



New South Wales

Environmental Legislation Amendment (Enforcement) Bill 1996

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to extend the limitation period within which proceedings for offences against the environmental legislation must be instituted so as to enable proceedings to be instituted within the requisite period after evidence of the offence first comes to the attention of any relevant authorised officer under that legislation (instead of only within the requisite period after the commission of the alleged offence), and
 - (b) to make it clear that authorised officers may enter premises under the environmental legislation if the officer suspects that pollution has been caused in or from the premises (at present the power of entry applies in some cases only if the officer suspects that pollution is being or is likely to be caused), and
 - (c) to make it clear that authorised officers may require an occupier of premises under the environmental legislation to produce records if the officer suspects that pollution has been caused in or from the premises (at present the power to require the production of records applies only if the officer suspects that pollution is being or is usually caused).
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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.

Clauses 3–7 are formal provisions giving effect to the amendments to the *Environmental Offences and Penalties Act 1989*, the *Clean Air Act 1961*, the *Clean Waters Act 1970*, the *Noise Control Act 1975* and the *Pollution Control Act 1970* set out in Schedules 1–5.

Schedule 1 Amendment of Environmental Offences and Penalties Act 1989

The Schedule substitutes section 12 of the Act to give effect to paragraph (a) of the above objects.

At present, proceedings for serious environmental offences must be commenced within 3 years after the commission of the alleged offence. Other environmental offences must be commenced within 12 months after the commission of the alleged offence. Under the proposed substituted section, the period is extended to 3 years or 1 year (depending on the offence) after evidence of the offence first comes to the attention of relevant authorised officers under the environmental legislation.

Schedule 2 Amendment of Clean Air Act 1961

The Schedule amends section 27 of the Act to give effect to paragraph (c) of the above objects in connection with air pollution.

Schedule 3 Amendment of Clean Waters Act 1970

The Schedule amends section 29 of the Act to give effect to paragraph (c) of the above objects in connection with water pollution.

Schedule 4 Amendment of Noise Control Act 1975

Schedule 4 [1] amends section 76 of the Act to give effect to paragraph (b) of the above objects in connection with noise.

Schedule 4 [2] also amends section 76 of the Act to give effect to paragraph (c) of the above objects in connection with noise.

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Explanatory note

Schedule 5 Amendment of Pollution Control Act 1970

Schedule 5 [1] amends section 24 of the Act to give effect to paragraph (b) of the above objects in connection with the Act.

Schedule 5 [2] also amends section 24 of the Act to give effect to paragraph (c) of the above objects in connection with the Act.



New South Wales

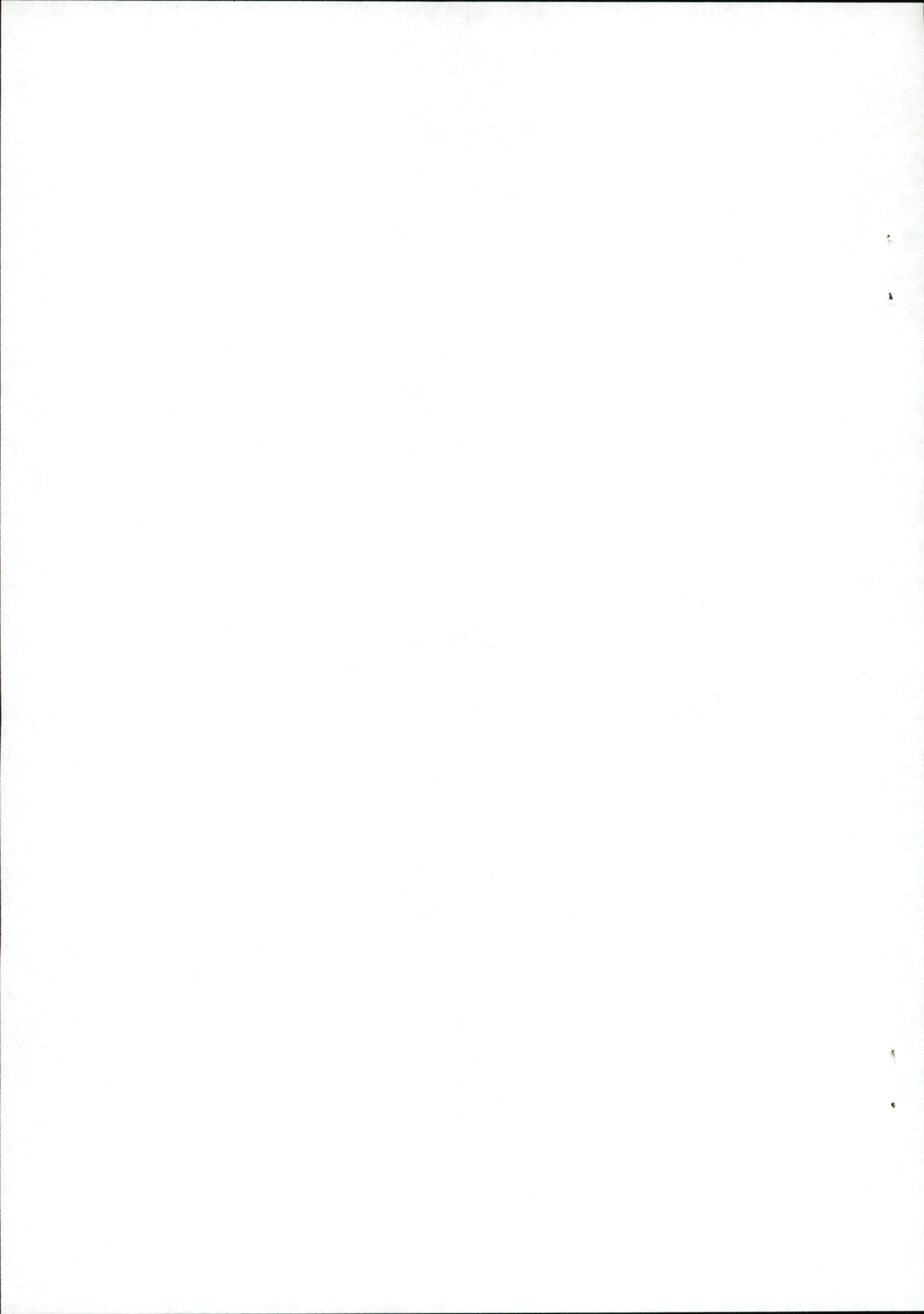
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New South Wales

Environmental Legislation Amendment (Enforcement) Bill 1996

No , 1996

A Bill for

An Act to amend the *Environmental Offences and Penalties Act 1989*, the *Pollution Control Act 1970* and certain other Acts with respect to the period within which prosecutions may be instituted and to the inspection of premises and the production of records.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Legislation Amendment (Enforcement) Act 1996*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Environmental Offences and Penalties Act 1989 No 150

The *Environmental Offences and Penalties Act 1989* is amended as set out in Schedule 1. 10

4 Amendment of Clean Air Act 1961 No 69

The *Clean Air Act 1961* is amended as set out in Schedule 2.

5 Amendment of Clean Waters Act 1970 No 78

The *Clean Waters Act 1970* is amended as set out in Schedule 3. 15

6 Amendment of Noise Control Act 1975 No 35

The *Noise Control Act 1975* is amended as set out in Schedule 4.

7 Amendment of Pollution Control Act 1970 No 95

The *Pollution Control Act 1970* is amended as set out in Schedule 5. 20

Schedule 1 Amendment of Environmental Offences and Penalties Act 1989

(Section 3)

Section 12

Omit the section. Insert instead:

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12 Time within which summary proceedings may be commenced

- (1) Proceedings for an offence against this Act may be commenced:
 - (a) in the case of a prescribed offence—within but not later than 3 years after the date on which the offence is alleged to have been committed, or 10
 - (b) in any other case—within but not later than 12 months after that date.
- (2) Proceedings for an offence against this Act may also be commenced: 15
 - (a) in the case of a prescribed offence—within but not later than 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer, or 20
 - (b) in any other case—within but not later than 12 months after that date.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence of the offence first came to the attention of any relevant authorised officer is the date specified in the information or application, unless the contrary is established. 25 30
- (4) This section applies only to proceedings that are to be dealt with summarily.

Environmental Legislation Amendment (Enforcement) Bill 1996

Schedule 1 Amendment of Environmental Offences and Penalties Act 1989

- (5) This section applies despite anything in the *Justices Act 1902* or any other Act.
- (6) This section extends to offences committed before the substitution of this section by the *Environmental Legislation Amendment (Enforcement) Act 1996*. 5
- (7) In this section:
- authorised officer** means a person who is an authorised officer for any purpose under the *Clean Air Act 1961*, the *Clean Waters Act 1970*, the *Noise Control Act 1975*, the *Pollution Control Act 1970* or the *Waste Minimisation and Management Act 1995*, whether or not the person has the functions of an authorised officer in connection with the offence concerned. 10
- evidence** of an offence means evidence of any act or omission constituting the offence. 15
- prescribed offence** means an offence arising under:
- (a) Division 1 of Part 2 of this Act, or
- (b) section 16 of the *Clean Air Act 1961*, or
- (c) section 19 of the *Clean Waters Act 1970*, or
- (d) section 27 of the *Noise Control Act 1975*, or 20
- (e) section 44, 45, 63 or 64 of the *Waste Minimisation and Management Act 1995*.
- relevant authorised officer** means:
- (a) in relation to proceedings for an offence instituted by or with the consent of the Environment Protection Authority or a member of the staff of that Authority—any authorised officer who is a member of the staff of that Authority, or 25
- (b) in relation to proceedings for an offence instituted by or with the consent of the council of a local government area or an employee of such a council—any authorised officer who is an employee of that council, or 30
- (c) in relation to proceedings for an offence instituted by any other person—any authorised officer. 35

Schedule 2 Amendment of Clean Air Act 1961

(Section 4)

Section 27 Powers of authorised officers

Omit "is usually being caused" from subsection (2) (a) (i).
Insert instead "has been caused".

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Schedule 3 Amendment of Clean Waters Act 1970

(Section 5)

Section 29 Powers of authorised officers

Omit "are usually discharged" from subsection (2) (a).
Insert instead "have been discharged".

5

**Schedule 4 Amendment of Noise Control Act
1975**

(Section 6)

[1] Section 76 Powers of authorised officers

Insert "has been," after "offensive noise" in subsection (1) (b). 5

[2] Section 76 (2) (a) (i)

Omit "is usually emitted". Insert instead "has been emitted".

**Schedule 5 Amendment of Pollution Control Act
1970**

(Section 7)

[1] Section 24 Power of entry

Insert "has been," after "pollution" in subsection (1) (b).

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[2] Section 24 (1A) (a)

Omit "is usually caused". Insert instead "has been caused".



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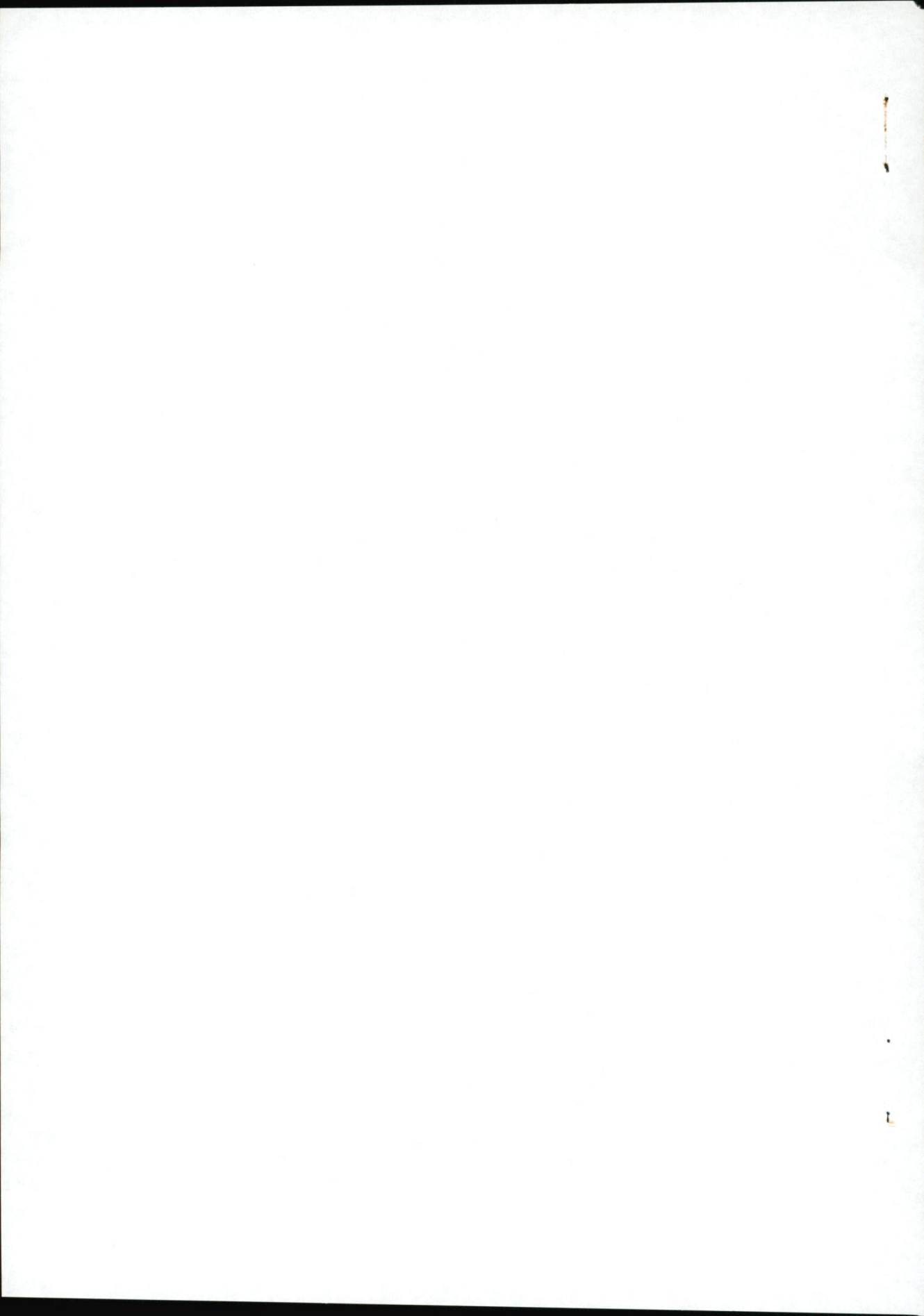
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New South Wales

Environmental Legislation Amendment (Enforcement) Act 1996 No 101

Act No 101, 1996

An Act to amend the *Environmental Offences and Penalties Act 1989*, the *Pollution Control Act 1970* and certain other Acts with respect to the period within which prosecutions may be instituted and to the inspection of premises and the production of records. [Assented to 26 November 1996]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Environmental Legislation Amendment (Enforcement) Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Environmental Offences and Penalties Act 1989 No 150

The *Environmental Offences and Penalties Act 1989* is amended as set out in Schedule 1.

4 Amendment of Clean Air Act 1961 No 69

The *Clean Air Act 1961* is amended as set out in Schedule 2.

5 Amendment of Clean Waters Act 1970 No 78

The *Clean Waters Act 1970* is amended as set out in Schedule 3.

6 Amendment of Noise Control Act 1975 No 35

The *Noise Control Act 1975* is amended as set out in Schedule 4.

7 Amendment of Pollution Control Act 1970 No 95

The *Pollution Control Act 1970* is amended as set out in Schedule 5.

Schedule 1 Amendment of Environmental Offences and Penalties Act 1989

(Section 3)

Section 12

Omit the section. Insert instead:

12 Time within which summary proceedings may be commenced

- (1) Proceedings for an offence against this Act may be commenced:
 - (a) in the case of a prescribed offence—within but not later than 3 years after the date on which the offence is alleged to have been committed, or
 - (b) in any other case—within but not later than 12 months after that date.
- (2) Proceedings for an offence against this Act may also be commenced:
 - (a) in the case of a prescribed offence—within but not later than 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer, or
 - (b) in any other case—within but not later than 12 months after that date.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence of the offence first came to the attention of any relevant authorised officer is the date specified in the information or application, unless the contrary is established.
- (4) This section applies only to proceedings that are to be dealt with summarily.

- (5) This section applies despite anything in the *Justices Act 1902* or any other Act.
- (6) This section extends to offences committed before the substitution of this section by the *Environmental Legislation Amendment (Enforcement) Act 1996*.
- (7) In this section:

authorised officer means a person who is an authorised officer for any purpose under the *Clean Air Act 1961*, the *Clean Waters Act 1970*, the *Noise Control Act 1975*, the *Pollution Control Act 1970* or the *Waste Minimisation and Management Act 1995*, whether or not the person has the functions of an authorised officer in connection with the offence concerned.

evidence of an offence means evidence of any act or omission constituting the offence.

prescribed offence means an offence arising under:

- (a) Division 1 of Part 2 of this Act, or
- (b) section 16 of the *Clean Air Act 1961*, or
- (c) section 19 of the *Clean Waters Act 1970*, or
- (d) section 27 of the *Noise Control Act 1975*, or
- (e) section 44, 45, 63 or 64 of the *Waste Minimisation and Management Act 1995*.

relevant authorised officer means:

- (a) in relation to proceedings for an offence instituted by or with the consent of the Environment Protection Authority or a member of the staff of that Authority—any authorised officer who is a member of the staff of that Authority, or
- (b) in relation to proceedings for an offence instituted by or with the consent of the council of a local government area or an employee of such a council—any authorised officer who is an employee of that council, or
- (c) in relation to proceedings for an offence instituted by any other person—any authorised officer.

Schedule 2 Amendment of Clean Air Act 1961

(Section 4)

Section 27 Powers of authorised officers

Omit "is usually being caused" from subsection (2) (a) (i).
Insert instead "has been caused".

Schedule 3 Amendment of Clean Waters Act 1970

(Section 5)

Section 29 Powers of authorised officers

Omit "are usually discharged" from subsection (2) (a).
Insert instead "have been discharged".

**Schedule 4 Amendment of Noise Control Act
1975**

(Section 6)

[1] Section 76 Powers of authorised officers

Insert "has been," after "offensive noise" in subsection (1) (b).

[2] Section 76 (2) (a) (i)

Omit "is usually emitted". Insert instead "has been emitted".

**Schedule 5 Amendment of Pollution Control Act
1970**

(Section 7)

[1] Section 24 Power of entry

Insert "has been," after "pollution" in subsection (1) (b).

[2] Section 24 (1A) (a)

Omit "is usually caused". Insert instead "has been caused".

[Minister's second reading speech made in—
Legislative Assembly on 30 October 1996
Legislative Council on 14 November 1996]

BY AUTHORITY