



New South Wales

Environment Legislation Amendment Bill 2021

Explanatory note

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

Overview of Bill

The objects of this Bill are to—

- (a) amend the *Contaminated Land Management Act 1997* for the following purposes—
 - (i) to enable the Environment Protection Authority (the *EPA*) to give clean-up notices and prevention notices as soon as the EPA is notified of contamination of land,
 - (ii) to enable the EPA to require financial assurances under ongoing maintenance orders, restrictions and public positive covenants,
 - (iii) to require the EPA to consider the financial capacity of a person before requiring a financial assurance from the person,
 - (iv) to ensure consistency between the maximum penalties for offences under the *Contaminated Land Management Act 1997* and the maximum penalties for similar offences under the *Protection of the Environment Operations Act 1997*,
 - (v) to ensure consistency between the court orders available in relation to offences under the *Contaminated Land Management Act 1997* and the court orders available in relation to offences under the *Protection of the Environment Operations Act 1997*,
 - (vi) to ensure consistency between the evidentiary presumptions under analysts' certificates under the *Contaminated Land Management Act 1997* and corresponding presumptions under other environment protection legislation,
 - (vii) to enable the EPA to recover monetary benefits from any of the following persons who benefit from the commission of an offence by a corporation—

- (A) a person who is, or was, at the time of the commission of the offence, a director of the corporation,
 - (B) a related body corporate,
 - (C) a person who is, or was, at the time of the commission of the offence, a director of related bodies corporate,
- (viii) to make it an offence for certain persons involved in the management of a corporation or related body corporate and related bodies corporate to receive, acquire or accrue a monetary benefit as a result of the commission by the corporation of an offence,
- (ix) to update references to members of the EPA Board consequent on changes to the structure of the EPA Board,
- (x) to update references to repealed provisions of the *Environmental Planning and Assessment Act 1979*,
- (b) amend the *Land and Environment Court Act 1979* to give the Land and Environment Court jurisdiction to hear and dispose of proceedings to recover monetary benefits from any of the following persons who benefit from the commission of an offence by a corporation under environment protection legislation—
- (i) a person who is, or was, at the time of the commission of the offence, a director of the corporation,
 - (ii) related bodies corporate,
 - (iii) a person who is, or was, at the time of the commission of the offence, a director of related body corporate,
- (c) amend the *Pesticides Act 1999* for the following purposes—
- (i) to enable the EPA to make a pesticide control order without the Minister’s approval,
 - (ii) to enable the EPA to recover monetary benefits from any of the following persons who benefit from the commission of an offence by a corporation—
 - (A) a person who is, or was, at the time of the commission of the offence, a director of the corporation,
 - (B) related bodies corporate,
 - (C) a person who is, or was, at the time of the commission of the offence, a director of related bodies corporate,
 - (iii) to make it an offence for certain persons involved in the management of a corporation or related body corporate and related bodies corporate to receive, acquire or accrue a monetary benefit as a result of the commission by the corporation of an offence,
 - (iv) to ensure consistency in the court orders available in relation to offences under the *Pesticides Act 1999* and the court orders available in relation to offences under the *Protection of the Environment Operations Act 1997*,
 - (v) to ensure consistency between the evidentiary presumptions under analysts’ certificates under the *Pesticides Act 1999* and the corresponding presumptions under other environment protection legislation,
 - (vi) to update references to members of the EPA Board consequent on changes to the structure of the EPA Board,
- (d) amend the *Protection of the Environment Administration Act 1991* to—
- (i) update provisions relating to the structure and administration of the EPA Board to clarify the functions of the Chairperson of the EPA Board, the Chief Executive Officer, and other members of the EPA Board,
 - (ii) clarify the nature of the directions the Minister may give the EPA,
 - (iii) extend protections against personal liability to include the Minister and Chief Executive Officer of the EPA in carrying out functions under the *environment protection legislation* and other legislation,

- (iv) prescribe the legislation that constitutes environment protection legislation,
- (e) amend the *Protection of the Environment Operations Act 1997* for the following purposes—
 - (i) to enable the EPA to consider the conduct of the following persons in determining whether a corporation is a fit and proper person when making licensing decisions—
 - (A) current and former directors of the corporation,
 - (B) related bodies corporate,
 - (C) current and former directors of the related bodies corporate,
 - (ii) to extend the offence of failing to comply with a condition of a licence to a failure to comply with a condition of the suspension, revocation or surrender of a licence by a person to whom the condition has been varied to apply,
 - (iii) to enable appropriate regulatory authorities to issue clean-up notices and prevention notices to any of the following if a corporation does not comply with an environment protection notice—
 - (A) current and former directors of the corporation,
 - (B) related bodies corporate,
 - (iv) to enable appropriate regulatory authorities to issue clean-up notices to persons reasonably suspected of having contributed to a pollution incident,
 - (v) to enable the Minister to issue prohibition notices to a occupiers of a class of premises or to a class of persons,
 - (vi) to extend a public authority’s ability to recover the costs of clean-up action taken by the authority in relation to a pollution incident to include persons the authority reasonably suspects contributed to the pollution incident, in addition to occupiers and persons the authority reasonably suspects caused the pollution incident,
 - (vii) to extend the offence of transporting or depositing waste to include, in addition to the person transporting or depositing the waste and the owner of the waste, the owner of the vehicle in which the waste is transported,
 - (viii) to provide for the new offences of—
 - (A) giving false or misleading information to the EPA, and
 - (B) knowingly giving false or misleading information to the EPA,
 - (ix) to prescribe the following offences as repeat waste offences, which make an offender liable to an additional penalty of an amount up to the maximum penalty for the relevant waste offence or imprisonment for up to 2 years, or both, if the offender commits a subsequent waste offence within 5 years of being convicted of an earlier waste offence—
 - (A) wilfully or negligently disposing of waste in a manner that harms or is likely to harm the environment,
 - (B) supplying information about waste to another person in the course of dealing with the waste, being information that is false or misleading in a material respect,
 - (x) to enable the EPA to recover monetary benefits from any of the following persons who benefit from the commission of an offence by a corporation—
 - (A) a person who is, or was, at the time of the commission of the offence, a director of the corporation,
 - (B) related bodies corporate,
 - (C) a person who is, or was, at the time of the commission of the offence, a director of related bodies corporate,
 - (xi) to make it an offence for certain persons involved in the management of a corporation or related body corporate and related bodies corporate to receive, acquire or accrue a monetary benefit as a result of the commission by the corporation of an offence,

- (xii) to prescribe the offence of giving false or misleading information to the EPA as an executive liability offence,
 - (xiii) to provide for the new offence of delaying, obstructing, assaulting, threatening or intimidating an authorised officer in the exercise of the officer's powers, in addition to the existing offence of wilfully delaying or obstructing an authorised officer,
 - (xiv) to extend the existing offence for wilfully delaying or obstructing an authorised officer in the exercise of the officer's powers to include assaulting, threatening or intimidating the authorised officer,
 - (xv) to provide a power to prescribe, by regulation, additional legislation to which the investigation provisions under the *Protection of the Environment Operations Act 1997*, Chapter 7 extends,
 - (xvi) to clarify the time within which summary proceedings for the offence of giving false or misleading information to the EPA may be commenced,
 - (xvii) to provide that restraining orders may be made in relation to a person against whom proceedings have been commenced that may result in the person being required to pay amounts representing monetary benefits acquired by or accrued to the person as a result of the commission of an offence,
 - (xviii) to ensure consistency between the evidentiary presumptions under analysts' certificates under the *Protection of the Environment Operations Act 1997* and corresponding presumptions under other environment protection legislation,
 - (xix) to require the EPA to consider the financial capacity of a person before requiring a financial assurance from the person,
 - (xx) to enable the EPA to impose restrictions on the use of, or public positive covenants, on land for the purpose of enforcing licence conditions or conditions of licence suspension, revocation or surrender,
 - (xxi) to increase penalties for particular offences to reflect contemporary community expectations,
 - (xxii) to clarify that when a licence is transferred, it is subject to the conditions to which the licence is subject at the time of the transfer,
 - (xxiii) to enable a person other than the holder, or former holder, of a licence, to apply to vary the conditions of the suspension, revocation or surrender of the licence,
 - (xxiv) to update references to members of the EPA Board consequent on changes to the structure of the EPA Board,
 - (xxv) to update references to entities consequent on changes in administrative arrangements,
 - (xxvi) to update references to repealed provisions of the *Environmental Planning and Assessment Act 1979*,
 - (xxvii) to update the formatting of provisions, and make other amendments of a consequential or ancillary nature,
- (f) amend the *Radiation Control Act 1990* for the following purposes—
- (i) to enable the EPA to recover monetary benefits from any of the following persons who benefit from the commission of an offence by a corporation—
 - (A) a person who is, or was, at the time of the commission of the offence, a director of the corporation,
 - (B) related bodies corporate,
 - (C) a person who is, or was, at the time of the commission of the offence, a director of related bodies corporate,
 - (ii) to make it an offence for certain persons involved in the management of a corporation or related body corporate and related bodies corporate to receive, acquire or accrue a monetary benefit as a result of the commission by the corporation of an offence,

- (iii) to ensure consistency between the court orders available in relation to offences under the *Radiation Control Act 1990* with the court orders available in relation to offences under the *Protection of the Environment Operations Act 1997*,
- (iv) to require the EPA to consider the financial capacity of a person before requiring a financial assurance from the person,
- (v) to update references to the EPA and members of the EPA Board consequent on changes to the structure of the EPA Board,
- (g) amend the *Waste Avoidance and Resource Recovery Act 2001* for the following purposes—
 - (i) to replace the reference to “commencement of this Part” in section 44 to refer to 1 December 2017, being the commencement of the section, to remove ambiguity given the different dates for commencement of different sections in the Part,
 - (ii) to update the formatting of provisions.

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.

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

Schedule 1[1]–[3] amend the *Contaminated Land Management Act 1997*, sections 4(1) and 6(4) to—

- (a) update references to repealed or substituted provisions of the *Environmental Planning and Assessment Act 1979*, and
- (b) update definitions consequent on amendments in Schedules 1[9], [35] and [37], and
- (c) update references to members of the Board of the EPA consequent on amendments in Schedule 4[6].

Schedule 1[4] amends the *Contaminated Land Management Act 1997*, section 10 to increase the maximum penalty for failing to comply with a preliminary investigation order to \$1,000,000 for a corporation or \$250,000 for an individual and increases the maximum penalty for a continuing offence to \$120,000 a day for a corporation or \$60,000 a day for an individual.

Schedule 1[5] and [6] amend the *Contaminated Land Management Act 1997*, section 14 to increase the maximum penalty for failing to comply with a direction or other requirement under a management order on a continuing basis from \$66,000 to \$120,000 for each day the offence continues for a corporation, and from \$33,000 to \$60,000 for an individual.

Schedule 1[7] amends the *Contaminated Land Management Act 1997*, section 28 to increase the maximum penalty for failing to comply with an ongoing maintenance order to \$1,000,000 for a corporation or \$250,000 for an individual and makes the offence a continuing offence, subject to a further penalty for each day the offence continues.

Schedule 1[9] amends the *Contaminated Land Management Act 1997*, section 42A to provide that financial assurances may be required to secure or guarantee funding for or towards requirements under ongoing maintenance orders and restriction or public positive covenants imposed under the Act, in addition to requirements under management orders. **Schedule 1[8], [11]–[14] and [34]** make consequential amendments.

Schedule 1[10] amends the *Contaminated Land Management Act 1997*, section 42B to require the EPA to consider the financial capacity of a person before requiring the person to provide a financial assurance.

Schedule 1[15], [25] and [26] amend the *Contaminated Land Management Act 1997* consequent on amendments in Schedule 4[6].

Schedule 1[16] amends the *Contaminated Land Management Act 1997*, section 45 to increase the maximum penalty for wilfully delaying or obstructing a person carrying out any action in compliance with an order or notice to \$1,000,000 for a corporation or \$250,000 for an individual and increases the maximum penalty for the continuing offence to \$120,000 for each day the offence continues for a corporation or \$60,000 for an individual.

Schedule 1[17] substitutes the *Contaminated Land Management Act 1997*, section 46 to enable the EPA to give a clean-up or prevention notice in relation to land if the EPA has been notified of contamination of land, in addition to land that the EPA has declared to be significantly contaminated.

Schedule 1[18] and [19] amend the *Contaminated Land Management Act 1997*, section 48 to increase the penalties for carrying out a site audit without accreditation, or making false representations about being capable of carrying out site audits, to \$1,000,000 for a corporation or \$250,000 for an individual and makes the offence a continuing offence, subject to a further penalty for each day the offence continues.

Schedule 1[20]–[22] amend the *Contaminated Land Management Act 1997*, section 57 to increase the penalties for making false representations about accreditation to carry out site audits while suspended or prohibited to \$1,000,000 for a corporation or \$250,000 for an individual and makes the offence a continuing offence, subject to a further penalty for each day the offence continues.

Schedule 1[23] and [24] amend the *Contaminated Land Management Act 1997*, section 60(1) and (2) to increase the maximum penalties offences relating to a failure to report contamination of land \$2,000,000 for a corporation and to \$500,000 for an individual, and to increase the maximum penalty for a continuing offence to \$240,000 for each day the offence continues for a corporation, and to \$120,000 for an individual.

Schedule 1[24] amend the *Contaminated Land Management Act 1997*, section 60(2) to increase the maximum penalty for an owner of land that has been contaminated failing to report the contamination to \$2,000,000 for a corporation and to \$500,000 for an individual and to increase the maximum penalty for a continuing offence from \$77,000 to \$240,000 for each day the offence continues for a corporation, and from \$33,000 to \$120,000 for an individual.

Schedule 1[27] amends the *Contaminated Land Management Act 1997*, section 72 to ensure the evidentiary presumptions relating to analysts' certificates are consistent across the environment protection legislation.

Schedule 1[28]–[30] amend the *Contaminated Land Management Act 1997*, Part 10, Division 2A to ensure that the orders a court may make in relation to offenders are consistent with the orders that may be made by a court under other environment protection legislation, including—

- (a) clarifying that 1 or more available orders may be made in relation to an offender, and
- (b) clarifying that orders may be made in relation to an offender in addition to other penalties or action taken against the offender, and
- (c) providing for orders for the recovery of costs and expenses in relation to investigating, managing or remediating contamination, or addressing the risk of harm from contamination, caused by the commission of an offence by the offender, and
- (d) providing for orders for the recovery of costs and expenses of the EPA relating to the investigation of an offence by the offender, and
- (e) providing for orders that an offender carry out audits of activities carried on by the offender, and
- (f) providing for orders that an offender pay an amount into the Environmental Trust for the purposes of specific projects or for general environmental purposes, and

- (g) providing for orders that an offender establish training courses for the offender's employees or contractors.

Schedule 1[31]–[33] amend the *Contaminated Land Management Act 1997*, section 95B to update the formatting of the provision.

Schedule 1[35] inserts proposed Division 2B into the *Contaminated Land Management Act 1997*, Part 10. The Division provides that, if a court convicts a corporation of an offence, the court may order that certain persons pay an amount representing the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence by the corporation.

Schedule 1[36] amends the *Contaminated Land Management Act 1997*, section 103 to update the formatting of the penalty and provide for a term of imprisonment of up to 18 months as an alternative to, or in addition to, the maximum monetary penalty for individuals.

Schedule 1[37] inserts proposed section 103A into the *Contaminated Land Management Act 1997*. The section makes it an offence for certain persons to receive, acquire or accrue a monetary benefit as a result of the commission by a corporation of an offence (the *underlying offence*). The new offence carries a maximum penalty equal to the maximum penalty of the underlying offence.

Schedule 1[38] amends the *Contaminated Land Management Act 1997*, section 107 to increase the maximum penalty for disclosing information that relates to manufacturing or other industrial or commercial secrets or working processes from 100 penalty units to 200 penalty units.

Schedule 1[39] and [40] amend the *Contaminated Land Management Act 1997*, section 112 to enable the regulations to create offences with penalties of up to 400 penalty units for corporations and 200 penalty units for individuals.

Schedule 1[41] amends the *Contaminated Land Management Act 1997* to provide for transitional matters consequent on the amendments in Schedule 1[17] and [28]–[33].

Schedule 2 Amendment of Land and Environment Court Act 1979 No 204

Schedule 2 amends the *Land and Environment Court Act 1979*, section 20 to give the Land and Environment Court jurisdiction to hear and dispose of proceedings under the *Contaminated Land Management Act 1997*, the *Pesticides Act 1999*, the *Protection of the Environment Operations Act 1997* and the *Radiation Control Act 1990* in relation to the proposed provisions providing for—

- (a) the recovery of costs and expenses, and compensation, after an offence has been proved, and
- (b) the recovery from certain persons of monetary benefits received, acquired or accrued by those persons as a result of the commission of an offence by a corporation.

Schedule 3 Amendment of Pesticides Act 1999 No 80

Schedule 3[1] and [9]–[11] amend the *Pesticides Act 1999* to—

- (a) insert a definition consequent on amendments in Schedule 3[5] and [13], and
- (b) update references to members of the Board of the EPA consequent on amendments in Schedule 4[6].

Schedule 3[2] amends the *Pesticides Act 1999*, section 38 to remove the requirement for the EPA to obtain the Minister's approval before making an order to prohibit or control the use of a pesticide or class of pesticide or authorise the use or possession of a restricted pesticide or class of restricted pesticide. **Schedule 3[3] and [4]** make consequential amendments.

Schedule 3[5] inserts proposed section 44A into the *Pesticides Act 1999*. The section makes it an offence for certain persons to receive, acquire or accrue a monetary benefit as a result of the

commission by a corporation of an offence (the *underlying offence*). The new offence carries a maximum penalty equal to the maximum penalty for the underlying offence.

Schedule 3[6]–[8] amend the *Pesticides Act 1999*, sections 93, 97 and 99, respectively to ensure that the orders a court may make in relation to offenders are consistent with the orders that may be made by a court under other environment protection legislation, by doing the following—

- (a) clarifying that orders may be made in relation to an offender in addition to other penalties or action taken against the offender,
- (b) providing for orders that the offender take specified action to publicise the offence or notify a particular person of offences,
- (c) providing for orders for the recovery of costs and expenses relating to the investigation of an offence by the offender,
- (d) providing for orders that an offender pay an amount into the Environmental Trust for the purposes of specific projects or for general environmental purposes,
- (e) providing for orders that an offender attend, or cause the offender’s employees or contractors to attend, training courses,
- (f) providing for orders that an offender establish training courses for the offender’s employees or contractors.

Schedule 3[12] amends the *Pesticides Act 1999*, section 107 to ensure the evidentiary presumptions relating to analysts’ certificates are consistent across the environment protection legislation.

Schedule 3[13] inserts proposed section 112C into the *Pesticides Act 1999*. The section provides that, if a court convicts a corporation of an offence, the court may order that certain persons pay an amount representing the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence by the corporation.

Schedule 3[14] amends the *Pesticides Act 1999* to provide for transitional matters consequent on the amendments in Schedule 3[6]–[8].

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

Schedule 4[1], [2], [6], [10]–[12], [14]–[17] and [20] amend the *Protection of the Environment Administration Act 1991* consequent on the amendments relating to the structure and administration of the EPA in Schedule 4[7]–[9], and [21]–[30].

Schedule 4[3] replaces the *Protection of the Environment Administration Act 1991*, section 3(1), definition of *environment protection legislation* to update the formatting of the definition and provide that the regulations may prescribe additional Acts, or parts of Acts, for the purposes of the definition. **Schedule 4[4]** provides that additional Acts or parts of Acts may only be prescribed with the concurrence of the Minister responsible for the Acts or parts.

Schedule 4[5] substitutes the *Protection of the Environment Administration Act 1991*, section 13 to provide that the EPA is not subject to the control of the Minister. The new provision confirms that the Minister may give the EPA directions if it is in the public interest for the Minister to do so and clarifies the nature of the directions the Minister may give. The amendment also requires directions given to the EPA by the Minister be published on the EPA’s website.

Schedule 4[7] substitutes the *Protection of the Environment Administration Act 1991*, section 14 and inserts proposed section 14A to provide that the Chief Executive Officer of the EPA is a member of the Board of the EPA, but is not entitled to vote on a matter considered by the Board, and clarify that the Chief Executive Officer is responsible for the day-to-day operations of the EPA.

Schedule 4[8] amends the *Protection of the Environment Administration Act 1991*, section 15 to provide for the establishment and membership of the Board of the EPA.

Schedule 4[9] amends the *Protection of the Environment Administration Act 1991*, section 16 to clarify that the functions of the Board of the EPA include determining policies and plans relating to organisational governance and risk management.

Schedule 4[13] amends the *Protection of the Environment Administration Act 1991*, section 18(2) to provide that the Chairperson of the Board of the EPA must be appointed on a part-time basis.

Schedule 4[18] amends the *Protection of the Environment Administration Act 1991*, section 34A to provide that amounts ordered to be paid in relation to the new offences of acquiring or receiving monetary benefits under the *Contaminated Land Management Act 1997*, the *Pesticides Act 1999*, the *Protection of the Environment Operations Act 1997* and the *Radiation Control Act 1990* may be paid into the Environment Protection Authority Fund.

Schedule 4[19] substitutes the *Protection of the Environment Administration Act 1991*, section 35 to update the formatting of the provision and extend the exclusion of personal liability to the Minister and Chief Executive Officer of the EPA.

Schedule 4[21]–[30] amend the *Protection of the Environment Administration Act 1991*, Schedule 1 and omit Schedule 2A to clarify and consolidate—

- (a) the provisions relating to the employment of the members of the Board, and
- (b) the procedural provisions relating to meetings of the Board.

Schedule 4[31] amends the *Protection of the Environment Administration Act 1991* to provide for savings and transitional matters consequent on the amendments in Schedule [6]–[8], [12], and [20]–[28].

Schedule 5 Amendment of Protection of the Environment Operations Act 1997 No 156

Schedule 5[1] amends the *Protection of the Environment Operations Act 1997*, section 29 to update a reference to the Secretary of a Government Department.

Schedule 5[2]–[6] amend the *Protection of the Environment Operations Act 1997*, sections 29, 50 and 51 to update references to repealed or substituted provisions of the *Environmental Planning and Assessment Act 1979*.

Schedule 5[7]–[10] and [12] amend the *Protection of the Environment Operations Act 1997*, sections 53, 54, 55 and 58 to update the formatting of the provisions.

Schedule 5[11] amends the *Protection of the Environment Operations Act 1997*, section 55 to provide that when a licence is transferred, it is transferred subject to the conditions to which the licence is subject at the time of the transfer, unless those conditions are varied as part of the transfer.

Schedule 5[14] amends the *Protection of the Environment Operations Act 1997*, section 64 to extend the offence of failing to comply with a condition of a licence to a failure to comply with a condition of the suspension, revocation or surrender of a licence by a person to whom the condition has been varied to apply.

Schedule 5[15] amends the *Protection of the Environment Operations Act 1997*, section 66 to increase the maximum penalty for giving a certificate to an appropriate regulatory authority that contains false or misleading information about compliance with the conditions of a licence from \$250,000 to \$500,000 for a corporation and from \$120,000 to \$250,000 for an individual.

Schedule 5[16] and [17] amend the *Protection of the Environment Operations Act 1997*, section 66 to increase the maximum penalty for offences relating to the publication of monitoring data from \$4,400 to \$20,000 for a corporation and from \$2,200 to \$10,000 for an individual.

Schedule 5[18] inserts proposed section 81A into the *Protection of the Environment Operations Act 1997*. The section enables the conditions of the suspension, revocation or surrender of a licence to be amended to apply to a person other than the holder or former holder of the relevant licence on the application of the person to whom the condition is to apply.

Schedule 5[19]–[24] amend the *Protection of the Environment Operations Act 1997*, section 83 to provide that the appropriate regulatory authority may, in determining whether a corporation is a fit and proper person, consider whether current and former directors of the corporation, related bodies corporate or current or former directors of related bodies corporate have contravened relevant legislation and are otherwise fit and proper persons.

Schedule 5[25]–[30] amend the *Protection of the Environment Operations Act 1997*, section 91 to extend an appropriate regulatory authority's power to direct particular persons to take clean-up actions so the appropriate regulatory authority can direct a person who contributes to a pollution incident to take clean-up action, regardless of whether another person has also been directed to take clean-up action. The amendments also provide that the person may recover costs of taking the action from another person who caused or contributed to the pollution incident.

Schedule 5[31] inserts proposed sections 91A and 91B into the *Protection of the Environment Operations Act 1997*. The sections—

- (a) enable an appropriate regulatory authority to give current and former directors of a corporation and related bodies corporate clean-up notices (**supplementary clean-up notices**) if a clean-up notice has been given to the corporation and the corporation has failed to comply with the notice, and
- (b) provide that a person given a supplementary clean-up notice may recover costs of taking the action from another person who caused or contributed to the pollution incident, and
- (c) make it an offence not to comply with a supplementary clean-up notice.

Schedule 5[32] inserts proposed section 96A into the *Protection of the Environment Operations Act 1997*. The section enables an appropriate regulatory authority to give current and former directors of a corporation and related bodies corporate prevention notices if a prevention notice has been given to the corporation and the corporation has failed to comply with the notice.

Schedule 5[33] and [34] amend the *Protection of the Environment Operations Act 1997*, section 101 to update the formatting of the provision and extend the Minister's power to issue prevention notices to include—

- (a) classes of premises, in addition to specific premises, and
- (b) classes of persons, in addition to specific persons.

Schedule 5[35] inserts proposed section 101A into the *Protection of the Environment Operations Act 1997*. The section enables an appropriate regulatory authority to give current and former directors of a corporation, related bodies corporate and current and former directors of related bodies corporate prohibition notices if a prohibition notice has been given to the corporation and the corporation has failed to comply with the notice.

Schedule 5[36] omits a redundant cross-reference consequent on the amendment in Schedule 5[31].

Schedule 5[37] updates the formatting of a provision and makes an amendment consequent on the amendments in Schedule 5[31].

Schedule 5[38] amends the *Protection of the Environment Operations Act 1997*, section 113 to provide for a term of imprisonment of up to 18 months as an alternative to, or in addition to, the maximum monetary penalty for individuals for making false or misleading statement in reports.

Schedule 5[39] amends the *Protection of the Environment Operations Act 1997*, section 143 to extend the offence of transporting waste to a place that cannot lawfully be used as a waste facility for that waste, or causes or permits the waste to be transported, to the owner of a vehicle in which the waste is transported.

Schedule 5[40] amends the *Protection of the Environment Operations Act 1997*, section 144AA(1) to increase the maximum penalty for giving false or misleading information about waste from \$250,000 to \$500,000 for a corporation and from \$120,000 to \$250,000 for an individual.

Schedule 5[41] amends the *Protection of the Environment Operations Act 1997*, section 144AA(2) to increase the maximum monetary penalty for knowingly giving false or misleading information about waste from \$500,000 to \$1,000,000 for a corporation and from \$240,000 to \$500,000 for an individual.

Schedule 5[42] and [43] amend the *Protection of the Environment Operations Act 1997*, section 144AB to include offences of wilfully or negligently disposing of waste in a manner that harms or is likely to harm the environment, giving false or misleading information about waste or knowingly giving false or misleading information about waste as repeat waste offences. Repeat waste offences render an offender liable to an additional maximum monetary penalty equal to the original offence by an individual or imprisonment for 2 years, or both, if the offender commits a further offence within 5 years of an earlier offence.

Schedule 5[44] updates the drafting of a provision in line with contemporary drafting practices by removing redundant words.

Schedule 5[45] inserts the following proposed sections into the *Protection of the Environment Operations Act 1997*—

- (a) proposed section 167A, which creates the following offences—
 - (i) a strict liability offence of providing the EPA with false or misleading information, with a maximum penalty of \$500,000 for a corporation or \$250,000 for an individual,
 - (ii) an offence for knowingly providing the EPA with false or misleading information, with a maximum penalty of \$1,000,000 for a corporation or \$500,000 or imprisonment for up to 18 months, or both, for an individual,
- (b) proposed section 167B, which makes it an offence for certain persons to receive, acquire or accrue a monetary benefit as a result of the commission by a corporation of an offence (the **underlying offence**) with a maximum penalty equal to the maximum penalty of the underlying offence.

Schedule 5[46] amends the *Protection of the Environment Operations Act 1997*, section 169A to update a cross-reference consequent on the amendments in Schedule 5[31].

Schedule 5[47] amends the *Protection of the Environment Operations Act 1997*, section 169A to prescribe the new offence under proposed section 167A relating to giving false or misleading information to the EPA as an executive liability offence.

Schedule 5[48]–[50] amend the *Protection of the Environment Operations Act 1997*, section 177 to—

- (a) increase the maximum penalties for offences under sections 177(1)–(4) relating to giving false or misleading information to an auditor, failing to give information to an auditor, including false or misleading information in an audit report and failing to include information in an audit report—
 - (i) from \$250,000 to \$1,000,000 for a corporation with a further \$120,000 a day for continuing offences, and
 - (ii) from \$120,000 to \$250,000 for an individual with a further \$60,000 a day for continuing offences, and
- (b) make a consequential amendment to section 177(5) to retain the current maximum penalty for offences relating to failure to retain or produce audit documentation.

Schedule 5[51] amends the *Protection of the Environment Operations Act 1997*, section 186 to provide that investigation provisions extend to environment protection legislation prescribed by the regulations in addition to the legislation specified in the provision.

Schedule 5[52]–[54] amend the *Protection of the Environment Operations Act 1997*, section 211 to provide that an individual who knowingly gives false or misleading information or does a thing knowing that the thing does not comply with a requirement under the Act is, instead of or in addition to a monetary penalty, liable to imprisonment for up to 18 months. The amendments also update the formatting of the provision.

Schedule 5[55] amends the *Protection of the Environment Operations Act 1997*, section 211 to—

- (a) extend the current offence of wilfully delaying or obstructing an authorised officer to include wilfully assaulting, threatening or intimidating an authorised officer and increasing the maximum penalty—
 - (i) from \$1,000,000 to \$2,000,000 for a corporation, with an additional \$240,000 a day for a continuing offence, or
 - (ii) from \$250,000 to \$500,000 for an individual, with an additional \$120,000 a day for a continuing offence, and
- (b) provide for a new strict liability offence for delaying, obstructing, assaulting, threatening or intimidating authorised officers with the following penalties—
 - (i) \$1,000,000 for a corporation, with an additional \$120,000 a day for a continuing offence, or
 - (ii) \$250,000 for an individual, with an additional \$60,000 a day for a continuing offence, and
- (c) provide that the strict liability offence is an alternative open to the court if satisfied that the strict liability offence has been proved.

Schedule 5[56] amends the *Protection of the Environment Operations Act 1997*, section 213 to provide the procedural provisions in Chapter 8 extend to environment legislation prescribed by the regulations in addition to the legislation specified in the provision.

Schedule 5[57] amends the *Protection of the Environment Operations Act 1997*, section 216 consequent on the amendments in Schedule 5[45].

Schedule 5[58] amends the *Protection of the Environment Operations Act 1997*, section 216 to update cross-references.

Schedule 5[59] amends the *Protection of the Environment Operations Act 1997*, section 230 to provide that the provisions relating to restraining orders apply in proceedings for offences in which a person may be required to pay an amount representing monetary benefits acquired or received by the person. **Schedule 5[60] and [61]** make consequential amendments.

Schedule 5[62], [64]–[67], [70], [72], [75], [77]–[79] and [81]–[82] amend the *Protection of the Environment Operations Act 1997* to—

- (a) update references to repealed or substituted provisions of the *Environmental Planning and Assessment Act 1979*, and
- (b) clarify that certain transitional arrangements in connection with the repeal of the *Environmental Planning and Assessment Act 1979*, Part 3A continue to have effect to the extent that particular grants of approval and consent under the *Protection of the Environment Operations Act 1997* are preserved, and
- (c) update definitions consequent on other amendments, and
- (d) update references to members of the Board of the EPA consequent on amendments in Schedule 4[6].

Schedule 5[63] inserts proposed Part 8.3A into the *Protection of the Environment Operations Act 1997*, Chapter 8. The Part provides that, if a court convicts a corporation of an offence, the court may order that certain persons pay an amount representing the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence by the corporation.

Schedule 5[68] amends the *Protection of the Environment Operations Act 1997*, section 262 to ensure the evidentiary presumptions relating to analysts' certificates are consistent across the environment protection legislation.

Schedule 5[69] amends the *Protection of the Environment Operations Act 1997*, section 281 to—

- (a) increase the maximum penalty for failing to provide information required by a police officer to \$20,000 for a corporation or \$10,000 for an individual, and
- (b) increase the maximum penalty for knowingly providing false or misleading information to a police officer in purported compliance with a requirement to \$40,000 for a corporation or \$20,000 for an individual, with imprisonment for up to 18 months instead of, or in addition to, the monetary penalty.

Schedule 5[71] amends the *Protection of the Environment Operations Act 1997*, section 299 to require the EPA to consider the financial capacity of a person before requiring the person to provide a financial assurance.

Schedule 5[72] amends the *Protection of the Environment Operations Act 1997*, section 305 to extend the exclusion of personal liability to the Chief Executive Officer of the EPA.

Schedule 5[73] inserts proposed new Part 9.4A into the *Protection of the Environment Operations Act 1997*, Chapter 9. The Part enables the EPA to impose restrictions on the use of, or public positive covenants on, land for the purpose of enforcing a condition of a licence, or a condition of the suspension, revocation or surrender of a licence.

Schedule 5[74] amends the *Protection of the Environment Operations Act 1997*, section 320A to increase the maximum penalty for making false representations as to goods or services being approved, provided, recommended or used by the EPA, or making false representations that a person holds a licence, to \$1,000,000 for a corporation and to \$250,000 for an individual, with imprisonment for up to 18 months as an alternative, or in addition to, the monetary penalty.

Schedule 5[76] amends the *Protection of the Environment Operations Act 1997*, Schedule 2 to provide that the regulations may give effect to and enforce compliance with national environmental protection measures made under the *National Environment Protection Council Act 1994* of the Commonwealth.

Schedule 5[80] amends the *Protection of the Environment Operations Act 1997* to provide for transitional matters consequent on the amendments in Schedule 5[30]–[34], [58] and [59].

Schedule 6 Amendment of Protection of the Environment Operations (General) Regulation 2021

Schedule 6 amends the *Protection of the Environment Operations (General) Regulation 2021*, Schedule 6 to update a reference to a penalty notice offence consequent on amendments in Schedule 5[31].

Schedule 7 Amendment of Radiation Control Act 1990 No 13

Schedule 7[1]–[3], [5], [6], [10] and [12] amend the *Radiation Control Act 1990*, sections 4(1), 5A, 23A, 25, 29 and 36 to—

- (a) updates and consolidates definitions consequent on amendments in Schedule 7[7], and
- (b) update references to members of the Board of the EPA consequent on amendments in Schedule 4[6].

Schedule 7[4] amends the *Radiation Control Act 1990*, section 5A to update a reference to a Government Department.

Schedule 7[7] inserts proposed section 27A into the *Radiation Control Act 1990*. The section provides that, if a court convicts a corporation of an offence, the court may order that certain

persons pay an amount representing the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence by the corporation.

Schedule 7[8] amends the *Radiation Control Act 1990*, section 28D to require the EPA to consider the financial capacity of a person before requiring the person to provide a financial assurance.

Schedule 7[9] amends the *Radiation Control Act 1990*, section 28J to extend the exclusion of personal liability to the Chief Executive Officer of the EPA.

Schedule 7[11] inserts proposed section 33B into the *Radiation Control Act 1990*. The section makes it an offence for a person to receive, acquire or accrue a monetary benefit as a result of the commission by a corporation of an offence (the *underlying offence*). The new offence carries a maximum penalty equal to the maximum penalty for the underlying offence.

Schedule 8 Amendment of Radiation Control Regulation 2013

Schedule 8[1]–[9], [11] and [14]–[16] amend the *Radiation Control Regulation 2013* to update references to members of the Board of the EPA consequent on amendments in Schedule 4[6].

Schedule 8[10] and [13] amend the *Radiation Control Regulation 2013* to update references to Government Departments.

Schedule 8[12] amends the *Radiation Control Regulation 2013* to update references to an Act.

Schedule 9 Amendments to Waste Avoidance and Resource Recovery Act 2001 No 58

Schedule 9[1] amends the *Waste Avoidance and Resource Recovery Act 2001*, section 44 to replace the reference to “commencement of this Part” with a reference to 1 December 2017, being the commencement of the section, to remove ambiguity given the different dates for the commencement of different sections in the Part.

Schedule 9[2] and [3] update the formatting of the *Waste Avoidance and Resource Recovery Act 2001*, section 44.