 9 before the repeal of that Part by Schedule 1 [6] and extending the application of Chapter 7 of the *Protection of the Environment Operations Act 1997* to investigations begun before the commencement of Schedule 1 [7].

Schedule 1 [2] omits an unnecessary definition from section 4 (1).

Schedule 1 [3] and [4] update references to the appropriate website on which certain documents are to be published.

Schedule 2 Amendment of Protection of the Environment Administration Act 1991 No 60

Schedule 2 [4] repeals Divisions 1–3 of Part 6 to abolish Environment Protection Community Consultation Forums and the New South Wales Council on Environmental Education. **Schedule 2 [1], [3] and [5]–[17]** make consequential amendments. **Schedule 2 [2]** is a consequential amendment omitting the requirement to include in the EPA’s report on the state of the environment a statement on the performance of environmental education programs, this being a function of the New South Wales Council on Environmental Education to prepare under Part 6.

Schedule 2 [18] inserts a transitional provision providing that existing members of Environment Protection Community Consultation Forums or the New South Wales Council on Environmental Education cease to hold office on the repeal of Divisions 1–3 of Part 6 and are not entitled to any remuneration or compensation because of the loss of that office.

Schedule 3 Amendment of Protection of the Environment Operations Act 1997 No 156

Schedule 3 [3] amends the requirement for certain regulatory authorities to publish notices of reviews of licences in a newspaper to provide that these notices must instead be published on the website of the EPA.

Schedule 3 [4] inserts proposed Part 3.6A into the Act containing provisions applying only to licences to transport trackable waste. The proposed Part provides for these licences to remain in force for a specified period, not exceeding 5 years, after which an application can be made for the licence to be renewed. This differs from the duration of other licences, which continue in force until suspended, revoked or surrendered. **Schedule 3 [1], [2], [11], [12] and [15]** make consequential amendments.

Schedule 3 [5] repeals section 87 to remove the requirement for public authorities to hold supervisory licences in respect of putrescible waste facilities operated by entities other than public authorities. Operators of putrescible waste facilities are already required to hold an environment protection licence under section 48 of the Act.

Schedule 3 [6] extends the EPA’s power to require that GPS tracking devices be installed on motor vehicles used to transport waste to apply to trailers. **Schedule 3 [18]** inserts a definition of *trailer* into the Dictionary.

Schedule 3 [7] makes an amendment consequential on the amendment made by Schedule 1 [7].

Schedule 3 [9] provides that if entry to premises is effected by means of an unmanned vehicle, vessel or aircraft, the vehicle, vessel or aircraft must be operated by or under the authority of an authorised officer. **Schedule 3 [8]** makes it clear that entry by means of a vessel is permitted (the section amended already permits entry by means of a vehicle, aircraft or in any other manner). **Schedule 3 [17]** inserts a definition of *aircraft*. The definition includes drones.

Schedule 3 [10] prescribes the offence under section 120 of polluting waters (but only in relation to underground or artesian waters) and the offence under section 144AB of being a repeat waste offender as offences in respect of which proceedings may be commenced within but not later than 3 years after the date on which the offence is alleged to have been committed or evidence of the alleged offence first came to the attention of an authorised officer.

Schedule 3 [13] excludes applications for renewal of licences to transport trackable waste from the requirement imposed on regulatory authorities to record in a public register details of licence applications. The amendment made by **Schedule 3 [1]** requires details of each licence to transport trackable waste that is renewed to be recorded in the public register.

Schedule 3 [14] inserts a requirement for the EPA to record in a public register the dates of notices of reviews of licences published on the EPA’s website.

Schedule 3 [16] inserts savings and transitional provisions that:

- (a) provide for the expiry of licences to transport trackable waste that were issued before the commencement of proposed Part 3.6A, and
- (b) provide that supervisory licences held in relation to putrescible waste landfill sites before the repeal of section 87 by Schedule 3 [5] cease to be in force on the repeal of that section, and
- (c) exclude the application of the amendment to section 216 (6) made by Schedule 3 [10] to offences under section 120 or 144AB if proceedings for those offences could not have been commenced as at the date of commencement of the amendment.

Schedule 4 Amendment of Radiation Control Act 1990 No 13

Schedule 4 [8] makes an amendment that takes away the jurisdiction of the District Court to hear appeals against decisions of the EPA and gives the Land and Environment Court that jurisdiction. **Schedule 4 [1]** makes consequential amendments.

Schedule 4 [2] makes an amendment that takes away the summary jurisdiction of the Supreme Court to hear proceedings for offences against the *Radiation Control Act 1990* or the regulations and gives the Land and Environment Court that summary jurisdiction. The amendment also removes the requirement for the consent of the Minister to prosecute offences and provides that offences may be prosecuted by the EPA as well as by persons acting with the authority of the EPA. **Schedule 4 [4]** makes a consequential amendment.

Schedule 4 [3] increases the maximum penalty for offences that may be imposed by the Local Court from 100 penalty units (\$11,000) to 200 penalty units (\$22,000). **Schedule 4 [6]** makes a consequential amendment.

Schedule 4 [5] increases the time within which proceedings for offences may be commenced from 12 months to 2 years after the date on which the offence is alleged to have been committed or evidence of the alleged offence first came to the attention of an authorised officer.

Schedule 4 [7] makes an amendment that takes away the jurisdiction of the Supreme Court to hear proceedings for orders to remedy or restrain breaches of the Act or regulations and gives the Land and Environment Court that jurisdiction.

Schedule 4 [9] inserts savings and transitional provisions that allow proceedings before the Supreme Court or the District Court that were instituted before the commencement of the amendments made by Schedule 4 [1], [2], [7] and [8] and that had not been finally determined at the date of the commencement of the amendments to be determined as if the amendments had not been made. Schedule 4 [9] also provides that the extension of the time within which proceedings for offences may be commenced made by Schedule 4 [5] applies to all offences, providing proceedings for those offences could have been commenced as at the date of commencement of Schedule 4 [5]. However, the increase in the maximum penalty made by Schedule 4 [3] does not apply to an offence committed before the commencement of Schedule 4 [3].

Schedule 5 Amendment of other legislation

Schedule 5.1 amends the *Dangerous Goods (Road and Rail Transport) Act 2008* to clarify that the regulations may make provision for or with respect to the refund and waiver of fees.

Schedule 5.2 amends the *Land and Environment Court Act 1979*.

Schedule 5.2 [1] gives the Land and Environment Court jurisdiction (Class 1 of its jurisdiction) to hear and dispose of appeals against decisions of the EPA under section 18 or 36A of the *Radiation Control Act 1990*.

Schedule 5.2 [2] gives the Land and Environment Court jurisdiction (Class 4 of its jurisdiction) to hear and dispose of proceedings under section 24A (Enforcement of undertakings), section 25B

(Remedy or restraint of breaches) or section 27 (Retention and disposal of seized property) of the *Radiation Control Act 1990*. **Schedule 5.2 [3]** makes a consequential amendment.

Schedule 5.2 [4] gives the Land and Environment Court summary jurisdiction (Class 5 of its jurisdiction) to hear and dispose of proceedings for offences under section 25 of the *Radiation Control Act 1990*.