



New South Wales

Environment Protection Legislation Amendment (Stronger Regulation and Penalties) Bill 2024

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2024



New South Wales

Environment Protection Legislation Amendment (Stronger Regulation and Penalties) Bill 2024

Act No _____, 2024

An Act to amend certain legislation administered by the Minister for Climate Change and the Minister for the Environment to provide for strengthened regulation, and increased penalties for offences, relating to the protection of the environment; and to amend the *Land and Environment Court Act 1979* for related purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Environment Protection Legislation Amendment (Stronger Regulation and Penalties) Act 2024*.

2 Commencement

This Act commences as follows—

- (a) for Schedule 9[9]—1 July 2024,
- (b) for Schedule 9[80]—immediately after the commencement of the *Environmental Legislation Amendment (Hazardous Chemicals) Act 2024*, Schedule 1[21],
- (c) otherwise—on the date of assent to this Act.

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

[1] Section 4 Definitions

Insert “as in” after “meaning” in section 4(1), definition of *related body corporate*.

[2] Section 4(1)

Insert in alphabetical order—

related entity has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

[3] Sections 72 and 72A

Omit section 72. Insert instead—

72 Evidence of analysts

- (1) The EPA may, by written instrument, appoint appropriately qualified persons to be analysts for this Act.
- (2) A certificate of an analyst prepared for the EPA under this section stating the results of an analysis or examination is admissible in evidence in proceedings under this Act as evidence of—
 - (a) the facts stated in the certificate, and
 - (b) the correctness of the result of the analysis or examination.
- (3) A certificate of an analyst prepared for the EPA under this section that a container containing a sample was received at a specified laboratory and that the container was sealed by an authorised officer or another person is admissible in proceedings under this Act as evidence—
 - (a) of the facts stated in the certificate, and
 - (b) the sample was the same sample as the sample obtained by the authorised officer or other person, and
 - (c) the sample had not been tampered with since the container was sealed by the authorised officer or other person.
- (4) A document purporting to be a certificate prepared for the EPA under this section is, unless the contrary is proved, taken to be a certificate under this section.

72A Evidence from photographs and other images

- (1) This section applies to a photographic or other image of an area of land formed from data captured by a device carried by an aircraft, satellite or other craft, and information recorded on the image, that either of the following certifies as an approved image—
 - (a) the CEO of the EPA,
 - (b) an officer of the EPA designated by the CEO of the EPA.
- (2) An approved image is admissible in proceedings under this Act and, in the absence of evidence to the contrary, is evidence of the following—
 - (a) the matter depicted on the image,
 - (b) the information recorded on the image relating to the location or boundaries of the land,
 - (c) the time when, or period during which, the image was taken,

- (d) other matter prescribed by the regulations.
- (3) In proceedings in which an approved image is admitted in evidence—
 - (a) the image is presumed, in the absence of evidence to the contrary, to be orthorectified, and
 - (b) evidence is not required, in the absence of evidence to the contrary, of the accuracy of any process used to—
 - (i) orthorectify the image, or
 - (ii) determine the boundaries of land recorded in the image.

[4] Section 92 Proceedings for other offences

Omit “100” from section 92(2). Insert instead “1,000”.

[5] Section 95A Orders regarding monetary benefits

Omit section 95A(3). Insert instead—

- (3) For subsection (1), the prosecutor may submit to the court a reasonable estimate of the amount of monetary benefits acquired by, or accrued or accruing to, a person as a result of the commission of the offence.
- (3A) The reasonable estimate may be calculated—
 - (a) in accordance with a protocol prescribed by the regulations, or
 - (b) using another method, formula or approach the prosecutor considers appropriate.

[6] Section 95C Recovery of monetary benefits from related persons after offence proved

Omit “body corporate” from section 95C(2)(b). Insert instead “entity”.

[7] Section 95C(5) and (5A)

Omit section 95C(5). Insert instead—

- (5) For subsection (2), the prosecutor may submit to the court a reasonable estimate of the amount of monetary benefits acquired by, or accrued or accruing to, a person as a result of the commission of the offence.
- (5A) The prosecutor may calculate the estimate—
 - (a) in accordance with a protocol prescribed by the regulations, or
 - (b) using another method, formula or approach the prosecutor considers appropriate.

[8] Section 108

Omit the section. Insert instead—

108 Service of documents

- (1) A document authorised or required by this Act or the regulations to be served on a person may be served in any of the following ways—
 - (a) for service on an individual—
 - (i) by personal delivery to the individual, or
 - (ii) if the individual’s address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the individual, at the document exchange in accordance with the usual arrangements for the exchange, or

- (iii) by post to—
 - (A) the address specified by the individual for service of documents generally or documents of that kind, or
 - (B) if the individual has not specified an address for service—the residential or business address of the individual last known to the person serving the document, or
 - (iv) by leaving a copy of the document, addressed to the individual—
 - (A) at the address specified by the individual for service of documents generally or documents of that kind, or
 - (B) if the individual has not specified an address for service—at the residential or business address of the individual last known to the person serving the document, or
 - (v) if the individual has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or
Examples of impliedly consenting to service of documents by means of electronic communication—previously using email to correspond with the EPA or including the individual's email address on applications made, or other documents given, to the EPA
 - (vi) in another way authorised by the regulations for the service of documents generally or documents of that kind,
- (b) for service on another person—
- (i) by post to—
 - (A) the address specified by the person for service of documents generally or documents of that kind, or
 - (B) if the person has not specified an address for service—the business address of the person last known to the person serving the document, or
 - (ii) if the person's address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the person, at the document exchange in accordance with the usual arrangements for the exchange, or
 - (iii) by leaving a copy of the document, addressed to the person—
 - (A) at the address specified by the person for service of documents generally or documents of that kind, or
 - (B) if the person has not specified an address for service—at the business address of the person last known to the person serving the document, or
 - (iv) if the person has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or
Examples of impliedly consenting to service of documents by means of electronic communication—previously using email to correspond with the EPA or including the person's email address on applications made, or other documents given, to the EPA
 - (v) in another way authorised by the regulations for the service of documents generally or documents of that kind.
- (2) Nothing in this section affects the operation of another law, including the rules of a court, authorising a document to be served on a person in another way.

- (3) In this section—
electronic communication has the same meaning as in the *Electronic Transactions Act 2000*.
serve includes give, issue, notify and send.

[9] Schedule 2 Savings and transitional provisions

Insert at the end of the schedule, with appropriate part and clause numbering—

**Part Provisions consequent on enactment of
Environment Protection Legislation Amendment
(Stronger Regulation and Penalties) Act 2024**

Definitions

In this part—

amendment Act means the *Environment Protection Legislation Amendment (Stronger Regulation and Penalties) Act 2024*.

commencement means the commencement of the amendment Act, Schedule 1.

Evidence of analysts

Sections 72 and 72A, as substituted or inserted by the amendment Act, apply to proceedings commenced but not finally determined before the commencement.

Jurisdictional limits for proceedings in Local Court

Section 92, as amended by the amendment Act, applies to proceedings commenced but not finally determined before the commencement.

Schedule 2 Amendment of Dangerous Goods (Road and Rail Transport) Act 2008 No 95

[1] **Section 15 Penalties under the regulations**

Omit “60”. Insert instead “250”.

[2] **Section 15**

Omit “300”. Insert instead “500”.

[3] **Section 39**

Omit the section. Insert instead—

39 Service of documents

(1) A document authorised or required by this Act or the regulations to be served on a person may be served in any of the following ways—

(a) for service on an individual—

(i) by personal delivery to the individual, or

(ii) by post to—

(A) the address specified by the individual for service of documents generally or documents of that kind, or

(B) if the individual has not specified an address for service—the residential or business address of the individual last known to the person serving the document, or

(iii) if the individual’s address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the individual, at the document exchange in accordance with the usual arrangements for the exchange, or

(iv) by leaving a copy of the document, addressed to the individual—

(A) at the address specified by the individual for service of documents generally or documents of that kind, or

(B) if the individual has not specified an address for service—at the residential or business address of the individual last known to the person serving the document, or

(v) if the individual has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or

Examples of impliedly consenting to service of documents by means of electronic communication— previously using email to correspond with the EPA or including the individual’s email address on applications made, or other documents given, to the EPA

(vi) in another way authorised by the regulations for the service of documents generally or documents of that kind,

(b) for service on another person—

(i) by post to—

(A) the address specified by the person for service of documents generally or documents of that kind, or

(B) if the person has not specified an address for service—the business address of the person last known to the person serving the document, or

- (ii) if the person's address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the person, at the document exchange in accordance with the usual arrangements for the exchange, or
 - (iii) by leaving a copy of the document, addressed to the person—
 - (A) at the address specified by the person for service of documents generally or documents of that kind, or
 - (B) if the person has not specified an address for service—at the business address of the person last known to the person serving the document, or
 - (iv) if the person has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or
Examples of impliedly consenting to service of documents by means of electronic communication—previously using email to correspond with the EPA or including the person's email address on applications made, or other documents given, to the EPA
 - (v) in another way authorised by the regulations for the service of documents generally or documents of that kind.
- (2) Also, a document authorised or required by this Act or the regulations to be served on a person that relates to a vehicle may be served by placing the document on the vehicle in a conspicuous position.
- (3) A person must not remove a document referred to in subsection (2) that relates to a contravention of this Act or the regulations from a vehicle before the matters causing the contravention have been remedied, unless it is necessary to remove the document to remedy the matters.
- Maximum penalty—
- (a) for an individual—100 penalty units, or
 - (b) otherwise—500 penalty units.
- (4) Nothing in this section affects the operation of another law, including the rules of a court, authorising a document to be served on a person in another way.
- (5) In this section—
electronic communication has the same meaning as in the *Electronic Transactions Act 2000*.
serve includes give, issue, notify and send.

[4] Section 47 Proceedings for an offence

Omit “100” from section 47(6). Insert instead “1,000”.

[5] Schedule 1 Savings, transitional and other provisions

Insert at the end of the schedule, with appropriate part and clause numbering—

**Part Provision consequent on enactment of
Environment Protection Legislation Amendment
(Stronger Regulation and Penalties) Act 2024**

Definitions

In this part—

amendment Act means the *Environment Protection Legislation Amendment (Stronger Regulation and Penalties) Act 2024*.

commencement means the commencement of the amendment Act, Schedule 2.

Jurisdictional limits for proceedings in Local Court

Section 47, as amended by the amendment Act, applies to proceedings commenced but not finally determined before the commencement.

Schedule 3 Amendment of Land and Environment Court Act 1979 No 204

[1] Section 17 Class 1—environmental planning and protection appeals

Insert after section 17(j)—

- (ja) appeals under regulations under the *Dangerous Goods (Road and Rail Transport) Act 2008* if the regulations prescribe the appeals are to be heard by the Court,

[2] Section 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement

Insert after section 20(1)(cib)—

- (cic) proceedings under the *Protection of the Environment Operations Act 1997*, section 253B,

[3] Section 20(3)

Insert in alphabetical order in section 20(3)(a)—

Dangerous Goods (Road and Rail Transport) Act 2008 and regulations made under the Act,

Schedule 4 Amendment of Pesticides Act 1999 No 80

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

related entity has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

[2] Section 5B Fit and proper persons

Omit section 5B(1). Insert instead—

- (1) In determining whether a person is a fit and proper person to hold a licence, the Authority may take into consideration any or all of the following—
 - (a) whether the person has—
 - (i) contravened relevant legislation, or
 - (ii) held a regulatory authorisation that has been suspended or cancelled under relevant legislation,
 - (b) if the person is a corporation—whether a director or former director of the corporation or a related body corporate has—
 - (i) contravened relevant legislation, or
 - (ii) held a regulatory authorisation that has been suspended or cancelled under relevant legislation,
 - (c) if the person is a corporation—whether a director or former director of the corporation or a related body corporate is or has been the director of another corporation that has—
 - (i) contravened relevant legislation, or
 - (ii) held a regulatory authorisation that has been suspended or cancelled under relevant legislation,
 - (d) the person's record of compliance with relevant legislation,
 - (e) if the person is a corporation—the record of compliance with relevant legislation of each director or former director of the corporation or a related body corporate,
 - (f) whether, in the Authority's opinion, any dealings of the person with pesticides under a licence will or will not be in the hands of a technically competent person,
 - (g) whether, in the Authority's opinion, the person is of good repute, having regard to character, honesty and integrity,
 - (h) if the person is a corporation—whether, in the Authority's opinion, each director and former director of the corporation or a related body corporate is of good repute, having regard to character, honesty and integrity,
 - (i) whether, in the previous 10 years, the person has, in this jurisdiction or another Australian jurisdiction, been convicted of an offence involving fraud, dishonesty or other behaviour the Authority considers would make the person unfit to hold a licence,
 - (j) if the person is a corporation—whether, in the previous 10 years, a director and former director of the corporation or a related body corporate has, in this jurisdiction or another Australian jurisdiction, been convicted of an offence involving fraud, dishonesty or other behaviour the Authority considers would make the person unfit to hold a licence,

- (k) whether, during the previous 3 years, the person was personally insolvent,
- (l) if the person is a corporation—whether, during the previous 3 years, a director or former director of the corporation was personally insolvent,
- (m) if the person is a corporation—whether the person or a related body corporate applied to take the benefit of a law for the relief of insolvent debtors or compounded with the person’s or body corporate’s creditors,
- (n) for an individual—whether the person is or was a director of a corporation that—
 - (i) is the subject of a winding up order, or
 - (ii) has had a controller or administrator appointed during the previous 3 years,
- (o) for a corporation—whether the corporation or a related body corporate—
 - (i) is the subject of a winding up order, or
 - (ii) has had a controller or administrator appointed during the previous 3 years,
- (p) whether the person has demonstrated to the Authority the financial capacity to comply with the person’s obligations under the licence or the proposed licence,
- (q) whether the person is in partnership with a person whom the Authority does not consider to be a fit and proper person under this section, in connection with dealings with pesticides authorised, or sought to be authorised, by a licence,
- (r) if the person is a corporation—whether a related body corporate is in partnership with a person whom the Authority does not consider to be a fit and proper person under this section, in connection with dealings with pesticides authorised, or sought to be authorised, by a licence,
- (s) another ground the Authority considers appropriate.

- [3] Section 7 Injury to persons or damage to property resulting from pesticide use**
Omit “\$250,000” from section 7(1), penalty, paragraph (a). Insert instead “\$2,000,000”.
- [4] Section 7(1), penalty, paragraph (b)**
Omit “\$120,000”. Insert instead “\$500,000”.
- [5] Section 8 Harm to animals or plants resulting from pesticide use**
Omit “\$250,000” from section 8(1), penalty, paragraph (a). Insert instead “\$2,000,000”.
- [6] Section 8(1), penalty, paragraph (b)**
Omit “\$120,000”. Insert instead “\$500,000”.
- [7] Section 9 Material harm to endangered, vulnerable or protected animals**
Omit “\$250,000” from section 9(1), penalty, paragraph (a). Insert instead “\$2,000,000”.
- [8] Section 9(1), penalty, paragraph (b)**
Omit “\$120,000”. Insert instead “\$500,000”.
- [9] Section 71 Manner in which proceedings for offences may be dealt with**
Omit “\$20,000” from section 71(3). Insert instead “1,000 penalty units”.

[10] Section 76 Penalty notices

Omit “not exceeding \$1,500 or the maximum amount of penalty that could be imposed for the offence by a court.” from section 76(4).

Insert instead—

not exceeding—

- (a) for a corporation—\$15,000, or
- (b) for an individual—\$7,500.

[11] Section 98 Orders regarding monetary benefits

Insert after section 98(2)—

- (2A) For subsection (1), the Environment Protection Authority may submit to the court a reasonable estimate of the amount of monetary benefits acquired by, or accrued or accruing to, a person as a result of the commission of the offence.
- (2B) The reasonable estimate may be calculated—
 - (a) in accordance with a protocol prescribed by the regulations, or
 - (b) using another method, formula or approach the Environment Protection Authority considers appropriate.

[12] Sections 107 and 107A

Omit section 107. Insert instead—

107 Evidence of analysts

- (1) The Environment Protection Authority may, by written instrument, appoint appropriately qualified persons to be analysts for this Act.
- (2) A certificate of an analyst prepared for the Environment Protection Authority under this section stating the results of an analysis or examination is admissible in evidence in proceedings under this Act as evidence of—
 - (a) the facts stated in the certificate, and
 - (b) the correctness of the result of the analysis or examination.
- (3) A certificate of an analyst prepared for the Environment Protection Authority under this section that a container containing a sample was received at a specified laboratory and that the container was sealed by an authorised officer or another person is admissible in proceedings under this Act as evidence—
 - (a) of the facts stated in the certificate, and
 - (b) the sample was the same sample as the sample obtained by the authorised officer or other person, and
 - (c) the sample had not been tampered with since the container was sealed by the authorised officer or other person.
- (4) A document purporting to be a certificate prepared for the Environment Protection Authority under this section is, unless the contrary is proved, taken to be a certificate under this section.

107A Evidence from photographs and other images

- (1) This section applies to a photographic or other image of an area of land formed from data captured by a device carried by an aircraft, satellite or other craft, and information recorded on the image, that either of the following certifies as an approved image—

- (a) the Chief Executive Officer of the Environment Protection Authority,
 - (b) an officer of the Environment Protection Authority designated by the Chief Executive Officer of the Authority.
- (2) An approved image is admissible in proceedings under this Act and, in the absence of evidence to the contrary, is evidence of the following—
- (a) the matter depicted on the image,
 - (b) the information recorded on the image relating to the location or boundaries of the land,
 - (c) the time when, or period during which, the image was taken,
 - (d) other matter prescribed by the regulations.
- (3) In proceedings in which an approved image is admitted in evidence—
- (a) the image is presumed, in the absence of evidence to the contrary, to be orthorectified, and
 - (b) evidence is not required, in the absence of evidence to the contrary, of the accuracy of any process used to—
 - (i) orthorectify the image, or
 - (ii) determine the boundaries of land recorded in the image.

[13] Section 112C Recovery of monetary benefits from related persons after offence proved

Omit “body corporate” from section 112C(2)(b). Insert instead “entity”.

[14] Section 112C(5) and (5A)

Omit section 112C(5). Insert instead—

- (5) For subsection (2), the Environment Protection Authority may submit to the court a reasonable estimate of the amount of monetary benefits acquired by, or accrued or accruing to, a person as a result of the commission of the offence.
- (5A) The reasonable estimate may be calculated—
- (a) in accordance with a protocol prescribed by the regulations, or
 - (b) using another method, formula or approach the Environment Protection Authority considers appropriate.

[15] Section 118

Omit the section. Insert instead—

118 Service of documents

- (1) A document authorised or required by this Act or the regulations to be served on a person may be served in any of the following ways—
- (a) for service on an individual—
 - (i) by personal delivery to the individual, or
 - (ii) by post to—
 - (A) the address specified by the individual for service of documents generally or documents of that kind, or
 - (B) if the individual has not specified an address for service— the residential or business address of the individual last known to the person serving the document, or

- (iii) if the individual's address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the individual, at the document exchange in accordance with the usual arrangements for the exchange, or
 - (iv) by leaving a copy of the document, addressed to the individual—
 - (A) at the address specified by the individual for service of documents generally or documents of that kind, or
 - (B) if the individual has not specified an address for service—
at the residential or business address of the individual last known to the person serving the document, or
 - (v) if the individual has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or
Examples of impliedly consenting to service of documents by means of electronic communication— previously using email to correspond with the Environment Protection Authority or including the individual's email address on applications made, or other documents given, to the Environment Protection Authority
 - (vi) in another way authorised by the regulations for the service of documents generally or documents of that kind,
- (b) for service on another person—
- (i) by post to—
 - (A) the address specified by the person for service of documents generally or documents of that kind, or
 - (B) if the person has not specified an address for service—the business address of the person last known to the person serving the document, or
 - (ii) if the person's address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the person, at the document exchange in accordance with the usual arrangements for the exchange, or
 - (iii) by leaving a copy of the document, addressed to the person—
 - (A) at the address specified by the person for service of documents generally or documents of that kind, or
 - (B) if the person has not specified an address for service—at the business address of the person last known to the person serving the document, or
 - (iv) if the person has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or
Examples of impliedly consenting to service of documents by means of electronic communication— previously using email to correspond with the Environment Protection Authority or including the person's email address on applications made, or other documents given, to the Environment Protection Authority
 - (v) in another way authorised by the regulations for the service of documents generally or documents of that kind.
- (2) Nothing in this section affects the operation of another law, including the rules of a court, authorising a document to be served on a person in another way.
- (3) In this section—

electronic communication has the same meaning as in the *Electronic Transactions Act 2000*.

serve includes give, issue, notify and send.

[16] Section 119 Regulations

Insert after section 119(2)(f)—

- (f1) matters relating to the following requirements, including the creation of offences for failing to comply with the requirements—
 - (i) requirements in relation to purchasers of pesticides providing evidence of training in the use of pesticides,
 - (ii) requirements in relation to recording, keeping and providing information about the evidence shown by purchasers of pesticides and details of pesticide sales,

[17] Section 119(3)

Omit “400”. Insert instead “500”.

[18] Section 119(3)

Omit “200”. Insert instead “250”.

[19] Schedule 2 Savings, transitional and other provisions

Insert at the end of the schedule, with appropriate part and clause numbering—

**Part Provisions consequent on enactment of
Environment Protection Legislation Amendment
(Stronger Regulation and Penalties) Act 2024**

Definitions

In this part—

amendment Act means the *Environment Protection Legislation Amendment (Stronger Regulation and Penalties) Act 2024*.

commencement means the commencement of the amendment Act., Schedule 4.

Jurisdictional limits for proceedings in Local Court

Section 71, as amended by the amendment Act, applies to proceedings commenced but not finally determined before the commencement.

Evidence of analysts

Sections 107 and 107A, as substituted or inserted by the amendment Act, apply to proceedings commenced but not finally determined before the commencement.

Schedule 5 Amendment of Plastic Reduction and Circular Economy Act 2021 No 31

[1] Section 59

Omit the section. Insert instead—

59 Service of documents

- (1) A document authorised or required by this Act or the regulations to be served on a person may be served in any of the following ways—
- (a) for service on an individual—
 - (i) by personal delivery to the individual, or
 - (ii) by post to—
 - (A) the address specified by the individual for service of documents generally or documents of that kind, or
 - (B) if the individual has not specified an address for service—the residential or business address of the individual last known to the person serving the document, or
 - (iii) if the individual’s address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the individual, at the document exchange in accordance with the usual arrangements for the exchange, or
 - (iv) by leaving a copy of the document, addressed to the individual—
 - (A) at the address specified by the individual for service of documents generally or documents of that kind, or
 - (B) if the individual has not specified an address for service—at the residential or business address of the individual last known to the person serving the document, or
 - (v) if the individual has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or
Examples of impliedly consenting to service of documents by means of electronic communication—previously using email to correspond with the EPA or including the individual’s email address on applications made, or other documents given, to the EPA
 - (vi) in another way authorised by the regulations for the service of documents generally or documents of that kind,
 - (b) for service on another person—
 - (i) by post to—
 - (A) the address specified by the person for service of documents generally or documents of that kind, or
 - (B) if the person has not specified an address for service—the business address of the person last known to the person serving the document, or
 - (ii) by leaving a copy of the document, addressed to the person—
 - (A) at the address specified by the person for service of documents generally or documents of that kind, or
 - (B) if the person has not specified an address for service—at the business address of the person last known to the person serving the document, or

- (iii) if the person’s address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the person, at the document exchange in accordance with the usual arrangements for the exchange, or
 - (iv) if the person has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or
Examples of impliedly consenting to service of documents by means of electronic communication—previously using email to correspond with the EPA or including the person’s email address on applications made, or other documents given, to the EPA
 - (v) in another way authorised by the regulations for the service of documents generally or documents of that kind.
- (2) Nothing in this section affects the operation of another law, including the rules of a court, authorising a document to be served on a person in another way.
- (3) In this section—
electronic communication has the same meaning as in the *Electronic Transactions Act 2000*.
serve includes give, issue, notify and send.

[2] Section 62 Delegation

Omit “Department of Planning, Industry and Environment” from section 62(a).

Insert instead “Department of Climate Change, Energy, the Environment and Water”.

Schedule 6 Amendment of Protection from Harmful Radiation Act 1990 No 13

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

related entity has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

[2] Section 5 Fit and proper persons

Omit section 5(1). Insert instead—

- (1) In determining whether a person is a fit and proper person to hold a licence or accreditation, the Authority may take into consideration any or all of the following—
 - (a) whether the person has—
 - (i) contravened relevant legislation, or
 - (ii) held a licence, accreditation or other authority that has been suspended or cancelled under relevant legislation,
 - (b) if the person is a corporation—whether a director or former director of the corporation or a related body corporate has—
 - (i) contravened relevant legislation, or
 - (ii) held a licence, accreditation or other authority that has been suspended or cancelled under relevant legislation,
 - (c) if the person is a corporation—whether a director or former director of the corporation or a related body corporate is or has been the director of another corporation that has—
 - (i) contravened relevant legislation, or
 - (ii) held a licence, accreditation or other authority that has been suspended or cancelled under relevant legislation,
 - (d) the person's record of compliance with relevant legislation,
 - (e) if the person is a corporation—the record of compliance with relevant legislation of each director or former director of the corporation or a related body corporate,
 - (f) whether, in the Authority's opinion, any dealings of the person with regulated material under a licence will or will not be in the hands of a technically competent person,
 - (g) whether, in the Authority's opinion, the person is of good repute, having regard to character, honesty and integrity,
 - (h) if the person is a corporation—whether, in the Authority's opinion, each director and former director of the corporation or a related body corporate is of good repute, having regard to character, honesty and integrity,
 - (i) whether, in the previous 10 years, the person has, in this jurisdiction or another Australian jurisdiction, been—
 - (i) convicted of an offence involving fraud, dishonesty or other behaviour the Authority considers would make the person unfit to hold a licence, or
 - (ii) subject to a finding of professional misconduct or unsatisfactory professional conduct by a body that regulates, or investigates complaints about, health practitioners,

- (j) if the person is a corporation—whether, in the previous 10 years, any director or former director of the corporation or a related body corporate has, in this jurisdiction or another Australian jurisdiction, been—
 - (i) convicted of an offence involving fraud, dishonesty or other behaviour the Authority considers would make the person unfit to hold a licence, or
 - (ii) subject to a finding of professional misconduct or unsatisfactory professional conduct by a body that regulates, or investigates complaints about, health practitioners,
- (k) whether, during the previous 3 years, the person was personally insolvent,
- (l) if the person is a corporation—whether, during the previous 3 years, a director or former director of the corporation was personally insolvent,
- (m) if the person is a corporation—whether the person or a related body corporate applied to take the benefit of a law for the relief of insolvent debtors or compounded with the person’s or body corporate’s creditors,
- (n) for an individual—whether the person is or was a director of a corporation that—
 - (i) is the subject of a winding up order, or
 - (ii) has had a controller or administrator appointed during the previous 3 years,
- (o) for a corporation—whether the corporation or a related body corporate—
 - (i) is the subject of a winding up order, or
 - (ii) has had a controller or administrator appointed during the previous 3 years,
- (p) whether the person has demonstrated to the Authority the financial capacity to comply with the person’s obligations under the licence or accreditation or the proposed licence or accreditation,
- (q) whether the person is in partnership with a person whom the Authority does not consider to be a fit and proper person in connection with—
 - (i) dealings with regulated material authorised, or sought to be authorised, by a licence, or
 - (ii) activities authorised, or sought to be authorised, by an accreditation,
- (r) if the person is a corporation—whether a related body corporate is in partnership with a person whom the Authority does not consider to be a fit and proper person under this section, in connection with dealings with regulated material authorised, or sought to be authorised, by a licence,
- (s) another ground the Authority considers appropriate.

[3] Section 5A Certain persons and public bodies may exercise certain functions of Authority

Omit section 5A(7).

[4] Sections 5B and 5C

Insert after section 5A—

5B Actions by incorrect public body

- (1) This section applies if the Authority or another public body that is authorised to exercise the functions of the Authority or the CEO of the Authority under section 5A exercises a function in relation to a matter for which it is not the appropriate public body.
- (2) The Authority or public body must, as soon as practicable after becoming aware of the exercise of the function, give written notice to the appropriate public body about—
 - (a) the exercise of the function, and
 - (b) any function for which the Authority or public body is not the appropriate public body that it proposes—
 - (i) to continue to exercise in relation to the matter, or
 - (ii) to cease to exercise in relation to the matter.
- (3) The Authority or public body may, if the Authority or public body gives notice under subsection (2), continue to exercise the function until—
 - (a) directed not to exercise the function by the appropriate public body, or
 - (b) either of the following applies—
 - (i) the Authority or public body is authorised to exercise the function,
 - (ii) for the Authority—the authorisation given to the public body to exercise the function is revoked.
- (4) If the appropriate public body becomes aware the Authority or other public body is exercising, or has exercised, a function of the appropriate public body in relation to a matter, the appropriate public body may, by written notice to the Authority or public body, direct the Authority or another public body not to exercise functions under this Act in relation to the matter.
- (5) A direction given by the appropriate public body does not affect proceedings already commenced by the Authority or other public body in relation to the matter and, for that purpose, this section applies as if the direction had not been given.
- (6) For this Act and the regulations and any proceedings, the Authority or a public body that exercises a function as referred to in subsection (1), or that continues to exercise a function under subsection (3), is taken to be the appropriate public body in relation to the matter.
- (7) In this section and in section 5C—
 - (a) a reference to the Authority or a public body extends to an authorised officer of the Authority or a person authorised by the public body, and
 - (b) a reference to the exercise of functions by the Authority or a public body extends to the exercise of functions by the authorised officer of the Authority or the person authorised by the public body.
- (8) In this section—

appropriate public body, in relation to a function of the Authority under this Act, means—

 - (a) if a public body has been authorised to exercise the function under section 5A—the public body, or
 - (b) otherwise—the Authority.

5C Appropriate regulatory authority may continue to exercise functions

- (1) This section applies if the Authority or a public body is required to cease to exercise functions, or ceases to exercise functions, under section 5B(3) or (4).
- (2) The appropriate public body may continue to exercise functions commenced by the Authority or other public body, as if the functions had been exercised by the appropriate public body.
- (3) For the Act, this regulation and any proceedings, any function previously exercised by the Authority or other public body relating to the matter is taken to have been exercised by the appropriate public body.
- (4) Without limiting subsection (3), a notice or direction given by the Authority or other public body may be enforced, or varied or revoked, as if it had been given by the appropriate regulatory authority.
- (5) A notice issued by the Authority or other public body is taken to be varied, to the extent of any inconsistency, if a subsequent inconsistent notice is issued by or on behalf of the appropriate public body.
- (6) Nothing in this section affects the right of the other public body or the Authority to recover a fee, charge or cost under this Act or the regulations in relation to a notice given while exercising functions as referred to in section 5B(1) or (3).

[5] Section 23A Orders regarding monetary benefits

Omit section 23A(3). Insert instead—

- (3) For subsection (1), the prosecutor for the offence may submit to the court a reasonable estimate of the amount of monetary benefits acquired by, or accrued or accruing to, a person as a result of the commission of the offence.
- (3A) The reasonable estimate may be calculated—
 - (a) in accordance with a protocol prescribed by the regulations, or
 - (b) using another method, formula or approach the prosecutor for the offence.

[6] Section 24 Increased penalty for offence causing serious harm

Omit “10,000 penalty units” from section 24(2). Insert instead “\$2,000,000”.

[7] Section 24(2)

Omit “1,500 penalty units”. Insert instead “\$500,000”.

[8] Section 27A Recovery of monetary benefits from related persons after offence proved

Omit “body corporate” from section 27A(2)(b). Insert instead “entity”.

[9] Section 27A(5) and (5A)

Omit section 27A(5). Insert instead—

- (5) For subsection (2), the prosecutor for the offence may submit to the court a reasonable estimate of the amount of monetary benefits acquired by, or accrued or accruing to, a person as a result of the commission of the offence.
- (5A) The reasonable estimate may be calculated—
 - (a) in accordance with a protocol prescribed by the regulations, or

- (b) using another method, formula or approach the prosecutor considers appropriate.

[10] Section 35

Omit the section. Insert instead—

35 Service of documents

- (1) A document authorised or required by this Act or the regulations to be served on a person may be served in any of the following ways—
 - (a) for service on an individual—
 - (i) by personal delivery to the individual, or
 - (ii) by post to—
 - (A) the address specified by the individual for service of documents generally or documents of that kind, or
 - (B) if the individual has not specified an address for service—the residential or business address of the individual last known to the person serving the document, or
 - (iii) if the individual’s address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the individual, at the document exchange in accordance with the usual arrangements for the exchange, or
 - (iv) by leaving a copy of the document, addressed to the individual—
 - (A) at the address specified by the individual for service of documents generally or documents of that kind, or
 - (B) if the individual has not specified an address for service—at the residential or business address of the individual last known to the person serving the document, or
 - (v) if the individual has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or
Examples of impliedly consenting to service of documents by means of electronic communication—previously using email to correspond with the Authority or including the individual’s email address on applications made, or other documents given, to the Authority
 - (vi) in another way authorised by the regulations for the service of documents generally or documents of that kind,
 - (b) for service on another person—
 - (i) by post to—
 - (A) the address specified by the person for service of documents generally or documents of that kind, or
 - (B) if the person has not specified an address for service—the business address of the person last known to the person serving the document, or
 - (ii) if the person’s address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the person, at the document exchange in accordance with the usual arrangements for the exchange, or
 - (iii) by leaving a copy of the document, addressed to the person—
 - (A) at the address specified by the person for service of documents generally or documents of that kind, or

- (B) if the person has not specified an address for service—at the business address of the person last known to the person serving the document, or
 - (iv) if the person has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or
Examples of impliedly consenting to service of documents by means of electronic communication— previously using email to correspond with the Authority or including the person’s email address on applications made, or other documents given, to the Authority
 - (v) in another way authorised by the regulations for the service of documents generally or documents of that kind.
- (2) Nothing in this section affects the operation of another law, including the rules of a court, authorising a document to be served on a person in another way.
- (3) In this section—
electronic communication has the same meaning as in the *Electronic Transactions Act 2000*.
serve includes give, issue, notify and send.

[11] Section 39

Omit the section. Insert instead—

39 Exemptions

- (1) The regulations may exempt any of the following from a specified provision of this Act or the regulations—
- (a) a person or class of persons,
 - (b) premises or class of premises,
 - (c) an area or class of areas,
 - (d) an activity or class of activities,
 - (e) another matter or thing or class of matters or things.
- (2) An exemption may apply—
- (a) in particular circumstances specified in the regulations, or
 - (b) subject to conditions specified in the regulations.

[12] Section 40 Regulations

Insert “, radiation apparatus and harmful non-ionising radiation” after “regulated material” wherever occurring in section 40(2).

[13] Section 40(3)(d2)–(d4)

Insert after section 40(3)(d1)—

- (d2) the imposition of terms on accreditations that were issued without an expiry date,
- (d3) matters relating to courses required for licences, permits, authorities, consents, accreditation and exemptions, including the fees payable for approval of the courses,
- (d4) requirements in relation to persons who are exempt from holding licences, including requirements regarding—
 - (i) the supervision of the persons, and

- (ii) the holders of licences under which regulated material is used by exempt persons,

[14] Section 40(3)(h)

Omit “accidents”. Insert instead “incidents”.

[15] Section 40(3)(i1) and (i2)

Insert after section 40(3)(i)—

- (i1) matters relating to devices used for monitoring levels of radiation exposure of persons, including—
 - (i) the approval of devices, and
 - (ii) the imposition of conditions on the approval of devices, and
 - (iii) the payment of fees for approval of devices, and
 - (iv) the approval of persons providing devices and dose monitoring services, including the imposition of conditions on the approval and the payment of fees for approval,
- (i2) the setting of dose limits and the imposition of obligations on employers and others to ensure radiation safety in workplaces, including obligations to—
 - (i) monitor for radiation and notify persons exposed to radiation, and
 - (ii) prepare plans to manage radiation, and
 - (iii) keep records relating to exposure to radiation and provide reports to the Authority, and
 - (iv) monitor radiation levels at premises and maintain monitoring devices,

[16] Section 40(3)(l)

Insert “, including the payment of different fees for the services provided based on the risk level of the activities or materials to which the services relate” after “Act”.

[17] Section 40(4)

Omit “400”. Insert instead “500”.

[18] Section 40(4)

Omit “200”. Insert instead “250”.

Schedule 7 Amendment of Protection from Harmful Radiation Regulation 2013

Clauses 48 and 49

Omit the clauses.

Schedule 8 Amendment of Protection of the Environment Administration Act 1991 No 60

[1] Section 3A

Insert after section 3—

3A Examples

If environment protection legislation includes an example of the operation of a provision—

- (a) the example is not exhaustive, and
- (b) the example does not limit the meaning of the provision, and
- (c) the example and the provision must be read in the context of each other and the other provisions of the environment protection legislation, but, if the example and the provision are inconsistent, the provision prevails.

[2] Section 6 Objectives of the Authority

Insert after section 6(1)(b), second bullet point—

- taking action in relation to climate change,

[3] Section 8 General powers of Authority

Insert at the end of the section—

- (2) Also, the Authority may—
 - (a) enter into arrangements, including commercial arrangements, in relation to carbon neutrality or achieving net zero emissions, and
 - (b) purchase property for the purposes of, or in relation to, carbon neutrality or achieving net zero emissions.

[4] Section 9 Powers of Authority relating to environmental quality

Insert at the end of section 9(1)(a)—

Example of developing objectives, guidelines and policies to ensure environment protection— developing environmental quality objectives, guidelines and policies to ensure environment protection from climate change

[5] Section 34A Environment Protection Authority Fund

Insert after section 34A(3)(a)—

- (a1) amounts payable under penalty notices issued under the following legislation by officers or employees of the Authority—
 - (i) environment protection legislation,
 - (ii) the *Biodiversity Conservation Act 2016* and regulations under that Act, and

[6] Section 35A

Insert after section 35—

35A Exclusion of liability for certain statements

- (1) No liability is incurred by the Crown and no personal liability is incurred by a protected person for a statement made or issued in good faith—
 - (a) under the *Protection of the Environment Operations Act 1997*, section 319B, or

- (b) in, or associated with, a recall notice within the meaning of the *Protection of the Environment Operations Act 1997*.
- (2) No liability is incurred by a person for publishing in good faith—
 - (a) a statement referred to in subsection (1), or
 - (b) a fair report or summary of the statement.
- (3) In this section—
 - liability* includes liability for defamation.
 - protected person* has the same meaning as in section 35.

[7] Schedule 1 Provisions relating to members and procedure of the Board

Insert in alphabetical order in clause 1—

electronic communication has the same meaning as in the *Electronic Transactions Act 2000*.

[8] Schedule 1, clause 14(5)

Omit “by facsimile or other transmission of the information in the papers concerned”.

Insert instead “by electronic communication”.

[9] Schedule 4 Savings, transitional and other provisions

Insert at the end of the schedule, with appropriate part and clause numbering—

**Part Provision consequent on enactment of
Environment Protection Legislation Amendment
(Stronger Regulation and Penalties) Act 2024**

Definitions

In this part—

amendment Act means the *Environment Protection Legislation Amendment (Stronger Regulation and Penalties) Act 2024*.

commencement means the commencement of the amendment Act, Schedule 8[5].

Environment Protection Authority Fund

Section 34A, as amended by the amendment Act, applies to penalty notices paid after the commencement.

Schedule 9 Amendment of Protection of the Environment Operations Act 1997 No 156

[1] Section 15 EPA to give notice of intention to prepare draft PEP

Omit the section.

[2] Section 17

Omit the section. Insert instead—

17 Public consultation

- (1) Before making a policy, the EPA must publish a notice about the proposal to make the policy.
- (2) The notice must be published—
 - (a) on the EPA’s website, and
 - (b) if the EPA considers it necessary to publish the notice in other ways to bring the notice to the attention of members of the public generally or in a particular part of the State—in other ways the EPA is satisfied are likely to bring the notice to the attention of members of the public generally or in that part of the State.
- (3) The notice must—
 - (a) state the objects of the proposed policy, and
 - (b) advise where a copy of the proposed policy and impact statement may be obtained, and
 - (c) invite submissions to the EPA on the proposed policy and impact statement within a period, not less than 3 months after the day on which the notice is published on the EPA’s website, specified in the notice.

[3] Section 29 Implementing PEPs—action under Environmental Planning and Assessment Act 1979

Omit “of Planning, Industry and Environment”.

Insert instead “in which the *Environmental Planning and Assessment Act 1979* is administered”.

[4] Section 45 Matters to be taken into consideration in licensing functions

Omit “*Threatened Species Conservation Act 1995*” from section 45(j).

Insert instead “*Biodiversity Conservation Act 2016*”.

[5] Sections 47(1), 48(2), 49(2), 64(1), 66(2), 86(3), 88(3), 91B, 97, 102, 112, 113, 123, 132, 141, 153A, 153B(2), 153D, 153E, 155, 156, 157, 158, 159, 162(5), 167(4), 167A(3), 177(1)–(4) and 211(1)–(3) and (4)

Omit “\$1,000,000” wherever occurring. Insert instead “\$2,000,000”.

[6] Sections 47(1), 48(2), 49(2), 64(1), 86(3), 88(3), 91B, 97, 102, 112, 123, 132, 141, 153A, 153B(2), 153D, 153E, 167(4), 177(1)–(5) and 211(1)–(3) and (4)

Omit “\$120,000” wherever occurring. Insert instead “\$240,000”.

- [7] **Sections 47(1), 48(2), 49(2), 64(1), 66(2) and (4), 86(3), 88(3), 91B, 97, 102, 112, 113, 123, 132, 141, 153A, 153B(2), 153D, 153E, 155, 156, 157, 158, 159, 162(5), 167(4), 167A(1), 177(1)–(5) and 211(1)–(3) and (4)**

Omit “\$250,000” wherever occurring. Insert instead “\$500,000”.

- [8] **Sections 47(1), 48(2), 49(2), 64(1), 86(3), 88(3), 91B, 97, 102, 112, 123, 132, 141, 153A, 153B(2), 153D, 153E, 167(4), 177(1)–(5) and 211(1)–(3) and (4)**

Omit “\$60,000” wherever occurring. Insert instead “\$120,000”.

- [9] **Section 58 Variation of licences**

Omit section 58(3). Insert instead—

(3) A licence may be varied—

- (a) on application and payment of the fee prescribed by the regulations by the holder of the licence, or
- (b) on the initiative of the appropriate regulatory authority.

(3A) The regulations may also provide for the waiver or refund of the fee in the circumstances prescribed by the regulations.

- [10] **Sections 66(4), 119 and 167A(1) and (3)**

Omit “\$500,000”. Insert instead “\$1,000,000”.

- [11] **Section 79 Suspension or revocation of licence by appropriate regulatory authority**

Insert after section 79(5)(a)—

- (a1) the holder of the licence has contravened this Act or regulations made under this Act,

- [12] **Section 83 Fit and proper persons**

Omit section 83(1) and (2). Insert instead—

- (1) This section has effect in determining whether a person is a fit and proper person for section 45(f), 79(5)(f) or 253B(1)(a) but does not limit the section.
- (2) The appropriate regulatory authority may take into consideration any or all of the following—
 - (a) whether the person has—
 - (i) contravened environment protection legislation or other relevant legislation, or
 - (ii) held a licence or other authority that has been suspended or revoked under environment protection legislation or other relevant legislation,
 - (b) if the person is a corporation—whether a director or former director of the corporation or a related body corporate has—
 - (i) contravened environment protection legislation or other relevant legislation, or
 - (ii) held a licence or other authority that has been suspended or revoked under environment protection legislation or other relevant legislation,
 - (c) if the person is a corporation—whether a director or former director of the corporation or a related body corporate is or has been the director of another corporation that has—

- (i) contravened environment protection legislation or other relevant legislation, or
 - (ii) held a licence or other authority that has been suspended or revoked under environment protection legislation or other relevant legislation,
- (d) the person's record of compliance with environment protection legislation,
- (e) if the person is a corporation—the record of compliance with environment protection legislation of each director or former director of the corporation or a related body corporate,
- (f) whether, in the appropriate regulatory authority's opinion, the management of the activities or works that are or are to be authorised, required or regulated under the relevant licence will or will not be in the hands of a technically competent person,
- (g) whether, in the appropriate regulatory authority's opinion, the person is of good repute, having regard to character, honesty and integrity,
- (h) if the person is a corporation—whether each director and former director of the corporation or a related body corporate is, in the appropriate regulatory authority's opinion, of good repute, having regard to character, honesty and integrity,
- (i) whether the person, in the previous 10 years, has been convicted in New South Wales or elsewhere of an offence involving fraud or dishonesty,
- (j) if the person is a corporation—whether a director or former director of the corporation or a related body corporate, in the previous 10 years, has been convicted in New South Wales or elsewhere of an offence involving fraud or dishonesty,
- (k) whether the person, during the previous 3 years, was personally insolvent,
- (l) if the person is a corporation—whether a director or former director of the corporation or a related body corporate, during the previous 3 years and while a director of the corporation or related body corporate, was personally insolvent,
- (m) if the person is a corporation—whether the person or a related body corporate applied to take the benefit of a law for the relief of insolvent debtors or compounded with the person's or body corporate's creditors,
- (n) if the person is an individual—whether the person is or was a director of a corporation that—
 - (i) is the subject of a winding up order, or
 - (ii) has had a controller or administrator appointed during the previous 3 years,
- (o) if the person is a corporation—whether the corporation—
 - (i) is the subject of a winding up order, or
 - (ii) has had a controller or administrator appointed during the previous 3 years,
- (p) whether the person has demonstrated to the EPA the financial capacity to comply with the person's obligations under or in connection with the licence or proposed licence,
- (q) whether the person is in partnership, in connection with activities that are subject to a licence or licence application, with a person whom the

appropriate regulatory authority does not consider to be a fit and proper person under this section,

- (r) if the person is a corporation—whether a related body corporate is in partnership with a person whom the appropriate regulatory authority does not consider to be a fit and proper person under this section,
- (s) another ground prescribed by the regulations.

[13] Chapter 4, heading

Insert “**and other notices**” after “**notices**”.

[14] Chapter 4, Part 4.1A

Insert after section 90—

Part 4.1A Preliminary investigation notices

90A Definitions

In this part—

preliminary investigation compliance notice—see section 90G(1).

preliminary investigation notice—see section 90B(2).

relevant circumstances—see section 90B(1).

90B Issue of preliminary investigation notices

- (1) This section applies if the EPA reasonably suspects any of the following circumstances (*relevant circumstances*) may exist or have existed at premises—
 - (a) circumstances that may pose a potential risk of harm to human health or the environment from—
 - (i) a substance, or
 - (ii) the deposit of waste or substances suspected of being waste,
 - (b) a pollution incident.
- (2) The EPA may issue a person referred to in subsection (3) with a written notice (a *preliminary investigation notice*) to facilitate the EPA carrying out a preliminary investigation to determine whether the relevant circumstances exist.
- (3) A preliminary investigation notice may be issued to—
 - (a) an owner or occupier of the premises, or
 - (b) a person who has caused or contributed to, to any extent, the relevant circumstances which are the subject of the notice.
- (4) A person to whom a preliminary investigation notice is issued must comply with the notice.
Maximum penalty for subsection (4)—
 - (a) for a corporation—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
 - (b) for an individual—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

90C Preliminary investigation notice may be given orally

- (1) The EPA may give a preliminary investigation notice orally.

- (2) A preliminary investigation notice given orally to a person ceases to have effect 72 hours after it was given to the person unless the notice is confirmed by the EPA by a written preliminary investigation notice.
- (3) A notice given orally under subsection (1)—
 - (a) has the same effect as a written preliminary investigation notice, and
 - (b) is taken to be a preliminary investigation notice.

90D Content of preliminary investigation notices

- (1) A preliminary investigation notice may require the person to whom it is issued to assist the EPA to—
 - (a) investigate whether the relevant circumstances exist, and
 - (b) if the relevant circumstances exist—determine the nature and extent of the relevant circumstances, including the nature and extent of any harm or risk of harm to human health or the environment arising from the relevant circumstances.
- (2) Without limiting subsection (1), the preliminary investigation notice may require the person to whom it is issued to do the following—
 - (a) collect samples of a substance and have the samples tested and analysed,
 - (b) provide a report about the testing or analysis to the EPA,
 - (c) preserve or prevent the disturbance of a specified substance or location at the premises for a period of time specified in the preliminary investigation notice, including—
 - (i) moving a substance to a more secure location on the premises or on other premises, and
 - (ii) restricting access to a substance or location, and
 - (iii) preventing a substance from being removed from the premises.

90E Preliminary investigation notices may be given to directors and related bodies corporate

- (1) This section applies if—
 - (a) a preliminary investigation notice (the *previous preliminary investigation notice*) has been given to a corporation by the EPA, and
 - (b) the corporation has not complied with the previous preliminary investigation notice within the period specified in the notice.
- (2) The EPA may, by written notice (the *supplementary preliminary investigation notice*), direct 1 or more of the following to carry out, or ensure the carrying out of, the action specified in the preliminary investigation notice within the period specified in the notice—
 - (a) a current director of the corporation,
 - (b) a former director of the corporation,
 - (c) a related body corporate.
- (3) The supplementary preliminary investigation notice may also require the person to whom the notice is given to provide reports to the EPA about progress on the carrying out of the action specified in the notice.
- (4) If the person given a supplementary preliminary investigation notice complies with the notice but was not the person who caused, or solely caused, the relevant circumstances, the cost, or part of the cost, of complying with the

notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from another person who caused or contributed to the relevant circumstances.

- (5) A reference in subsection (2) to a director of a corporation extends to a person involved in the management of the affairs of the corporation.

90F Action by EPA to comply with preliminary investigation notice

If a person does not comply with a preliminary investigation notice given to the person or the EPA otherwise believes it would be appropriate, the EPA may—

- (a) take action to comply with the notice itself or by its employees, agents or contractors, and
(b) recover the relevant costs under sections 90G and 90H.

90G Preliminary investigation compliance notices

- (1) If the EPA gives a preliminary investigation notice to a person, the EPA may, by written notice (a *preliminary investigation compliance notice*) given to the person, require the person to pay all or any reasonable costs and expenses incurred by the EPA in connection with—
- (a) taking action or monitoring under the preliminary investigation notice, and
(b) ensuring the notice is complied with, and
(c) other associated matters.
- (2) If the EPA takes action under section 90F because a preliminary investigation notice is not complied with or the EPA otherwise believes it would be appropriate, the EPA may, by written notice, require the person to whom the notice was given or a person who caused or contributed to the relevant circumstances to pay all or any reasonable costs and expenses incurred by the EPA in taking the action.

90H Recovery of amounts

- (1) The EPA may recover any unpaid amounts specified in a preliminary investigation compliance notice as a debt in a court of competent jurisdiction.
- (2) If the person given a preliminary investigation compliance notice complies with the notice but was not the person who caused or contributed to the relevant circumstances, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who caused or contributed to the relevant circumstances.

90I Recovery of other costs

- (1) This section applies if—
- (a) a person (the *first person*) carries out the requirements of a preliminary investigation notice, and
(b) another person (the *second person*) is issued an environment protection notice or recall notice in relation to the relevant circumstances the subject of the preliminary investigation notice.
- (2) The first person may recover the first person's costs in carrying out the requirements from the second person if the second person contributed to the relevant circumstances.

- (3) For this section, the costs of the first person in carrying out the requirements of the preliminary investigation notice include any amount for which the first person is liable, or reasonable cost the first person has a duty to meet, under section 90G.

[15] Section 91, heading

Omit “occupiers or polluters”.

Insert instead “owners and occupiers of premises and polluters”.

[16] Section 91

Insert at the end of the section—

Note— See also section 144AG, which provides that this part applies to the depositing of litter or waste referred to in section 144AE(1) or the depositing of litter under Part 5.6A as if the depositing of the litter or waste were a pollution incident.

[17] Section 93A

Insert after section 93—

93A Development consent and approval not required for clean-up action

- (1) This section applies if—
- (a) under this part, a person is required to take clean-up action, and
 - (b) the carrying out of the clean-up action would, but for this section, require consent or approval under the *Environmental Planning and Assessment Act 1979*.
- (2) Despite the *Environmental Planning and Assessment Act 1979* or an instrument made under that Act, consent or approval under that Act or instrument is not required to carry out the clean-up action.

[18] Chapter 4, Part 4.2A

Insert after section 94—

Part 4.2A Recall notices

94A Definitions

In this part—

recall cost notice—see section 94M(1).

recall notice—see section 94B.

supply chain participant—see section 94C(1)(c).

94B Issue of recall notice

The EPA may, with the approval of the Minister, issue a notice (a *recall notice*) if, in the EPA’s opinion, 1 or more of the following grounds apply—

- (a) either—
- (i) a substance poses a potential risk of harm to human health or the environment, or
 - (ii) a particular use of, or activity involving, the substance poses a potential risk of harm to human health or the environment,
- (b) a substance—

- (i) is required by environment protection legislation or a national environment protection measure to comply with a prescribed standard or other specific requirements, and
- (ii) does not comply with the standard or other requirements,
- (c) environment protection legislation has been contravened,
- (d) another matter prescribed by the regulations.

94C Content of recall notice

- (1) A recall notice must—
 - (a) identify the substance the subject of the notice, and
 - (b) state the reason under section 94B the recall notice has been issued, and
 - (c) identify the persons or class of persons (both *supply chain participants*) who are subject to the recall notice, and
 - (d) give information or advice about how to minimise the risk of potential harm from the substance, and
 - (e) state the actions required to be taken by the supply chain participants who are subject to the recall notice, and
 - (f) include any other matters prescribed by the regulations.
- (2) For subsection (1)(c), the recall notice may identify the supply chain participants in either or both of the following ways—
 - (a) specifically by name,
 - (b) by reference to a class of persons.

94D Application of recall notice to supply chain participants

A recall notice may apply to any supply chain participant involved in the supply chain of the substance, including a supply chain participant—

- (a) producing, generating, processing or reprocessing the substance, including processing or reprocessing the substance with other substances or by mixing the substance with other substances, or
- (b) selling, distributing, transporting, supplying, resupplying or storing the substance, or
- (c) receiving or processing the substance, whether or not to supply the substance to another person, or
- (d) making the substance available or providing the substance to another person.

94E Actions required by recall notice

For section 94C(1)(e), a recall notice may require a supply chain participant who is subject to the notice to do any of the following—

- (a) stop supplying the substance, or a particular batch of the substance, immediately or within a specified time,
- (b) take action to recover the substance from another person and return the substance to—
 - (i) the supply chain participant's premises, or
 - (ii) another specified location,
- (c) take specified action in relation to the substance, including—
 - (i) sampling, testing, remediating or disposing of the substance, or

- (ii) moving the substance to a specified location,
- (d) give information and records to the EPA about—
 - (i) who the supply chain participant has supplied the substance to, and
 - (ii) the supply chain for the substance,
- (e) if the substance cannot be recalled from a person who has received a supply of the substance—take specified actions, including the following—
 - (i) securing the substance at its current location,
 - (ii) taking action or giving information to the person to prevent or minimise the likelihood of the substance causing harm to human health or the environment,
- (f) publish, in a form approved by the EPA—
 - (i) warnings that the substance is being recalled on the basis of 1 or more of the grounds referred to in section 94B(a)–(d), and
 - (ii) other specified particulars, including the following—
 - (A) batch numbers or other identifying particulars of the substance,
 - (B) information about preventing or minimising the likelihood of the substance causing harm to human health or the environment,
 - (C) information about the recall of the substance,
- (g) control the movement of the substance at premises used or controlled by the supply chain participant, including the following—
 - (i) isolating the substance from other substances,
 - (ii) securing, or restricting or preventing access to, the substance in place,
 - (iii) prohibiting the movement of the substance on the premises at which the substance is located or to other premises,
- (h) not produce the substance for a specified period,
- (i) report on compliance with the recall notice,
- (j) if the supply chain participant has received supply or resupply of the substance—not supply the substance to another person,
- (k) take the following action and provide evidence of the action taken—
 - (i) action to dispose of the substance at a facility that can lawfully receive the substance,
 - (ii) action to destroy the substance,
- (l) another action prescribed by the regulations.

94F Publication of recall notice

- (1) A recall notice must be published—
 - (a) on the EPA’s website, and
 - (b) if the EPA considers it necessary to publish the notice in other ways to bring the notice to the attention of members of the public generally or in a particular part of the State—in other ways the EPA is satisfied are likely to bring the notice to the attention of members of the public generally or in that part of the State.

- (2) A recall notice takes effect—
 - (a) when the notice is published on the EPA’s website, or
 - (b) on a later date specified in the notice.
- (3) A recall notice must also be published in the Gazette as soon as practicable after the notice is published on the EPA’s website.

94G Recall notices may be given to directors and related bodies corporate

- (1) This section applies if—
 - (a) a recall notice (the *previous recall notice*) has been issued by the EPA in relation to a supply chain participant that is a corporation, and
 - (b) the corporation has not complied with the previous recall notice within the period specified in the notice.
- (2) The EPA may, by written notice (the *supplementary recall notice*), direct 1 or more of the following to carry out, or ensure the carrying out of, the action specified in the recall notice within the period specified in the notice—
 - (a) a current director of the supply chain participant,
 - (b) a former director of the supply chain participant,
 - (c) a related body corporate.
- (3) The supplementary recall notice may also require the person to whom the notice is given to provide reports to the EPA about progress on the carrying out of the action specified in the notice.
- (4) If the person given a supplementary recall notice complies with the notice but was not the person who caused, or solely caused, the circumstances the subject of the recall notice, the cost, or part of the cost, of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from another person who caused or contributed to the relevant circumstances.
- (5) A reference in subsection (2) to a director of a supply chain participant that is a corporation extends to a person involved in the management of the corporation.

94H Development consent and approval not required for action under recall notice

- (1) This section applies if—
 - (a) under this part, a person is required to take action under a recall notice, and
 - (b) the carrying out of the action would, but for this section, require consent or approval under the *Environmental Planning and Assessment Act 1979*.
- (2) Despite the *Environmental Planning and Assessment Act 1979* or an instrument made under that Act, consent or approval under that Act or instrument is not required to carry out the action under the recall notice.

94I Public authority may take action in relation to recall notice

- (1) This section applies if—
 - (a) a supply chain participant is given a recall notice, and
 - (b) either—
 - (i) the supply chain participant does not comply with the notice, or

- (ii) the EPA or a public authority otherwise considers it would be appropriate for the EPA or public authority to take action required under the recall notice.
- (2) The EPA may take action required under the recall notice if the EPA considers it appropriate to take the action.
- (3) The public authority may take action required under the recall notice if the public authority—
 - (a) is directed by the EPA to take the action, or
 - (b) otherwise considers it appropriate to take the action.

94J Costs of complying with recall notice

- (1) A supply chain participant to whom a recall notice is given must pay the participant's own costs of complying with the notice.
- (2) To avoid doubt, subsection (1) does not prevent the supply chain participant from recovering costs, or making another claim for damages or compensation, to which the supply chain participant may be entitled other than under this Act.
- (3) If the EPA or a public authority takes action to comply with a recall notice itself or its officers, employees or contractors take the action, the EPA or public authority may recover the relevant costs under sections 94M and 94N.

94K Reviews and appeals

For this part—

- (a) a decision by the Minister or EPA is not an administratively reviewable decision for the *Administrative Decisions Review Act 1997*, and
- (b) in proceedings for judicial review or other provisions, a court or tribunal must not make an interlocutory order that has the effect of staying the operation of a recall notice.

94L Failure to comply with recall notice

A supply chain participant who is subject to a recall notice must, unless the participant has a reasonable excuse, comply with the notice.

Maximum penalty—

- (a) for a corporation—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) for an individual—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

94M Recall cost notices

- (1) The EPA or a public authority may, by written notice (a **recall cost notice**), require the supply chain participant to whom a recall notice is given to pay all or any reasonable costs and expenses incurred by the EPA or public authority in connection with—
 - (a) taking action or monitoring under the recall notice, and
 - (b) ensuring the notice is complied with, and
 - (c) other associated matters.
- (2) If the EPA or a public authority takes action under subsection (1), the EPA or public authority may, by written notice given to the supply chain participant to whom the recall notice was given, require the participant to pay all or any

reasonable costs and expenses incurred by the EPA or public authority in taking the action.

94N Recovery of amounts

The EPA or a public authority may recover any unpaid amounts specified in a recall cost notice as a debt in a court of competent jurisdiction.

94O Voluntary recalls

- (1) A person involved in the supply chain of a substance may initiate a voluntary recall of the substance if the person considers it necessary or appropriate, including if—
 - (a) either—
 - (i) the substance poses a potential risk of harm to human health or the environment, or
 - (ii) a particular use of, or activity involving, the substance poses a potential risk of harm to human health or the environment, or
 - (b) the substance—
 - (i) is required by environment protection legislation or a national protection measure to comply with a prescribed standard or other specific requirements, and
 - (ii) does not comply with the standard or other requirements, or
 - (c) environment protection legislation has been contravened, or
 - (d) another matter prescribed by a regulation under section 94B(d) applies.
- (2) If a person initiates a voluntary recall, the person must immediately give the EPA written notice of the recall.
- (3) The notice must include the following information—
 - (a) that a voluntary recall is occurring,
 - (b) details of the substance that is subject to the recall,
 - (c) if the substance may pose a risk to human health or the environment—the circumstances in which the substance may pose the risk and the nature of the risk,
 - (d) if the substance does not comply with a prescribed standard or other requirements—the nature of the non-compliance,
 - (e) any information or advice for minimising any risk to human health or the environment posed by the substance,
 - (f) the nature of the actions being taken by the person as part of the recall,
 - (g) any other matters prescribed by the regulations.
- (4) If the EPA is given notice about a voluntary recall of a substance, the EPA must publish information about the recall on the EPA's website.
- (5) A voluntary recall under this section does not prevent the EPA from issuing a recall notice to the person in relation to the same substance or matter.

[19] Section 108A

Insert after section 108—

108A Single notice for multiple pollution incidents

- (1) A single notice under this chapter may be given by the EPA to a person in relation to—
 - (a) pollution incidents that relate to—
 - (i) multiple premises in the same or different local government areas, or
 - (ii) the whole of the State or a part of the State, or
 - (b) matters involving the transport, storage, supply, processing, reprocessing or disposal of a substance or waste across—
 - (i) multiple premises in the same or different local government areas, or
 - (ii) the whole of the State or a part of the State.
- (2) For subsection (1)(a), pollution incidents that relate to multiple premises, or the whole of the State or a part of the State, may be treated as 1 pollution incident.
- (3) To avoid doubt, the EPA may issue a notice under subsection (1) even if the EPA is not the appropriate regulatory authority for all the areas, premises, activities or matters—
 - (a) to which the pollution incidents relate, or
 - (b) involved in the transport, storage, supply, processing, reprocessing or disposal of the substance or waste.

[20] Section 109A

Insert after section 109—

109A Interaction of notices with proceedings for offences

A notice under this chapter, including the variation of a notice under section 110, may be given to a person in relation to an activity, matter, thing or premises even though the activity, matter, thing or premises are also the subject of proceedings for an offence.

[21] Section 110 Revocation or variation

Omit section 110(2). Insert instead—

- (2) A notice may be varied by—
 - (a) including a new term or specification in the notice, or
 - (b) substituting, omitting or amending a term or specification in the notice.

[22] Section 112 Obstruction of persons

Omit “an environment protection notice” from section 112(a).

Insert instead “a notice under this chapter”.

[23] Section 112(b)

Omit “taking clean-up action under Part 4.2”.

Insert instead “taking action under Part 4.2 or 4.2A”.

[24] Section 112(c)

Omit “taking action under section 98 or 103”.

Insert instead “taking action under Part 4.1A or 4.2A or section 98 or 103”.

[25] Section 113, heading

Omit “reports”.

Insert instead “tests, environmental monitoring and reports”.

[26] Section 113

Omit “report”. Insert instead “test, environmental monitoring or a report”.

[27] Section 119 Maximum penalty for tier 1 offences

Omit “\$5,000,000” from section 119(a). Insert instead “\$10,000,000”.

[28] Section 119(a)

Omit “\$2,000,000”. Insert instead “\$4,000,000”.

[29] Section 119(b)

Omit “\$1,000,000”. Insert instead “\$2,000,000”.

[30] Section 133 Prohibition by EPA of burning in open air or incinerators

Omit section 133(4). Insert instead—

- (4) An order must be published in the reasonably practicable way the EPA is satisfied is most likely to bring the order to the attention of the persons to whom the order applies.

[31] Section 142A Pollution of land

Omit section 142A(1), penalty. Insert instead—

Maximum penalty—

(a) for a corporation—

- (i) if the offence involves asbestos waste—\$4,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (ii) otherwise—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or

(b) for an individual—

- (i) if the offence involves asbestos waste—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (ii) otherwise—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

[32] Section 143 Unlawful transporting or depositing of waste

Omit section 143(1), penalty. Insert instead—

Maximum penalty—

(a) for a corporation—

- (i) if the offence involves asbestos waste—\$4,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (ii) otherwise—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or

- (b) for an individual—
 - (i) if the offence involves asbestos waste—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
 - (ii) otherwise—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

[33] Section 144 Use of place as waste facility without lawful authority

Omit section 144(1), penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—
 - (i) if the offence involves asbestos waste—\$4,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
 - (ii) otherwise—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) for an individual—
 - (i) if the offence involves asbestos waste—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
 - (ii) otherwise—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

[34] Section 144AAA Unlawful disposal of asbestos waste

Omit section 144AAA(1), penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—\$4,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) for an individual—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

[35] Section 144AAB Re-use and recycling of asbestos waste prohibited

Omit section 144AAB, penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—\$4,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) for an individual—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

[36] Section 144AA False or misleading information about waste

Omit section 144AA(1), penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) for an individual—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

[37] Section 144AA(2)

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) for an individual—either or both of the following—
 - (i) \$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues,
 - (ii) imprisonment for 18 months.

[38] Section 144AB Repeat waste offenders

Insert in appropriate order in section 144AB(1)—

- (aaa) section 91B, in relation to a pollution incident relating to waste,
- (ab) section 116, if the leaks, spillages or other escapes involve waste,
- (h) section 286A(2),
- (i) section 286B(1),
- (j) section 286C(1).

[39] Section 144AC Use of approved GPS tracking device required by EPA for waste transportation vehicles

Omit section 144AC(2), penalty. Insert instead—

Maximum penalty—

- (b) for a corporation—\$44,000, or
- (a) for an individual—\$22,000.

[40] Chapter 5, Part 5.6AA

Insert after section 144AC—

Part 5.6AA Illegal dumping

144AD Definitions

In this part—

authorised officer means the following—

- (a) an authorised officer under this Act,
- (b) a police officer,
- (c) an authorised officer under the *National Parks and Wildlife Act 1974*,
- (d) an authorised officer under the *Forestry Act 2012*,
- (e) an authorised officer under the *Crown Land Management Act 2016*,
- (f) an authorised officer under the *Greater Sydney Parklands Trust Act 2022*,
- (g) an authorised person under regulations made under the *Royal Botanic Gardens and Domain Trust Act 1980*.

depositing litter has the same meaning as in Part 5.6A.

illegal dumping offence—see section 144AE(2).

litter has the same meaning as in Part 5.6A.

open private place has the same meaning as in Part 5.6A.

sensitive place means the following—

- (a) land acquired or reserved under the *National Parks and Wildlife Act 1974*, including land acquired under Part 11 of that Act that is yet to be reserved,
- (b) a State forest or flora reserve within the meaning of the *Forestry Act 2012*,
- (c) land that is a park within the meaning of the *Local Government Act 1993*,
- (d) a beach within the meaning of the *Coastal Management Act 2016*,
- (e) waters,
- (f) the grounds of a childcare centre, hospital or school to the extent the grounds are a public place or private open space,
- (g) another place prescribed by the regulations.

144AE Offence of illegal dumping

- (1) This section applies if a person, without lawful excuse—
 - (a) deposits litter or waste in an amount of more than 50L or 50kg in or on—
 - (i) a public place, or
 - (ii) an open private place, or
 - (b) causes or permits conduct referred to in paragraph (a).
- (2) The person commits an offence (an *illegal dumping offence*).
Maximum penalty—
 - (a) for a corporation—
 - (i) for an offence committed in or on a sensitive place—\$100,000, or
 - (ii) otherwise—\$50,000, or
 - (b) for an individual—
 - (i) for an offence committed in or on a sensitive place—\$50,000, or
 - (ii) otherwise—\$25,000.
- (3) If a court is satisfied a person charged with an illegal dumping offence in relation to depositing litter is not guilty of that offence but is satisfied on the evidence the person is guilty of an offence under section 145—
 - (a) the court may find the person guilty of the offence under section 145, and
 - (b) the person is liable to punishment under that section.

144AF Exceptions

- (1) Section 144AE does not apply to a person who deposited the litter or waste in or on a public place if the person—
 - (a) deposited the litter or waste in or on the place—
 - (i) in a receptacle provided by the custodian of the place for the depositing of litter or waste, and
 - (ii) in accordance with any conditions specified by the custodian, by a notice displayed on or near the receptacle, in relation to the depositing of litter or waste in the receptacle, or
 - (b) placed a receptacle containing the litter or waste in the place for the purpose of the litter or waste being removed during a litter or waste removal service provided by the custodian of the place, or

- (c) deposited the litter or waste in the place—
 - (i) in response to an invitation contained in a notice published by the custodian of the place, and
 - (ii) in accordance with any conditions specified in the notice in relation to the depositing of litter or waste in the place, or
 - (d) deposited the litter or waste in the place with the express consent of the custodian of the place.
- (2) Section 144AE does not apply to a person who deposited the litter or waste in or on an open private place if the person—
- (a) deposited the litter or waste in or on the place in any receptacle that is—
 - (i) provided for the depositing of litter or waste, and
 - (ii) appropriate for litter or waste of that size, shape, nature or volume, or
 - (b) at the relevant time was the custodian of the place or was acting with the express or implied consent of the custodian of the place.
- (3) Section 144AE does not apply to a person who deposited the litter or waste in or on a place if the person—
- (a) deposited the litter or waste in the place under an authority conferred by or under this Act or another Act or a Commonwealth Act, or
 - (b) deposited the litter or waste in accordance with regulations made for the purposes of this section or in circumstances prescribed by regulations made for the purposes of this section.

144AG Clean-up of illegal dumping

- (1) Chapter 4, Part 4.2 applies to the depositing of litter or waste referred to in section 144AE(1) or the depositing of litter under Part 5.6A as if the depositing of the litter or waste were a pollution incident.
- (2) For subsection (1), Chapter 4, Part 4.2 applies—
- (a) as if a reference to premises at or from which a pollution incident has occurred or is occurring, or is suspected to have occurred or is occurring, were a reference to premises on which litter or waste has been deposited as referred to in section 144AE(1), and
 - (b) as if the maximum penalty in section 91B for a corporation were \$50,000 and, for a continuing offence, a further penalty of \$6,000 for each day the offence continues, and
 - (c) as if the maximum penalty in section 91B for an individual were \$25,000 and, for a continuing offence, a further penalty of \$6,000 for each day the offence continues, and
 - (d) with any other modifications prescribed by the regulations.

144AH Direction to remove litter or waste

- (1) This section applies if an authorised officer believes on reasonable grounds that litter or waste has been deposited in a public place by a person in contravention of this Act.
- (2) The authorised officer may give the following persons a verbal direction to remove the litter or waste from the public place—
- (a) the person who deposited the litter or waste,
 - (b) the person who caused or permitted the depositing of the litter or waste.

- (3) The person must comply with the direction.
Maximum penalty—
- (a) if the amount of litter or waste is no more than 50kg or 50L—
 - (i) for a corporation—\$10,000, or
 - (ii) for an individual—\$5,000, or
 - (b) if the amount of litter or waste is more than 50kg or 50L—
 - (i) for a corporation—\$20,000, or
 - (ii) for an individual—\$10,000.

[41] Section 145 Littering generally

Omit section 145(1), penalty. Insert instead—

- Maximum penalty—
- (a) for a corporation—\$10,000, or
 - (b) for an individual—\$5,000.

[42] Section 145A

Omit the section. Insert instead—

145A Littering dangerous materials

- (1) A person who deposits litter that is or includes dangerous material in or on either of the following places commits an offence—
- (a) a public place,
 - (b) an open private place.
- Maximum penalty—
- (a) for a corporation—\$50,000, or
 - (b) for an individual—\$25,000.
- (2) If a court is satisfied a person charged with an offence under this section is not guilty of the offence but is satisfied on the evidence the person is guilty of an offence under section 145, the court may—
- (a) find the person guilty of the offence under section 145, and
 - (b) impose a penalty on the person under that section.
- (3) In this section—
- dangerous material*** means the following—
- (a) a lit cigarette or a lit cigarette butt,
 - (b) an e-cigarette,
 - (c) a lithium battery or an item that contains a lithium battery,
 - (d) a syringe,
 - (e) glass,
 - (f) oil, fuel, grease, paint or solvent,
 - (g) a substance, material or other thing prescribed by the regulations.
- syringe***—
- (a) means a hypodermic syringe, and
 - (b) includes—

- (i) anything designed for use, or intended to be used, as part of a hypodermic syringe, and
- (ii) a needle designed for use, or intended to be used, in connection with a hypodermic syringe.

[43] Section 152 Offence

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—\$4,000,000 and, for a continuing offence, a further penalty of \$480,000 for each day the offence continues, or
- (b) for an individual—\$1,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues.

[44] Section 153F Implementation of plan

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—\$4,000,000 and, for a continuing offence, a further penalty of \$480,000 for each day the offence continues, or
- (b) for an individual—\$1,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues.

[45] Section 167B Receiving monetary benefits

Omit “body corporate” from section 167B(1)(b). Insert instead “entity”.

[46] Section 173 Accreditation and regulation of environmental auditors

Omit “auditors.” from section 173(b). Insert instead—

auditors, including—

- (i) the protection of documents prepared for environmental audits, and
- (ii) the admissibility in a court or tribunal of documents prepared for environmental audits.

[47] Chapter 6, Part 6.3

Omit the part.

[48] Section 186 Extension of Chapter to other environment protection legislation

Insert after section 186(a)—

- (a1) *Dangerous Goods (Road and Rail Transport) Act 2008* and the regulations under that Act,

[49] Section 198 Powers of authorised officers to do things at premises

Omit section 198(2)(h). Insert instead—

- (h) seize anything the authorised officer reasonably suspects—
 - (i) is connected with an offence against this Act or the regulations, or
 - (ii) may present a risk of harm to human health or the environment,

[50] Section 211 Offences

Omit section 211(3A), penalty. Insert instead—

Maximum penalty, subject to sections 204 and 208—

- (a) for a corporation—\$4,000,000 and, for a continuing offence, a further penalty of \$480,000 for each day the offence continues, or
- (b) for an individual—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues.

[51] Section 212A Revocation or variation

Omit section 212A(2). Insert instead—

- (2) A notice may be varied by—
 - (a) including a new term or specification in the notice, or
 - (b) substituting, omitting or amending a term or specification in the notice.

[52] Section 215 Proceedings for other offences

Omit “1,000 penalty units” from section 215(2). Insert instead “2,000 penalty units”.

[53] Section 216A

Insert after section 216—

216A Multiple contraventions

- (1) Two or more contraventions of a provision of environment protection legislation by a person that arise out of the following may be charged as a single offence or as separate offences—
 - (a) the same factual circumstances,
 - (b) the same activity being carried on at the same premises.
- (2) This section does not authorise contraventions of 2 or more provisions of environment protection legislation to be charged as a single offence.
- (3) A single penalty only may be imposed in relation to 2 or more contraventions of a provision that are charged as a single offence.

[54] Section 218 Other authorities who may also institute proceedings

Insert after section 218(3)—

- (3A) The following persons may institute proceedings for a littering offence—
 - (a) the Secretary of the Department of Climate Change, Energy, the Environment and Water or a person authorised by the Secretary,
 - (b) the Secretary of the Department of Planning, Housing and Infrastructure or a person authorised by the Secretary,
 - (c) the Greater Sydney Parklands Trust constituted under the *Greater Sydney Parklands Trust Act 2022* or a person authorised by the Trust,
 - (d) the Royal Botanic Gardens and Domain Trust constituted under the *Royal Botanic Gardens and Domain Trust Act 1980* or a person authorised by the Trust,
 - (e) a public authority or person prescribed by the regulations.

[55] Section 218(7), definition of “littering offence”

Insert “5.6AA or” after “Part”.

[56] Section 226 Enforcement officers

Insert “5.6AA or” after “Part” in section 226(4).

[57] Section 249 Orders regarding monetary benefits

Omit section 249(2A). Insert instead—

- (2A) For subsection (1), the prosecutor for the offence may give to the court a reasonable estimate of the amount of monetary benefits acquired by, or accrued or accruing to, a person as a result of the commission of the offence.
- (2B) The prosecutor may calculate the estimate—
 - (a) in accordance with a protocol prescribed by the regulations, or
 - (b) using another method, formula or approach the prosecutor considers appropriate.

[58] Section 250A

Insert after section 250—

250A Prohibiting a person from holding a licence

- (1) A court may, having regard to the matters mentioned in subsection (2) and other matters the court considers appropriate, make the following orders—
 - (a) an order prohibiting the offender from either of the following for an indefinite period or a period specified in the order—
 - (i) being involved in scheduled activities,
 - (ii) applying for or holding a licence,
 - (b) another order the court considers appropriate.
- (2) The matters to which a court must have regard are as follows—
 - (a) the offender’s record in failing to comply with this Act or the regulations,
 - (b) any previous conviction of the offender under environment protection legislation,
 - (c) the circumstances surrounding the commission of the offence for which the offender is being sentenced.
- (3) A prohibition order cannot be sought in relation to a public utility that provides an essential service.
- (4) In this section—

public utility that provides an essential service means the following—

 - (a) the Crown,
 - (b) the Sydney Water Corporation constituted by the *Sydney Water Act 1994*,
 - (c) the Hunter Water Corporation constituted by the *Hunter Water Act 1991*,
 - (d) a local authority,
 - (e) another person or body prescribed by the regulations.

[59] Section 251A Recovery of monetary benefits from related persons after offence proved

Omit “body corporate” from section 251A(2)(b). Insert instead “entity”.

[60] Section 251A(4) and (4A)

Omit section 251A(4). Insert instead—

- (4) For subsection (2), the prosecutor for the offence may give to the court a reasonable estimate of the amount of monetary benefits acquired by, or accrued or accruing to, a person as a result of the commission of the offence.
- (4A) The prosecutor may calculate the estimate—
 - (a) in accordance with a protocol prescribed by the regulations, or
 - (b) using another method, formula or approach the prosecutor considers appropriate.

[61] Section 253B

Insert after section 253A—

253B Prohibition orders

- (1) This section applies if the EPA considers a person (the *relevant person*)—
 - (a) is likely to engage again, or continue to engage, in unlawful conduct, or
 - (b) is not a fit and proper person to hold, or continue to hold, an environment protection licence.
- (2) The EPA may apply to the Land and Environment Court for an order under this section.
- (3) The relevant person cannot apply for an environment protection licence during the period—
 - (a) starting when the application is made to the Land and Environment Court, and
 - (b) ending when the Court makes a decision about whether or not to make an order under this section.
- (4) The Land and Environment Court may make—
 - (a) an order prohibiting the relevant person from either of the following for an indefinite period or a period specified in the order—
 - (i) being involved in scheduled activities,
 - (ii) applying for or holding a licence, or
 - (b) another order the Court considers appropriate.
- (5) An order under this section cannot be sought in relation to a public utility that provides an essential service.
- (6) In this section—

public utility that provides an essential service means the following—

 - (a) the Crown,
 - (b) the Sydney Water Corporation constituted by the *Sydney Water Act 1994*,
 - (c) the Hunter Water Corporation constituted by the *Hunter Water Act 1991*,
 - (d) a local authority,
 - (e) another person or body prescribed by the regulations.

[62] Section 256 Onus of proof of certain matters

Insert “5.6AA or” after “Part” in section 256(2).

[63] Section 256(2)

Insert “144AF(1)–(3),” after “section”.

[64] Section 261 Certificate evidence of certain matters

Insert “or the regulations” after “Act” wherever occurring in section 261(1) and (2)(a)(i) and (i).

[65] Section 261(2)(a1)

Insert after section 261(2)(a)—

- (a1) that notice of a matter under this Act or the regulations was given on the EPA’s website and the date and form of the notice,

[66] Sections 262 and 262A

Omit section 262. Insert instead—

262 Evidence of analysts

- (1) The EPA may, by written instrument, appoint appropriately qualified persons to be analysts for this Act.
- (2) A certificate of an analyst prepared under this section for a regulatory authority stating the results of an analysis or examination is admissible in evidence in proceedings under this Act as evidence of—
 - (a) the facts stated in the certificate, and
 - (b) the correctness of the result of the analysis or examination.
- (3) A certificate of an analyst prepared under this section for a regulatory authority stating that a container containing a sample was received at a specified laboratory and that the container was sealed by an authorised officer or another person is admissible in proceedings under this Act as evidence—
 - (a) of the facts stated in the certificate, and
 - (b) the sample was the same sample as the sample obtained by the authorised officer or other person, and
 - (c) the sample had not been tampered with since the container was sealed by the authorised officer or other person.
- (4) A document purporting to be a certificate prepared under this section is, unless the contrary is proved, taken to be a certificate under this section.

262A Evidence from photographs and other images

- (1) This section applies to a photographic or other image of an area of land formed from data captured by a device carried by an aircraft, satellite or other craft, and information recorded on the image, that either of the following certifies as an approved image—
 - (a) the CEO of the EPA,
 - (b) an officer of the EPA designated by the CEO of the EPA.
- (2) An approved image is admissible in proceedings under this Act and, in the absence of evidence to the contrary, is evidence of the following—
 - (a) the matter depicted on the image,

- (b) the information recorded on the image relating to the location or boundaries of the land,
 - (c) the time when, or period during which, the image was taken,
 - (d) other matters prescribed by the regulations.
- (3) In proceedings in which an approved image is admitted in evidence—
- (a) the image is presumed, in the absence of evidence to the contrary, to be orthorectified, and
 - (b) evidence is not required, in the absence of evidence to the contrary, of the accuracy of any process used to—
 - (i) orthorectify the image, or
 - (ii) determine the boundaries of land recorded in the image.

[67] Section 284 Exemptions by EPA in emergencies and other situations

Omit “exemption.” from section 284(2)(b)(iii). Insert instead—
exemption, or

- (c) circumstances prescribed by the regulations.

[68] Sections 286A–286C

Insert after section 286—

286A Offence regarding resource recovery orders

- (1) The EPA may, by order, impose requirements on a specified person, or a specified class of persons, in relation to the supply by the person, or persons in the specified class, of waste to which a resource recovery exemption applies.
- (2) A person to whom an order under subsection (1) applies must comply with the requirements imposed by the order on—
 - (a) the person, or
 - (b) the class of persons to which the person belongs.Maximum penalty—
 - (a) for a corporation—
 - (i) if the offence involves asbestos waste—\$4,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
 - (ii) otherwise—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
 - (b) for an individual—
 - (i) if the offence involves asbestos waste—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
 - (ii) otherwise—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.
- (3) The regulations may provide for further matters in relation to orders under subsection (1), including—
 - (a) specifying the classes of waste and supply of waste in relation to which orders may be made, and
 - (b) how notice of an order is given, and

- (c) when an order takes effect, and
- (d) the variation and revocation of orders.

286B Records relating to resource recovery exemptions and orders

- (1) A person who is required by a resource recovery exemption or resource recovery order to record information must—
 - (a) make or keep records in accordance with the exemption or order, and
 - (b) ensure the record is kept for at least 6 years after the record is made, and
 - (c) make the record available for inspection and copying by an authorised officer if requested.Maximum penalty—
 - (a) for a corporation—
 - (i) if the offence relates to asbestos waste—\$1,000,000, or
 - (ii) otherwise—\$500,000, or
 - (b) for an individual—
 - (i) if the offence relates to asbestos waste—\$500,000, or
 - (ii) otherwise—\$250,000.
- (2) The regulations may provide for additional matters in relation to records under exemptions under section 286 and resource recovery orders, including matters relating to the effect of a variation or revocation of an exemption or order on a requirement referred to in subsection (1).
- (3) Nothing in this section limits—
 - (a) the conditions that may be imposed on a resource recovery exemption, or
 - (b) the requirements that may be imposed by a resource recovery order.

286C Information or records under resource recovery exemption or order

- (1) A person who is required under a resource recovery exemption or resource recovery order to give another person information or records relating to waste to which the exemption or order relates must give the information or records to the other person—
 - (a) within the time specified in the exemption or order, or
 - (b) on the request of the other person—within 7 days after the request is made or the shorter period specified in the exemption or order.

Note— Part 7.3 confers powers on the EPA to require a person to give information to the EPA.

Maximum penalty—
 - (a) for a corporation—
 - (i) if the offence involves asbestos waste—\$1,000,000, or
 - (ii) otherwise—\$500,000, or
 - (b) for an individual—
 - (i) if the offence involves asbestos waste—\$500,000, or
 - (ii) otherwise—\$250,000.
- (2) The regulations may provide for additional matters in relation to information or records under exemptions under section 286 and resource recovery orders, including matters relating to the effect of a variation or revocation of an exemption or order on a requirement referred to in subsection (1).

- (3) Nothing in this section limits—
 - (a) the conditions that may be imposed on a resource recovery exemption, or
 - (b) the requirements that may be imposed by a resource recovery order.

[69] Section 319B

Insert after section 319A—

319B Public warning statements

- (1) The EPA may make or issue a public statement identifying, and giving warnings or information about, the following—
 - (a) substances or activities the EPA reasonably suspects of contributing to a pollution incident, including details about the providers of the substances or activities,
 - (b) an activity the EPA reasonably suspects is being carried out in an environmentally unsatisfactory way, including details about the provider of the activity,
 - (c) an activity, person, substance or other matter that, in the EPA’s opinion, is of environmental concern, including if the EPA suspects there is a potential risk of harm to human health or the environment,
Examples— warning against acquiring free fill material from unknown sources and warning not to accept fill material from a particular person in response to offers on social media or from a particular phone number
 - (d) regulatory action taken against a person, including specifying the nature of the regulatory action and, if the person is a corporation, identifying the directors of the corporation and any related body corporate,
 - (e) complaints received by the EPA under environment protection legislation in relation to a matter,
 - (f) anything relevant to the administration of this Act or the regulations and protecting the environment.
- (2) The statement may do any of the following—
 - (a) identify a particular individual or corporation, including any known aliases of the individual or corporation,
 - (b) identify a particular business practice, service, material or product, including waste,
 - (c) identify a specific substance, including by referring to the brand name of a substance,
Example— identifying contaminated fill material by the name the material is sold as from a landscaping company
 - (d) specify information about a substance or activity, including the basis on which the EPA suspects the substance or activity has contributed to a pollution incident or may pose a risk of harm to human health or the environment and warnings or advice for minimising the risk,
 - (e) specify particular locations or premises,
Example— specifying that contaminated fill is being advertised as clean fill in a particular region or that the EPA has concerns that excavated material from particular premises has been applied to land at a second premises
 - (f) refer to methods of promoting a substance or activity and ways of operating,

- Example—** advertising free fill material on social media or online marketplaces, or on signs displayed in a particular location with contact details
- (g) specify regulatory action or previous regulatory action taken in relation to a named person or a person involved in the management of a corporation or business,
Example— a statement that a specified person has previously been fined or prosecuted for a particular type of offence
- (h) specify the nature of complaints the EPA has received about an activity, substance, person engaged in an activity or other matter.
Example— in a warning about non-compliant material, identify that the EPA has received a number of complaints about the odour of the material
- (3) The EPA may make or issue a public statement under this section only if the EPA is satisfied that making or issuing the public statement is in the public interest.
Note— See the *Protection of the Environment Administration Act 1991*, section 35A, which provides for the exclusion of liability in relation to a statement made or issued under this section, the publication of the statement or a fair report or summary of the statement.

[70] Section 320A

Omit the section. Insert instead—

320A False representations

- (1) A person must not, knowing it to be false or misleading, represent that—
- (a) any of the following are approved, provided, recommended or used by the EPA—
- (i) goods,
- (ii) substances,
Example— waste
- (iii) services, or
- (b) the person, or another person, holds a licence that permits certain activities, or
- (c) the person, or another person, is authorised by an order or exemption under this Act to carry out certain activities, or
- (d) waste supplied under a resource recovery order under section 286A meets the requirements of the order.
- Maximum penalty—
- (a) for a corporation—\$2,000,000, or
- (b) for an individual—\$500,000 or imprisonment for 18 months, or both.
- (2) In this section—
represent includes cause or permit a representation to be made.

[71] Section 321

Omit the section. Insert instead—

321 Service of documents

- (1) A document authorised or required by this Act or the regulations to be served on a person may be served in any of the following ways—
- (a) for service on an individual—

- (i) by personal delivery to the individual, or
 - (ii) by post to—
 - (A) the address specified by the individual for service of documents generally or documents of that kind, or
 - (B) if the individual has not specified an address for service—the residential or business address of the individual last known to the person serving the document, or
 - (iii) if the individual’s address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the individual, at the document exchange in accordance with the usual arrangements for the exchange, or
 - (iv) by leaving a copy of the document, addressed to the individual—
 - (A) at the address specified by the individual for service of documents generally or documents of that kind, or
 - (B) if the individual has not specified an address for service—at the residential or business address of the individual last known to the person serving the document, or
 - (v) if the individual has consented, whether explicitly or impliedly, to service of documents generally, or documents of that kind, by electronic communication—by electronic communication, or
Examples of impliedly consenting to service of documents by electronic communication—previously using email to correspond with the EPA or including the individual’s email address on applications made, or other documents given, to the EPA
 - (vi) in another way authorised by the regulations for the service of documents generally or documents of that kind,
- (b) for service on another person—
- (i) by post to—
 - (A) the address specified by the person for service of documents generally or documents of that kind, or
 - (B) if the person has not specified an address for service—the business address of the person last known to the person serving the document, or
 - (ii) if the person’s address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the person, at the document exchange in accordance with the usual arrangements for the exchange, or
 - (iii) by leaving a copy of the document, addressed to the person—
 - (A) at the address specified by the person for service of documents generally or documents of that kind, or
 - (B) if the person has not specified an address for service—at the business address of the person last known to the person serving the document, or
 - (iv) if the person has consented, whether explicitly or impliedly, to service of documents generally, or documents of that kind, by electronic communication—by electronic communication, or
Examples of impliedly consenting to service of documents by electronic communication—previously using email to correspond for the purposes of this Act or including the person’s email address on applications or other documents under this Act
 - (v) in another way authorised by the regulations for the service of documents generally or documents of that kind.

- (2) Nothing in this section affects the operation of another law, including the rules of a court, authorising a document to be served on a person in another way.
- (3) In this section—
electronic communication has the same meaning as in the *Electronic Transactions Act 2000*.
serve includes give, issue, notify and send.

[72] Section 323 Regulations

Omit “200 penalty units” from section 323(3)(a). Insert instead “250 penalty units”.

[73] Section 323(3)(b)

Omit “400 penalty units”. Insert instead “500 penalty units”.

[74] Schedule 1 Scheduled activities

Omit “(made under clause 93 of the *Protection of the Environment Operations (Waste) Regulation 2014*)” from clause 34(2A)(b).

[75] Schedule 1, clause 41(2AA)(b)

Omit “(made under clause 93 of the *Protection of the Environment Operations (Waste) Regulation 2014*)”.

[76] Schedule 1, clause 42(2A)(b)

Omit “(made under clause 93 of the *Protection of the Environment Operations (Waste) Regulation 2014*)”.

[77] Schedule 1, clause 50(1)

Omit “(www.epa.nsw.gov.au)” wherever occurring.

[78] Schedule 2 Regulation-making powers

Insert after clause 9A—

9B Waste classifier accreditation scheme

- (1) A scheme for the accreditation of persons (*waste classifiers*) to classify or assess waste, including waste the subject of a resource recovery exemption or resource recovery order or a class of waste.
- (2) Without limiting subsection (1), the scheme may include provision for the following—
 - (a) training and certification of waste classifiers,
 - (b) fees to be paid in relation to the scheme and the waiver and refund of fees,
 - (c) an online register for waste classifiers and reports about waste classification,
 - (d) requirements about the classification of waste, including a requirement that waste must be classified by a waste classifier accredited under the scheme,
 - (e) requirements for notifications and reports about waste classification,
 - (f) information that must be provided by waste classifiers to the EPA and other persons and authorities and how the information must be provided,

- (g) recognition of similar accreditations in jurisdictions other than New South Wales,
- (h) the administration of the scheme, including the following—
 - (i) who administers the scheme,
 - (ii) how the scheme is administered,
 - (iii) how long an accreditation is in force.

[79] Schedule 2, clause 15(3)

Insert after section 15(2)—

- (3) Requirements in relation to keeping information, records and other documents about pollution, including complaints about pollution.

[80] Schedule 5 Savings, transitional and other provisions

Insert at the end of the schedule, with appropriate part and clause numbering—

Part Provisions consequent on enactment of Environment Protection Legislation Amendment (Stronger Regulation and Penalties) Act 2024

Definition

In this part—

amendment Act means the *Environment Protection Legislation Amendment (Stronger Regulation and Penalties) Act 2024*.

Suspension or revocation of licence

Section 79, as amended by the amendment Act, applies in relation to a contravention of this Act or the regulations that occurred before the commencement of the amendment Act, Schedule 9[11].

Preliminary investigation notices

Part 4.1A, as inserted by the amendment Act, applies in relation to circumstances or a pollution incident that occurred before the commencement of the amendment Act, Schedule 9[14] in the same way as if the circumstances or pollution incident occurred on or after the commencement of the item.

Recall notices

Part 4.2A, as inserted by the amendment Act, applies in relation to a ground mentioned in section 94B that occurred before the commencement of the amendment Act, Schedule 9[18] in the same way as if the ground occurred on or after the commencement of the item.

Variation of notices

Sections 110(2) and 212A(2), as substituted by the amendment Act, apply to a notice issued before the commencement of the amendment Act, Schedule 9[21] and [51] and in force immediately before the commencement of the items.

Tests, environmental monitoring and reports

Section 113, as amended by the amendment Act, applies to a test, environmental monitoring or a report lodged with an appropriate regulatory

authority in the same way as if the test, monitoring or report were lodged on or after the commencement of the amendment Act, Schedule 9[25] and [26].

Illegal dumping

Part 5.6AA, as inserted by the amendment Act, applies in relation to litter or waste deposited before the commencement of the amendment Act, Schedule 9[40] in the same way as if the litter or waste were deposited on or after the commencement of the item.

Littering dangerous material

Section 145A, as substituted by the amendment Act, applies in relation to litter deposited before the commencement of the amendment Act, Schedule 9[42] in the same way as if the litter were deposited on or after the commencement of the item.

Receiving monetary benefits

Section 167B, as amended by the amendment Act, applies to proceedings commenced but not finally determined before the commencement of the amendment Act, Schedule 9[45].

Protected documents

- (1) Previous sections 181–183 continue to apply to documents referred to in section 181 in relation to proceedings commenced but not finally determined before the commencement of the amendment Act, Schedule 9[47].
- (2) Previous sections 181–183 do not apply to documents prepared before the commencement of the item in relation to proceedings commenced on or after the commencement of the item.
- (3) In this clause—
previous sections 181–183 means sections 181–183 as in force immediately before the repeal of the sections by the amendment Act.

Powers of authorised officers

- (1) This clause applies if, on or after the commencement of the amendment Act, Schedule 9[49], an authorised officer lawfully enters premises under section 198(1).
- (2) The power of the authorised officer to seize a thing, in accordance with section 198(2)(h) as substituted by the amendment Act, extends to a thing—
 - (a) connected with an offence alleged to have been committed before the commencement of the amendment Act, Schedule 9[49], or
 - (b) that may present a risk of harm that arose before the commencement of the item.

Jurisdictional limits for proceedings in Local Court

Section 215, as amended by the amendment Act, applies to proceedings commenced but not finally determined before the commencement of the amendment Act, Schedule 9[52].

Multiple contraventions

Section 216A, as inserted by the amendment Act, extends to contraventions arising out of circumstances that occurred, or the carrying out of an activity, before the commencement of the amendment Act, Schedule 9[53] if

proceedings in relation to the contraventions had not commenced before the commencement of the item.

Court orders

Sections 249, 250A, 251A(4) and (4A) and 253B, as amended, inserted or substituted by the amendment Act, apply to proceedings commenced but not finally determined before the commencement of the amendment Act, Schedule 9[57]–[61].

Evidence of analysts

Sections 262 and 262A, as substituted or inserted by the amendment Act, apply to proceedings commenced but not finally determined before the commencement of the amendment Act, Schedule 9[66].

Resource recovery orders

- (1) This clause applies to a resource recovery order issued under a regulation under this Act before the commencement of the amendment Act, Schedule 9[84].
- (2) The resource recovery order is, from the commencement of the item, taken to be a resource recovery order issued under section 286A.
- (3) Without limiting subclause (2), a reference in the following to a resource recovery order made under a regulation under this Act is taken, from the commencement of the item, to be a reference to a resource recovery order issued under section 286A—
 - (a) environment protection legislation,
 - (b) another Act or regulation or an instrument under another Act or regulation,
 - (c) the NSW Energy from Waste Policy Statement dated June 2021 and published in the Gazette on 8 July 2022,
 - (d) the Eligible Waste Fuels Guidelines dated June 2022 and published in the Gazette on 8 July 2022.

Resource recovery exemptions

- (1) This clause applies to an exemption by, or provided for in, regulations made under section 286 from provisions of this Act or the regulations in relation to an activity, or class of activities, relating to waste that was in force immediately before the commencement of the amendment Act, Schedule 9[84].
- (2) The exemption is, from the commencement of the item, taken to be a resource recovery exemption within the meaning of Schedule 6.

Information and records under resource recovery exemption or order

Sections 286B and 286C, as inserted by the amendment Act, extend to—

- (a) a resource recovery exemption or order in force immediately before the commencement of the amendment Act, Schedule 9[68], and
- (b) information or records in existence before the commencement of the item.

Public warning statements

Section 319B, as inserted by the amendment Act, applies in relation to conduct that occurred before the commencement of the amendment Act, Schedule 9[69] in the same way as if the conduct occurred on or after the commencement of the item.

[81] Dictionary, heading

Omit the heading. Insert instead—

Schedule 6 Dictionary

[82] Dictionary

Omit the definition of *clean-up action*. Insert instead—

clean-up action—

- (a) in relation to a pollution incident—includes—
 - (i) action to prevent, minimise, remove, disperse, destroy or mitigate pollution resulting or likely to result from the pollution incident, and
 - (ii) ascertaining the nature and extent of the pollution incident and the actual or likely resulting pollution, and
 - (iii) preparing and carrying out a remedial plan of action to deal with the pollution incident, and
 - (iv) actions required to restore the environment to a state that is as close as possible to the state the environment was in immediately before the pollution incident, and
 - (v) carrying out—
 - (A) specified tests or environmental monitoring, and
 - (B) action to facilitate testing by the appropriate regulatory authority, and
 - (vi) giving the appropriate regulatory authority a specified test, monitoring or a report, and
- (b) also includes action to remove or store the following—
 - (i) waste disposed of on land unlawfully,
 - (ii) chemicals,
 - (iii) products or articles containing chemicals.

[83] Dictionary, definition of “public place”

Omit “state game reserve” from paragraph (c).

Insert instead “karst conservation reserve, regional park”.

[84] Dictionary

Insert in alphabetical order—

authorised officer, for Chapter 5, Part 5.6AA—see section 144AD.

depositing litter, for Chapter 5, Part 5.6AA—see section 144AD.

illegal dumping offence, for Chapter 5, Part 5.6AA—see section 144AE(2).

litter, for Chapter 5, Part 5.6AA—see section 144AD.

open private place, for Chapter 5, Part 5.6AA—see section 144AD.

preliminary investigation compliance notice, for Chapter 4, Part 4.1A—see section 90G(1).

preliminary investigation notice, for Chapter 4, Part 4.1A—see section 90B(2).

recall cost notice, for Chapter 4, Part 4.2A—see section 94M(1).

recall notice, for Chapter 4, Part 4.2A—see section 94B.

related entity has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

relevant circumstances, for Chapter 4, Part 4.1A—see section 90B(1).

resource recovery exemption means an exemption—

- (a) by, or provided for in, regulations made under section 286 from provisions of this Act or the regulations in relation to an activity, or class of activities, relating to waste, and
- (b) in relation to which the regulations expressly state that a resource recovery order is, or may be, made in relation to the exemption.

resource recovery order means an order made under section 286A.

sensitive place, for Chapter 5, Part 5.6AA—see section 144AD.

supply chain participant, for Chapter 4, Part 4.2A—see section 94C(1)(c).

Schedule 10 Amendment of Protection of the Environment Operations (General) Regulation 2022

[1] Section 7

Omit “Planning Secretary” wherever occurring.

Insert instead “Secretary of the Department of Climate Change, Energy, the Environment and Water”.

[2] Section 7(2)

Omit the subsection.

[3] Section 151 Fee for clean-up, prevention and noise control notices

Omit section 151(1)(b)–(e). Insert instead—

- (b) in the financial year 2023–24—
 - (i) for a clean-up notice issued in relation to depositing litter or waste under the Act, section 94(2) as applied by the Act, section 144AG—\$250, or
 - (ii) otherwise—\$785,
- (c) in the financial year 2024–25—
 - (i) for a clean-up notice issued in relation to depositing litter or waste under the Act, section 94(2) as applied by the Act, section 144AG—\$256, or
 - (ii) otherwise—\$803,
- (d) in the financial year 2025–26—
 - (i) for a clean-up notice issued in relation to depositing litter or waste under the Act, section 94(2) as applied by the Act, section 144AG—\$267, or
 - (ii) otherwise—\$821,
- (e) in the financial year 2026–27—
 - (i) for a clean-up notice issued in relation to depositing litter or waste under the Act, section 94(2) as applied by the Act, section 144AG—\$286, or
 - (ii) otherwise—\$840,

[4] Schedule 6 Penalty notice offences

Omit “Department of Planning and Environment” from section 2(a)(ii).

Insert instead “Department of Climate Change, Energy, the Environment and Water”.

[5] Schedule 6, section 2(h)(i)

Omit “Department of Planning and Environment”.

Insert instead “Department of Planning, Housing and Infrastructure”.

[6] Schedule 6, section 2(o)

Omit “by the Department of Planning and Environment.”.

Insert instead—

by—

- (i) the Department of Climate Change, Energy, the Environment and Water, or
- (ii) the Department of Planning, Housing and Infrastructure.

[7] Schedule 6, Protection of the Environment Operations Act 1997

Omit the matter relating to sections 48, 49, 64, 91B, 97, 120, 124, 125, 126, 128, 129, 142A, 143, 144, 144AAA, 144AAB, 144AA(1), 144AC(2), 145, 145A, 152, 167 and 211(1).

Insert in appropriate order—

Section 48(2)	2	For a first offence— \$15,000	For a first offence— \$30,000
		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 49(2)	2	For a first offence— \$15,000	For a first offence— \$30,000
		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 64(1)			
• failing to submit an annual return by the time required by the condition of a licence	2	For a first offence— \$1,500	For a first offence— \$3,000
		For a second or subsequent offence— \$2,250	For a second or subsequent offence— \$4,500
• otherwise	2	For a first offence— \$15,000	For a first offence— \$30,000
		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 90B(4)	2	\$15,000	\$30,000
Section 91B	1, 2, 11, 12, 13	For a first offence— \$15,000	For a first offence— \$30,000
		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 94L	2	\$15,000	\$30,000
Section 97	1, 2, 11, 12, 13	For a first offence— \$15,000	For a first offence— \$30,000
		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 120(1)	1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14	For a first offence— \$15,000	For a first offence— \$30,000

		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 124	1, 2, 13	For a first offence— \$4,000	For a first offence— \$8,000
		For a second or subsequent offence— \$6,000	For a second or subsequent offence— \$12,000
Section 125	1, 2, 13	For a first offence— \$4,000	For a first offence— \$8,000
		For a second or subsequent offence— \$6,000	For a second or subsequent offence— \$12,000
Section 126(1)	1, 2, 13	For a first offence— \$4,000	For a first offence— \$8,000
		For a second or subsequent offence— \$6,000	For a second or subsequent offence— \$12,000
Section 128(3)	1, 2, 13	For a first offence— \$15,000	For a first offence— \$30,000
		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 129(3)	2	For a first offence— \$4,000	For a first offence— \$8,000
		For a second or subsequent offence— \$6,000	For a second or subsequent offence— \$12,000
Section 142A(1)	1, 2	For a first offence— \$15,000	For a first offence— \$30,000
		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000

Section 143(1) transport the following waste to a place that cannot lawfully be used as a waste facility for the waste—	1, 2, 4, 12, 14	For a first offence— \$15,000	For a first offence— \$30,000
(a) waste comprising asbestos waste or hazardous waste, within the meaning of the Act, Schedule 1			
(b) other waste greater than 1m ³ in volume or 2t in weight		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 143(1) transport other waste to a place that cannot lawfully be used as a waste facility for the waste	1, 2, 4, 12, 14	For a first offence— \$8,000	For a first offence— \$16,000
		For a second or subsequent offence— \$12,000	For a second or subsequent offence— \$24,000
Section 144(1)	1, 2, 4, 12	For a first offence— \$15,000	For a first offence— \$30,000
		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 144AAA(1)	1, 2	For a first offence— \$15,000	For a first offence— \$30,000
		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 144AAB	1, 2	For a first offence— \$15,000	For a first offence— \$30,000
		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 144AA(1)	2	For a first offence— \$8,000	For a first offence— \$16,000
		For a second or subsequent offence— \$12,000	For a second or subsequent offence— \$24,000

Section 144AC(2)	2	For a first offence— \$2,000	For a first offence— \$4,000
		For a second or subsequent offence— \$3,000	For a second or subsequent offence— \$6,000
Section 144AE(2) illegal dumping of waste or litter	1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15		
• for an offence committed in or on a sensitive place		\$2,500	\$10,000
• otherwise		\$1,000	\$5,000
Section 144AG(2)	1, 2, 11, 12, 13	\$2,500	\$5,000
Section 144AH(3) non-compliance with direction to remove litter or waste	1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15		
• if the amount of litter or waste is no more than 50kg or 50L		\$250	\$1,000
• if the amount of litter or waste is more than 50kg or 50L		\$500	\$2,000
Section 145(1) deposit litter that is a small item, including a confectionery wrapper, cigarette packet, ATM statement or bus or train ticket, excluding a cigarette and excluding litter deposited from a vehicle	1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15	\$160	\$160
Section 145(1) deposit other litter, excluding a cigarette and excluding litter deposited from a vehicle	1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15	\$500	\$1,000
Section 145(1) deposit litter that is an unlit or extinguished cigarette, excluding litter deposited from a vehicle	1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15	\$160	\$160

Section 145(1) deposit litter from a vehicle	1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15	\$500	\$1,000
Section 145A(1) littering dangerous material	1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15	\$1,000	\$5,000
Section 152	1, 2	\$4,000	\$8,000
Section 167(4)	1, 2	\$4,000	\$8,000
Section 211(1)	1, 2, 3, 4, 12, 13	For a first offence— \$15,000	For a first offence— \$30,000
		For a second or subsequent offence— \$22,500	For a second or subsequent offence— \$45,000
Section 286A(2)	2	\$15,000	\$30,000
Section 286B(1)	2	\$4,000	\$8,000
Section 286C(1)	2	\$4,000	\$8,000

[8] Schedule 6, Protection of the Environment Operations (Waste) Regulation 2014

Omit the matter relating to clauses 78(1), 78(2), 78(3), 78(4), 80(2), 80(3), 80(4), 93(7), 94(1)(a), 94(1)(b), 95(1) and 110A(1).

Insert in appropriate order—

Clause 78(1)	1, 2	\$7,500	\$15,000
Clause 78(2)	1, 2	\$7,500	\$15,000
Clause 78(3)	1, 2	\$7,500	\$15,000
Clause 78(4)	1, 2	\$7,500	\$15,000
Clause 80(2)	1, 2	\$7,500	\$15,000
Clause 80(3)	1, 2	\$7,500	\$15,000
Clause 80(4)	1, 2	\$7,500	\$15,000
Clause 110A(1)	1, 2	\$7,500	\$15,000

Schedule 11 Amendment of Protection of the Environment Operations (Waste) Regulation 2014

- [1] **Clause 10B When contributions are to be paid by waste facilities that are not disposal facilities (except for trackable liquid waste)**
Omit clause 10B(2), definition of *resource recovery order*.
- [2] **Clause 92 Exemptions relating to resource recovery**
Insert after clause 92(4)—
(5) An exemption granted under clause 91 because of the operation of this clause is an exemption for which a resource recovery order may be made.
- [3] **Clause 93 Supply of waste to which resource recovery exemptions apply**
Omit clause 93(1).
- [4] **Clause 93(2)**
Omit “An order can only be issued under this clause”.
Insert instead “A resource recovery order may be issued only”.
- [5] **Clause 93(3), (4) and (6)**
Omit “An order under this clause”.
Insert “A resource recovery order”.
- [6] **Clause 93(5)**
Omit “an order granted under this clause”. Insert instead “a resource recovery order”.
- [7] **Clause 93(7)**
Omit the subclause.
- [8] **Clause 94 Record keeping**
Omit clause 94(1).
- [9] **Clause 94(2)**
Omit clause 92(2) and (3). Insert instead—
(2) The variation or revocation of an exemption granted under the Act, section 286 or a resource recovery order does not affect the operation of the Act, section 286A in relation to information the exemption or order required to be recorded before the variation or revocation.
- [10] **Clause 95(1)**
Omit the subclause.
- [11] **Clause 95(2)**
Omit “, or an order made under this Part, does not affect the operation of subclause (1)”.
Insert instead “or resource recovery order does not affect the operation of the Act, section 286B”.
- [12] **Clause 95(3)**
Omit “subclause (1)”. Insert instead “the Act, section 286B”.

[13] Clause 95(4)

Omit the subclause.

[14] Clause 96 Defence to offences relating to resource recovery orders

Omit the clause.