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Authorised Version No. 005
Environment Protection Act 2017
No. 51 of 2017

Authorised Version incorporating amendments as at
1 July 2021

The Parliament of Victoria enacts:

Chapter 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to provide for the continuation of the Environment Protection Authority; and
- (b) to specify a new objective of the Environment Protection Authority; and
- (c) to provide for a new governance structure of the continued Environment Protection Authority; and
- (d) to provide for the Governing Board of the Environment Protection Authority; and
- (e) to set out principles of environment protection; and
- (f) to set out the legislative framework for the protection of human health and the environment from pollution and waste; and
- (g) to provide for a general environmental duty to minimise risks of harm to human health and the environment from pollution or waste; and

Pt 1 (Heading) substituted as Ch. 1 (Heading) by No. 39/2018 s. 4.

S. 1(e) inserted by No. 39/2018 s. 5(1).

S. 1(f) inserted by No. 39/2018 s. 5(1).

S. 1(g) inserted by No. 39/2018 s. 5(1).

S. 1(h)
inserted by
No. 39/2018
s. 5(1).

(h) to establish a permissions scheme that enables the Environment Protection Authority to issue or grant development licences, operating licences, pilot project licences, permits and registrations; and

S. 1(i)
inserted by
No. 39/2018
s. 5(1).

(i) to provide a framework for the management of waste; and

S. 1(j)
inserted by
No. 39/2018
s. 5(1).

(j) to provide for waste and resource recovery infrastructure and planning; and

S. 1(k)
inserted by
No. 39/2018
s. 5(1).

(k) to enable the Environment Protection Authority and authorised officers to ensure compliance with the Act and require action to manage risks of harm to human health and the environment from pollution or waste; and

S. 1(l)
inserted by
No. 39/2018
s. 5(1).

(l) to provide for a system of criminal and civil penalties; and

S. 1(m)
inserted by
No. 39/2018
s. 5(1).

(m) to provide for a system of civil remedies and compensation orders available to the Court; and

S. 1(e)
renumbered
as s. 1(o) by
No. 39/2018
s. 5(2)(a),
amended by
No. 39/2018
s. 5(2)(b)(c).

(o) to make consequential amendments to the **Public Administration Act 2004** and other Acts.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2018, it comes into operation on that day.

3 Definitions

(1) In this Act—

activity includes—

- (a) the storage or possession of waste or any other substance or thing; or
- (b) anything prescribed to be an activity;

S. 3(1) def. of *activity* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

advisory committee means a committee established under section 372;

S. 3(1) def. of *advisory committee* amended by No. 39/2018 s. 6(1).

agent of a vessel means a person or body that transacts business, in a port, on behalf of the owner or charterer of the vessel;

S. 3(1) def. of *agent of a vessel* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

analysis includes the taking of a sample or any test, measurement, calculation or examination made for the purpose of determining—

- (a) the characteristics of a matter or substance; or
- (b) the effects of a discharge, emission or deposit of waste or pollution;

S. 3(1) def. of *analysis* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

analyst means a person appointed as an analyst under section 245;

S. 3(1) def. of *analyst* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of
associate
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

associate, of another person, means any of the following persons—

- (a) a spouse, parent, brother, sister or child of the other person;
- (b) a domestic partner of the other person within the meaning of section 39(1) of the **Relationships Act 2008**;
- (c) a member of the other person's household;
- (d) a person who is in a partnership within the meaning of the **Partnerships Act 1958** with the other person;
- (e) a person participating in the management of the same unincorporated body as the other person;
- (f) a trustee or beneficiary of the same trust as the other person;
- (g) a trustee of a trust of which the other person is a beneficiary;
- (h) a beneficiary of a trust of which the other person is a trustee;
- (i) if the other person is a body corporate, an officer or member of the governing body of the body corporate;
- (j) a shareholder of the other person if the other person is a body corporate (other than a public company whose shares are listed on a stock exchange);
- (k) a person with whom a chain of relationships with the other person can be traced under any one or more of the above paragraphs;
- (l) a prescribed person;

associated entity has the same meaning as in the Corporations Act;

S. 3(1) def. of *associated entity* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

authorised officer means a person appointed as an authorised officer under section 242;

S. 3(1) def. of *authorised officer* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

authorised to receive industrial waste, in relation to a person or a place or premises, means any of the following—

S. 3(1) def. of *authorised to receive industrial waste* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

- (a) authorised by a permission to receive that type of industrial waste;
- (b) exempt from a requirement to obtain a permission to receive that type of industrial waste;
- (c) authorised under section 157(1) to receive that type of industrial waste;
- (d) specified by operation of section 48 as not required to obtain a permission to receive that type of industrial waste;
- (e) authorised by the regulations, or in accordance with a process prescribed by the regulations, to receive that type of industrial waste;

Authority means the Environment Protection Authority continued under section 356;

S. 3(1) def. of *Authority* amended by No. 39/2018 s. 6(2).

S. 3(1) def. of
*Barwon
South West
Waste and
Resource
Recovery
Group*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

Barwon South West Waste and Resource Recovery Group means the Waste and Resource Recovery Group established for the Barwon South West Waste and Resource Recovery Region;

S. 3(1) def. of
*Barwon
South West
Waste and
Resource
Recovery
Region*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

Barwon South West Waste and Resource Recovery Region means the region that consists of the municipal districts of the following councils—

- (a) Borough of Queenscliffe Council;
- (b) Colac Otway Shire Council;
- (c) Corangamite Shire Council;
- (d) Glenelg Shire Council;
- (e) Greater Geelong City Council;
- (f) Moyne Shire Council;
- (g) Southern Grampians Shire Council;
- (h) Surf Coast Shire Council;
- (i) Warrnambool City Council;

S. 3(1) def. of
*better
environment
plan*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

better environment plan means a better environment plan accepted by the Authority under section 182;

S. 3(1) def. of
Chairperson
amended by
No. 39/2018
s. 6(3).

Chairperson means the Chairperson of the Governing Board appointed under section 363;

chief environmental scientist means the chief environmental scientist appointed under section 374;

S. 3(1) def. of *chief environmental scientist* amended by No. 39/2018 s. 6(4).

chief executive officer means the chief executive officer appointed under section 373;

S. 3(1) def. of *chief executive officer* amended by No. 39/2018 s. 6(5).

civil penalty order means an order made under Part 11.5;

S. 3(1) def. of *civil penalty order* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

civil penalty provision means a provision set out in the table in section 314;

S. 3(1) def. of *civil penalty provision* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

clean up includes measures or activities—

- (a) to investigate and assess the nature and extent of pollution or waste, including any harm or risk of harm to human health and the environment arising from the pollution or waste; and
- (b) to remove, disperse, destroy, dispose of, abate, neutralise or treat pollution or waste; and
- (c) to restore the environment to a state as close as practicable to the state it was in immediately before the discharge or emission of pollution or the deposit of

S. 3(1) def. of *clean up* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

waste, or to any other state, for the purposes of Part 10.9; and

- (d) for the remediation of contaminated land; and
- (e) for the ongoing management of pollution or waste; and
- (f) to do anything necessary for, in connection with, or in relation to, the measures set out in paragraph (a), (b), (c), (d) or (e);

S. 3(1) def. of *commencement day* repealed by No. 39/2018 s. 6(8).

* * * * *

S. 3(1) def. of *commercially sensitive information* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

commercially sensitive information means information that relates to matters of a business, commercial or financial nature, the disclosure of which would be likely to unreasonably expose a person, an authority or an associated entity to disadvantage;

S. 3(1) def. of *compliance code* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

compliance code means a compliance code approved under section 100(1);

S. 3(1) def. of *conduct* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

conduct, in relation to a business or undertaking, has the meaning given by subsection (4);

contaminated land has the meaning given in section 35;

S. 3(1) def. of *contaminated land* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

corrupt conduct has the same meaning as in the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3(1) def. of *corrupt conduct* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

council has the same meaning as *Council* has in section 3(1) of the **Local Government Act 1989**;

S. 3(1) def. of *council* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

council officer means—

- (a) a Chief Executive Officer within the meaning of section 3(1) of the **Local Government Act 1989**; or
- (b) a member of Council staff within the meaning of section 3(1) of the **Local Government Act 1989**;

S. 3(1) def. of *council officer* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

Court means the County Court, the Magistrates' Court or the Supreme Court;

S. 3(1) def. of *Court* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of
court officer
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

court officer means a magistrate or registrar of the
Magistrates' Court;

S. 3(1) def. of
*dangerous
litter*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

dangerous litter has the meaning given by
section 112;

S. 3(1) def. of
deposit
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

deposit, in relation to litter and waste, means the
act of parting with the possession of litter or
waste and includes the disposal of litter or
waste by burning;

S. 3(1) def. of
*deputy
Chairperson*
amended by
No. 39/2018
s. 6(6).

deputy Chairperson means the deputy
Chairperson of the Governing Board
appointed under section 363;

S. 3(1) def. of
*development
licence*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

development licence means a licence issued under
section 69;

S. 3(1) def. of
*Director,
Transport
Safety*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

Director, Transport Safety has the same meaning
as in the **Transport Integration Act 2010**;

draft Regional Waste and Resource Recovery Implementation Plan means a Regional Waste and Resource Recovery Implementation Plan prepared by a Waste and Resource Recovery Group for approval by the Minister;

S. 3(1) def. of *draft Regional Waste and Resource Recovery Implementation Plan* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

draft State-Wide Waste and Resource Recovery Infrastructure Plan means a State-Wide Waste and Resource Recovery Infrastructure Plan prepared by Sustainability Victoria for approval by the Minister;

S. 3(1) def. of *draft State-Wide Waste and Resource Recovery Infrastructure Plan* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

economic instrument means a measure that provides financial incentives or disincentives for the purpose of encouraging protection of human health and the environment in economic activity, through incorporating the costs of harm and risks of harm, including but not limited to—

S. 3(1) def. of *economic instrument* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

- (a) a scheme in the nature of a tradeable permit scheme; and
- (b) an environmental offset (however described);

eligible person, in relation to an application under Part 11.4, has the meaning given by section 308(1);

S. 3(1) def. of *eligible person* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of *enforceable undertaking* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

enforceable undertaking means an undertaking accepted by the Authority under section 300;

S. 3(1) def. of *entertainment venue* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

entertainment venue means any premises or place where music is performed or played but does not include residential premises or a place of worship;

S. 3(1) def. of *environment* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

environment means—

- (a) the physical factors of the surroundings of human beings including the land, waters, atmosphere, climate, sound, odours and tastes; and
- (b) the biological factors of animals and plants; and
- (c) the social factor of aesthetics;

S. 3(1) def. of *environment reference standard* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

environment reference standard means an environment reference standard made under section 93(1);

S. 3(1) def. of *environmental action notice* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

environmental action notice means an environmental action notice issued under section 274;

environmental audit means an environmental audit conducted in accordance with section 208;

S. 3(1) def. of ***environmental audit*** inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

environmental audit report means a report prepared under section 212;

S. 3(1) def. of ***environmental audit report*** inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

environmental audit statement means an environmental audit statement prepared under section 210;

S. 3(1) def. of ***environmental audit statement*** inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

environmental auditor means a person appointed as an environmental auditor under Division 1 of Part 8.3;

S. 3(1) def. of ***environmental auditor*** inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

environmental value means a use, an attribute or a function of the environment;

S. 3(1) def. of ***environmental value*** inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of *financial assurance* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

financial assurance means a financial assurance provided to the Authority in accordance with section 219;

S. 3(1) def. of *general environmental duty* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

general environmental duty means the duty under section 25(1);

S. 3(1) def. of *Gippsland Waste and Resource Recovery Group* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

Gippsland Waste and Resource Recovery Group means the Waste and Resource Recovery Group established for the Gippsland Waste and Resource Recovery Region;

S. 3(1) def. of *Gippsland Waste and Resource Recovery Region* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

Gippsland Waste and Resource Recovery Region means the region that consists of the municipal districts of the following councils—

- (a) Bass Coast Shire Council;
- (b) Baw Baw Shire Council;
- (c) East Gippsland Shire Council;
- (d) Latrobe City Council;
- (e) South Gippsland Shire Council;
- (f) Wellington Shire Council;

Goulburn Valley Waste and Resource Recovery Group means the Waste and Resource Recovery Group established for the Goulburn Valley Waste and Resource Recovery Region;

S. 3(1) def. of *Goulburn Valley Waste and Resource Recovery Group* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

Goulburn Valley Waste and Resource Recovery Region means the region that consists of the municipal districts of the following councils—

S. 3(1) def. of *Goulburn Valley Waste and Resource Recovery Region* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

- (a) Campaspe Shire Council;
- (b) Greater Shepparton City Council;
- (c) Mitchell Shire Council;
- (d) Moira Shire Council;
- (e) Murrindindi Shire Council;
- (f) Strathbogie Shire Council;

Governing Board means the Environment Protection Authority Governing Board under section 361;

S. 3(1) def. of *Governing Board* amended by No. 39/2018 s. 6(7).

Grampians Central West Waste and Resource Recovery Group means the Waste and Resource Recovery Group established for the Grampians Central West Waste and Resource Recovery Region;

S. 3(1) def. of *Grampians Central West Waste and Resource Recovery Group* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of *Grampians Central West Waste and Resource Recovery Region* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

Grampians Central West Waste and Resource Recovery Region means the region that consists of the municipal districts of the following councils—

- (a) Ararat Rural City Council;
- (b) Ballarat City Council;
- (c) Central Goldfields Shire Council;
- (d) Golden Plains Shire Council;
- (e) Hepburn Shire Council;
- (f) Hindmarsh Shire Council;
- (g) Horsham Rural City Council;
- (h) Moorabool Shire Council;
- (i) Northern Grampians Shire Council;
- (j) Pyrenees Shire Council;
- (k) West Wimmera Shire Council;
- (l) Yarriambiack Shire Council;

S. 3(1) def. of *greenhouse gas substance* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

greenhouse gas substance means—

- (a) carbon dioxide, methane, nitrous oxide or sulphur hexafluoride, whether in a gaseous or liquid state; or
- (b) a hydrofluorocarbon or a perfluorocarbon, whether in a gaseous or liquid state, that is specified in regulations made under the National Greenhouse and Energy Reporting Act 2007 of the Commonwealth;

S. 3(1) def. of *groundwater* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

groundwater means any water contained in or occurring in a geological structure or formation or an artificial landfill below the surface of land;

human health includes psychological health;

S. 3(1) def. of *human health* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

IBAC means the Independent Broad-based Anti-corruption Commission established under section 12 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3(1) def. of *IBAC* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

IBAC personnel has the same meaning as it has in the **Victorian Inspectorate Act 2011**;

S. 3(1) def. of *IBAC personnel* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

improvement notice means a notice issued under section 271(1);

S. 3(1) def. of *improvement notice* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

industrial waste means—

- (a) waste arising from commercial, industrial or trade activities or from laboratories; or
- (b) waste prescribed to be industrial waste for the purposes of this definition;

S. 3(1) def. of *industrial waste* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of
information gathering notice
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

information gathering notice means a notice
served by the Authority under section 255;

S. 3(1) def. of
issue of environmental concern
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

issue of environmental concern means an issue
that is declared to be an issue of
environmental concern under section 160;

S. 3(1) def. of
land
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

land means any land, whether publicly or
privately owned, and includes—
(a) any buildings or other structures
permanently affixed to the land; and
(b) groundwater;

S. 3(1) def. of
law enforcement agency
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

law enforcement agency includes—
(a) a law enforcement agency within the
meaning of the **Privacy and Data
Protection Act 2014**; and
(b) any council;

S. 3(1) def. of
liable person
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

liable person has the meaning given by
section 144;

licence means—

- (a) a development licence; or
- (b) an operating licence; or
- (c) a pilot project licence;

S. 3(1) def. of *licence* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

licence activity, in relation to a licence, means an activity specified in the licence;

S. 3(1) def. of *licence activity* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

litter has the meaning given by section 112;

S. 3(1) def. of *litter* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

litter authority includes—

- (a) the Authority; or
- (b) any other body created by or under an Act; or
- (c) a Government department; or
- (d) a council; or
- (e) the Secretary, being the body corporate established by Part 2 of the **Conservation, Forests and Lands Act 1987**; or
- (f) a body declared by Order of the Governor in Council under section 113 to be a litter authority;

S. 3(1) def. of *litter authority* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of
*litter
enforcement
officer*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

litter enforcement officer means—

- (a) a person appointed as a litter enforcement officer by the Authority under section 114(1); or
- (b) a person appointed as a litter enforcement officer by a litter authority under section 114(2); or
- (c) a person appointed as a litter enforcement officer by the Secretary under section 114(3); or
- (d) an authorised officer; or
- (e) a police officer; or
- (f) a protective services officer appointed under the **Victoria Police Act 2013** who is on duty at, or in the vicinity of, a designated place within the meaning of that Act; or
- (g) a person appointed as an authorised officer under Part 3 of the **Victorian Fisheries Authority Act 2016** for the purposes of this Act;

S. 3(1) def. of
*Local
Government
Waste Forum*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

Local Government Waste Forum means a Local Government Waste Forum established under section 391;

Loddon Mallee Waste and Resource Recovery Group means the Waste and Resource Recovery Group established for the Loddon Mallee Waste and Resource Recovery Region;

S. 3(1) def. of *Loddon Mallee Waste and Resource Recovery Group* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

Loddon Mallee Waste and Resource Recovery Region means the region that consists of the municipal districts of the following councils—

S. 3(1) def. of *Loddon Mallee Waste and Resource Recovery Region* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

- (a) Buloke Shire Council;
- (b) Gannawarra Shire Council;
- (c) Greater Bendigo City Council;
- (d) Loddon Shire Council;
- (e) Macedon Ranges Shire Council;
- (f) Mildura Rural City Council;
- (g) Mount Alexander Shire Council;
- (h) Swan Hill Rural City Council;

management or control, in relation to industrial waste or priority waste, means exercising management functions in relation to, or control over, the industrial waste or priority waste and includes the following—

S. 3(1) def. of *management or control* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

- (a) producing or generating waste;
- (b) collecting, consigning, transferring or transporting waste;
- (c) receiving, handling or storing waste;
- (d) undertaking resource recovery or processing of waste;

S. 3(1) def. of
*Metropolitan
Waste and
Resource
Recovery
Group*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

(e) undertaking waste disposal;

Metropolitan Waste and Resource Recovery Group means the Waste and Resource Recovery Group established for the Metropolitan Waste and Resource Recovery Region;

S. 3(1) def. of
*Metropolitan
Waste and
Resource
Recovery
Region*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

Metropolitan Waste and Resource Recovery Region means the region that consists of the municipal districts of the following councils—

- (a) Banyule City Council;
- (b) Bayside City Council;
- (c) Boroondara City Council;
- (d) Brimbank City Council;
- (e) Cardinia Shire Council;
- (f) Casey City Council;
- (g) Darebin City Council;
- (h) Frankston City Council;
- (i) Glen Eira City Council;
- (j) Greater Dandenong City Council;
- (k) Hobsons Bay City Council;
- (l) Hume City Council;
- (m) Kingston City Council;
- (n) Knox City Council;
- (o) Manningham City Council;
- (p) Maribyrnong City Council;
- (q) Maroondah City Council;

- (r) Melbourne City Council;
- (s) Melton City Council;
- (t) Monash City Council;
- (u) Moonee Valley City Council;
- (v) Moreland City Council;
- (w) Mornington Peninsula Shire Council;
- (x) Nillumbik Shire Council;
- (y) Port Phillip City Council;
- (z) Stonnington City Council;
- (za) Whitehorse City Council;
- (zb) Whittlesea City Council;
- (zc) Wyndham City Council;
- (zd) Yarra City Council;
- (ze) Yarra Ranges Shire Council;

motor vehicle has the same meaning as in the
Road Safety Act 1986;

S. 3(1) def. of
motor vehicle
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

municipal district has the same meaning as in the
Local Government Act 1989;

S. 3(1) def. of
*municipal
district*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

S. 3(1) def. of *municipal waste* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

municipal waste means waste arising from municipal or residential activities, and includes waste collected by, or on behalf of, a council, but does not include industrial waste;

S. 3(1) def. of *National Environment Protection Council* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

National Environment Protection Council means the National Environment Protection Council established by section 8 of the **National Environment Protection Council (Victoria) Act 1995**;

S. 3(1) def. of *national environment protection measure* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

national environment protection measure means a national environment protection measure made under section 14(1) of the **National Environment Protection Council (Victoria) Act 1995**;

S. 3(1) def. of *noise* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

noise includes sound and vibration;

S. 3(1) def. of *North East Waste and Resource Recovery Group* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

North East Waste and Resource Recovery Group means the Waste and Resource Recovery Group established for the North East Waste and Resource Recovery Region;

North East Waste and Resource Recovery

Region means the region that consists of the municipal districts of the following councils—

- (a) Alpine Shire Council;
- (b) Benalla Rural City Council;
- (c) Falls Creek Alpine Resort Management Board;
- (d) Indigo Shire Council;
- (e) Mansfield Shire Council;
- (f) Mount Buller and Mount Stirling Alpine Resort Management Board;
- (g) Mount Hotham Alpine Resort Management Board;
- (h) Towong Shire Council;
- (i) Wangaratta Rural City Council;
- (j) Wodonga City Council;

notice to investigate means a notice to investigate issued under section 273;

notifiable contamination has the meaning given by section 37;

S. 3(1) def. of *North East Waste and Resource Recovery Region* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of *notice to investigate* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of *notifiable contamination* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of *notifiable incident* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

notifiable incident has the meaning given by section 30;

S. 3(1) def. of *officer* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

officer in relation to a body corporate means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate;

S. 3(1) def. of *operating licence* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

operating licence means a licence issued under section 74;

S. 3(1) def. of *participant* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

participant, in a better environment plan, has the meaning given by section 179;

S. 3(1) def. of *permission* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

permission means—

- (a) a development licence; or
- (b) an operating licence; or
- (c) a pilot project licence; or
- (d) a permit; or
- (e) a registration;

| | |
|--|--|
| <p><i>permission activity</i>, in relation to a permission, means an activity specified in the permission;</p> | <p>S. 3(1) def. of <i>permission activity</i> inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).</p> |
| <p><i>permit</i> means a permit issued under section 81;</p> | <p>S. 3(1) def. of <i>permit</i> inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).</p> |
| <p><i>pilot project licence</i> means a licence issued under section 78;</p> | <p>S. 3(1) def. of <i>pilot project licence</i> inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).</p> |
| <p><i>place</i> includes land, waters, a location, an area or a region;</p> | <p>S. 3(1) def. of <i>place</i> inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).</p> |
| <p><i>police officer</i> has the same meaning as in the Victoria Police Act 2013;</p> | <p>S. 3(1) def. of <i>police officer</i> inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).</p> |
| <p><i>pollution</i> includes any emission, discharge, deposit, disturbance or escape of— (a) a solid, liquid or gas, or a combination of a solid, liquid or gas, including but</p> | <p>S. 3(1) def. of <i>pollution</i> inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).</p> |

not limited to smoke, dust, fumes or odour; or

- (b) noise; or
- (c) heat; or
- (d) a thing prescribed for the purposes of this definition—

but does not include a thing prescribed not to be pollution for the purposes of this definition;

S. 3(1) def. of *pollution incident* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

pollution incident has the meaning given by section 29;

S. 3(1) def. of *position statement* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

position statement means a position statement published under section 105(1);

S. 3(1) def. of *preliminary risk screen assessment* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

preliminary risk screen assessment means a preliminary risk screen assessment conducted under section 204;

preliminary risk screen assessment report means
a report prepared under section 207;

S. 3(1) def. of
*preliminary
risk screen
assessment
report*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

preliminary risk screen assessment statement
means a preliminary risk screen assessment
statement issued under section 205;

S. 3(1) def. of
*preliminary
risk screen
assessment
statement*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

premises includes a structure, building or vehicle;

S. 3(1) def. of
premises
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

priority waste has the meaning given in
section 138;

S. 3(1) def. of
priority waste
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

prohibited person has the meaning set out in
section 88(1);

S. 3(1) def. of
*prohibited
person*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

S. 3(1) def. of
*prohibition
notice*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

prohibition notice means a notice issued under
section 272(1);

S. 3(1) def. of
public entity
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

public entity has the same meaning as in the
Public Administration Act 2004;

S. 3(1) def. of
*Public
Register*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

Public Register means the Public Register
established and maintained under
section 455;

S. 3(1) def. of
*public sector
body*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

public sector body has the same meaning as in
the **Public Administration Act 2004**;

S. 3(1) def. of
*Regional
Waste and
Resource
Recovery
Implementation
Plan*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

*Regional Waste and Resource Recovery
Implementation Plan* means a Regional
Waste and Resource Recovery
Implementation Plan approved by the
Minister under section 420(1);

registered owner means—

- (a) in relation to a motor vehicle—the person who is registered as the registered operator of the motor vehicle under the **Road Safety Act 1986** or a corresponding law of the Commonwealth, a State or a Territory; and
- (b) in relation to a vessel—the person in whose name the vessel is registered under the **Marine Safety Act 2010** or a corresponding law of the Commonwealth, a State or a Territory; and
- (c) in relation to any other vehicle—the person who owns the vehicle (whether the vehicle is registered in any way or not);

S. 3(1) def. of *registered owner* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

registration means a registration granted under section 85;

S. 3(1) def. of *registration* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

related entity has the same meaning as in the Corporations Act;

S. 3(1) def. of *related entity* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

reportable priority waste means priority waste prescribed as reportable priority waste for the purposes of section 142 or 143, or both;

S. 3(1) def. of *reportable priority waste* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of
*residential
noise
enforcement
officer*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

residential noise enforcement officer means a
person appointed as a residential noise
enforcement officer under section 171;

S. 3(1) def. of
*residential
noise
improvement
notice*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

residential noise improvement notice means a
notice issued under section 172(1);

S. 3(1) def. of
*resource
recovery*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

resource recovery in relation to waste, means—

- (a) preparation for reuse of the waste;
- (b) recycling the waste;
- (c) reprocessing the waste;
- (d) recovering energy or other resources
from the waste;
- (e) anything prescribed to be resource
recovery in relation to waste—

but does not include anything prescribed not
to be resource recovery in relation to waste;

S. 3(1) def. of
*Restorative
Project
Account*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

Restorative Project Account means the account
established and maintained under section
447;

reuse, in relation to waste, means the use of the waste for a purpose that is the same or similar to the purpose for which it was used before it became waste;

S. 3(1) def. of *reuse* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

site means specified land or a specified parcel of land;

S. 3(1) def. of *site* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

site management order means an order issued under section 275;

S. 3(1) def. of *site management order* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

State-Wide Waste and Resource Recovery Infrastructure Plan means a State-Wide Waste and Resource Recovery Infrastructure Plan approved by the Minister under section 410;

S. 3(1) def. of *State-Wide Waste and Resource Recovery Infrastructure Plan* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

Sustainability Victoria means Sustainability Victoria established by section 5 of the **Sustainability Victoria Act 2005**;

S. 3(1) def. of *Sustainability Victoria* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of
*unreasonable
noise*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

unreasonable noise means noise that—

- (a) is unreasonable having regard to the following—
 - (i) its volume, intensity or duration;
 - (ii) its character;
 - (iii) the time, place and other circumstances in which it is emitted;
 - (iv) how often it is emitted;
 - (v) any prescribed factors; or
- (b) is prescribed to be unreasonable noise;

S. 3(1) def. of
vehicle
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

vehicle includes—

- (a) a vessel or aircraft; and
- (b) a trailer attached to a vehicle;

S. 3(1) def. of
vessel
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

vessel has the same meaning as it has in the
Marine Safety Act 2010;

S. 3(1) def. of
*Victorian
Waste and
Resource
Recovery
Infrastructure
Planning
Framework*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

*Victorian Waste and Resource Recovery
Infrastructure Planning Framework* has the
meaning given by section 405;

waste includes any of the following—

- (a) matter, including solid, liquid, gaseous or radioactive matter, that is deposited, discharged, emitted or disposed of into the environment in a manner that alters the environment;
- (b) a greenhouse gas substance emitted or discharged into the environment;
- (c) matter that is discarded, rejected, abandoned, unwanted or surplus, irrespective of any potential use or value;
- (d) matter prescribed to be waste;
- (e) matter or a greenhouse gas substance referred to in paragraph (a), (b), (c) or (d) that is intended for, or is undergoing, resource recovery;

S. 3(1) def. of **waste** inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

waste abatement notice means a notice issued under section 121(1);

S. 3(1) def. of **waste abatement notice** inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

Waste and Resource Recovery Group means a body corporate continued under section 382;

S. 3(1) def. of **Waste and Resource Recovery Group** inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(1) def. of
*waste and
resource
recovery
region*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

waste and resource recovery region means any of
the following—

- (a) the Barwon South West Waste and
Resource Recovery Region;
- (b) the Gippsland Waste and Resource
Recovery Region;
- (c) the Goulburn Valley Waste and
Resource Recovery Region;
- (d) the Grampians Central West Waste and
Resource Recovery Region;
- (e) the Loddon Mallee Waste and Resource
Recovery Region;
- (f) the Metropolitan Waste and Resource
Recovery Region;
- (g) the North East Waste and Resource
Recovery Region;

S. 3(1) def. of
*waste
disposal*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

waste disposal means any activity carried out in
connection with the disposal of waste, but
does not include resource recovery;

S. 3(1) def. of
*waste
management
facility*
inserted by
No. 39/2018
s. 6(9) (as
amended by
No. 27/2019
s. 11).

waste management facility includes a landfill,
a transfer station, a composting facility, a
facility to store or contain solid waste and a
resource recovery facility;

waters includes the following—

- (a) a reservoir, tank or billabong;
 - (b) an anabranch, canal, spring, swamp;
 - (c) a natural or artificial channel, lake, lagoon, waterway or dam;
 - (d) tidal water, coastal water or groundwater.
- (2) A reference in this Act to a person *engaging* in an activity includes a reference to a person who is conducting, undertaking, managing or in control of that activity.
- (3) A reference in this Act to *waters* includes a reference to—
- (a) the bed and subsoil lying beneath those waters; and
 - (b) the airspace superjacent to those waters; and
 - (c) an open, piped or underground drain—
- but does not include a reference to a drain that conveys waste to, or which forms part of, any works for the treatment of waste.
- (4) For the purposes of this Act, a person *conducts* a business or undertaking—
- (a) whether or not the business or undertaking is conducted for profit or gain; and
 - (b) whether or not the business or undertaking is conducted by a government or public authority (however described)—
- but a natural person does not conduct a business or undertaking merely because the person is engaged in an activity—
- (c) that is primarily domestic or private and not conducted for profit or financial gain; or

S. 3(1) def. of *waters* inserted by No. 39/2018 s. 6(9) (as amended by No. 27/2019 s. 11).

S. 3(2) substituted by No. 39/2018 s. 6(10).

S. 3(3) inserted by No. 39/2018 s. 6(10).

S. 3(4) inserted by No. 39/2018 s. 6(10).

(d) subject to Part 11.8, solely in the person's capacity as an employee or officer of another person or on a voluntary basis.

S. 3(5)
inserted by
No. 39/2018
s. 6(10).

(5) To avoid doubt, a reference in this Act to *under this Act* includes a reference to under the regulations under this Act, and this subsection has a corresponding effect in relation to references to other Acts.

New s. 4
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

4 What is *harm*?

- (1) In this Act, *harm*, in relation to human health or the environment, means an adverse effect on human health or the environment (of whatever degree or duration) and includes—
- (a) an adverse effect on the amenity of a place or premises that unreasonably interferes with or is likely to unreasonably interfere with enjoyment of the place or premises; or
 - (b) a change to the condition of the environment so as to make it offensive to the senses of human beings; or
 - (c) anything prescribed to be harm for the purposes of this Act or the regulations.
- (2) For the purposes of subsection (1), harm may arise as a result of the cumulative effect of harm arising from an activity combined with harm arising from other activities or factors.

New s. 5
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

5 What is *material harm*?

- (1) In this Act, *material harm*, in relation to human health or the environment means harm that is caused by pollution or waste that—
- (a) involves an actual adverse effect on human health or the environment that is not negligible; or

- (b) involves an actual adverse effect on an area of high conservation value or of special significance; or
 - (c) results in, or is likely to result in, costs in excess of the threshold amount being incurred in order to take appropriate action to prevent or minimise the harm or to rehabilitate or restore the environment to the state it was in before the harm.
- (2) For the purposes of subsection (1), harm may become *material harm* regardless of the period of time in which the harm occurs and as a result of—
- (a) a single occurrence of harm arising from an activity; or
 - (b) multiple occurrences of harm arising from the same activity; or
 - (c) the cumulative effect of harm arising from an activity combined with harm arising from other activities or factors.
- (3) In this section, *threshold amount* means \$10 000 or a higher amount prescribed by the regulations.

6 The concept of minimising risks of harm to human health and the environment

- (1) A duty imposed on a person under this Act to minimise, so far as reasonably practicable, risks of harm to human health and the environment requires the person—
- (a) to eliminate risks of harm to human health and the environment so far as reasonably practicable; and
 - (b) if it is not reasonably practicable to eliminate risks of harm to human health and the environment, to reduce those risks so far as reasonably practicable.

New s. 6
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (2) To determine what is (or was at a particular time) reasonably practicable in relation to the minimisation of risks of harm to human health and the environment, regard must be had to the following matters—
- (a) the likelihood of those risks eventuating;
 - (b) the degree of harm that would result if those risks eventuated;
 - (c) what the person concerned knows, or ought reasonably to know, about the harm or risks of harm and any ways of eliminating or reducing those risks;
 - (d) the availability and suitability of ways to eliminate or reduce those risks;
 - (e) the cost of eliminating or reducing those risks.

New s. 7
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

7 Application of Act

- (1) This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) This Act does not apply to a radiation source within the meaning of the **Radiation Act 2005** unless a serious risk to human health or the environment from pollution or waste has arisen or is likely to arise.

New s. 8
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

8 Extraterritorial application of Act

- (1) This Act extends to, and applies to and in relation to, the territorial seas adjacent to the coasts of Victoria.
- (2) This Act extends to, and applies to, the discharge or deposit of pollution or waste into, or on to, the waters of the River Murray from any place or premises that is in Victoria and extends to, and applies in relation to, any permission issued or any

proceedings brought in relation to the discharge or deposit.

- (3) A reference in this Act to *waters* includes a reference to the waters of the River Murray in respect of pollution or waste that has been deposited into, or on to, the waters of the River Murray from the Victorian bank of the River Murray.

9 Simplified outlines

A simplified outline of any portion of this Act set out in a section of this Act is intended only as a guide to readers as to the general scheme and effect of that portion of this Act.

New s. 9
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Chapter 2—Principles of environment protection

Ch. 2
(Headings and new ss 10–23) inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

Part 2.1—Simplified outline

Pt 2.1
(Heading and new s. 10) inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

10 Simplified outline—Chapter 2

New s. 10 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 2.2 provides for the application of this Chapter.
- (3) Part 2.3 sets out the principles of environment protection.

Part 2.2—Application of this Chapter

Pt 2.2
(Heading and
new ss 11, 12)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

11 Specified principles of environment protection

- (1) This Chapter specifies the principles of environment protection.
- (2) It is the intention of Parliament that in the administration of this Act and the regulations regard should be given to the principles specified in this Chapter.

New s. 11
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Note

In making certain decisions under this Act the Authority or the Minister must take into account the principles of environment protection.

12 Effect of this Chapter

The Parliament does not intend by this Chapter to create in any person a legal right or give rise to any civil cause of action.

New s. 12
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 2.3—Principles of environment protection

Pt 2.3
(Heading and
new ss 13–23)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

New s. 13
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

New s. 14
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

New s. 15
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

New s. 16
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

13 Principle of integration of environmental, social and economic considerations

Environmental, social and economic considerations should be effectively integrated.

14 Principle of proportionality

A decision, action or thing directed towards minimising harm or a risk of harm to human health or the environment should be proportionate to the harm or risk of harm that is being addressed.

15 Principle of primacy of prevention

Prevention of harm to human health and the environment is preferred to remedial or mitigation measures.

16 Principle of shared responsibility

Protection of human health and the environment is a responsibility shared by all levels of Government and industry, business, communities and the people of Victoria.

17 Principle of polluter pays

Persons who generate pollution and waste should bear the cost of containment, avoidance and abatement.

New s. 17 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

18 Principle of waste management hierarchy

Waste should be managed in accordance with the following order of preference, so far as reasonably practicable—

- (a) avoidance;
- (b) reuse;
- (c) recycling;
- (d) recovery of energy;
- (e) containment;
- (f) waste disposal.

New s. 18 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

19 Principle of evidence-based decision making

Actions or decisions under this Act should be based on the best available evidence in the circumstances that is relevant and reliable.

New s. 19 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

20 Precautionary principle

If there exist threats of serious or irreversible harm to human health or the environment, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or minimise those threats.

New s. 20 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

New s. 21
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

21 Principle of equity

- (1) All people are entitled to live in a safe and healthy environment irrespective of their personal attributes or location.
- (2) People should not be disproportionately affected by harm or risks of harm to human health and the environment.
- (3) The present generation should ensure the state of the environment is maintained or enhanced for the benefit of future generations.

New s. 22
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

22 Principle of accountability

Members of the public should—

- (a) have access to reliable and relevant information in appropriate forms to facilitate a good understanding of issues of harm or risks of harm to human health and the environment and of how decisions are made under this Act; and
- (b) be engaged and given opportunities to participate in decisions made under this Act, where appropriate to do so; and
- (c) have their interests taken into account in decisions made under this Act.

New s. 23
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

23 Principle of conservation

Biological diversity and ecological integrity should be protected for purposes that include the protection of human health.

Chapter 3—Duties relating to environment protection

Ch. 3
(Headings
and ss 24–42)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 3.1—Simplified outline

Pt 3.1
(Heading and
new s. 24)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

24 Simplified outline—Chapter 3

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 3.2 provides for the general environmental duty in relation to risks of harm to human health and the environment from pollution and waste and an offence for aggravated breach of the general environmental duty.
- (3) Part 3.3 provides for a transitional duty in relation to material harm.
- (4) Part 3.4 provides for duties relating to pollution incidents.
- (5) Part 3.5 provides for duties in relation to the management and notification of contaminated land.

New s. 24
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 3.2—General environmental duty

Pt 3.2
(Heading and
ss 25–27)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

25 General environmental duty

- (1) A person who is engaging in an activity that may give rise to risks of harm to human health or the environment from pollution or waste must minimise those risks, so far as reasonably practicable.

Notes

See section 6 in relation to the concept of minimising risks of harm to human health and the environment.

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314. See also section 314(3).

- (2) A person commits an offence if the person contravenes subsection (1) in the course of conducting a business or an undertaking.

Penalty: In the case of a natural person,
2000 penalty units;

In the case of a body corporate,
10 000 penalty units.

- (3) An offence under subsection (2) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

- (4) Without limiting subsection (1), a person who is conducting a business or an undertaking contravenes that subsection if the person fails to do any of the following in the course of conducting the business or the undertaking, so far as reasonably practicable—
- (a) use and maintain plant, equipment, processes and systems in a manner that minimises risks of harm to human health and the environment from pollution and waste;
 - (b) use and maintain systems for identification, assessment and control of risks of harm to human health and the environment from pollution and waste that may arise in connection with the activity, and for the evaluation of the effectiveness of controls;
 - (c) use and maintain adequate systems to ensure that if a risk of harm to human health or the environment from pollution or waste were to eventuate, its harmful effects would be minimised;
 - (d) ensure that all substances are handled, stored, used or transported in a manner that minimises risks of harm to human health and the environment from pollution and waste;
 - (e) provide information, instruction, supervision and training to any person engaging in the activity to enable those persons to comply with the duty under subsection (1).
- (5) Without limiting subsection (1), a person who is conducting a business or an undertaking and engaging in an activity that involves the design, manufacture, installation or supply of a substance, plant, equipment or structure, contravenes that subsection if the person fails to do any of the following in the course of conducting the business

or the undertaking and engaging in the activity, so far as reasonably practicable—

- (a) minimise risks of harm to human health and the environment from pollution and waste arising from the design, manufacture, installation or supply of the substance, plant, equipment or structure when the substance, plant, equipment or structure is used for a purpose for which it was designed, manufactured, installed or supplied;
- (b) provide information regarding the purpose of the substance, plant, equipment or structure and any conditions necessary to ensure it can be used in a manner that complies with the duty under subsection (1).

26 Multiple contraventions of general environmental duty

New s. 26 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

- (1) This section applies to—
 - (a) a contravention of the general environmental duty; or
 - (b) a contravention of the general environmental duty for which an officer of a body corporate (including a body corporate representing the Crown) is liable.
- (2) Subject to any contrary court order, 2 or more contraventions may be charged as a single offence if the contraventions arise out of the same factual circumstances.
- (3) If 2 or more contraventions are charged as a single offence, a single penalty only may be imposed in respect of the contraventions.

27 Aggravated breach of the general environmental duty

- (1) A person commits an offence if—
- (a) the person intentionally or recklessly contravenes the general environmental duty; and
 - (b) the contravention results in material harm or is likely to result in material harm to human health or the environment from pollution or waste; and
 - (c) the person knew or reasonably should have known that the contravention would result in material harm or would be likely to result in material harm to human health or the environment from pollution or waste.

Penalty: In the case of a natural person,
4000 penalty units or 5 years
imprisonment or both;

In the case of a body corporate,
20 000 penalty units.

- (2) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

S. 27
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 3.3—Transitional duty relating to material harm

Pt 3.3
(Heading and
s. 28)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 28
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

28 Transitional duty relating to material harm

- (1) A person must not engage in conduct that results in material harm to human health or the environment from pollution or waste.

Notes

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

See section 5 for the definition of *material harm*.

- (2) A person who contravenes subsection (1) commits an offence.

Penalty: In the case of a natural person,
2000 penalty units;

In the case of a body corporate,
10 000 penalty units.

- (3) If a person contravenes subsection (1), it is a defence if the person proves that, in engaging in the conduct, the person did not contravene the general environmental duty.
- (4) An offence under subsection (2) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

- (5) Proceedings must not be commenced against a person in relation to a contravention of subsection (1) if the person has been convicted of an offence against the general environmental duty constituted by conduct that is the same or substantially the same as the conduct that constitutes the contravention of subsection (1).
- (6) Proceedings must not be commenced against a person in relation to a contravention of the general environmental duty if the person has been convicted of an offence under subsection (2) constituted by conduct that is the same or substantially the same as the conduct that constitutes the contravention of the general environmental duty.
- (7) This Part is **repealed** on whichever is the earlier of—
 - (a) the fourth anniversary of the day on which it comes into operation; or
 - (b) a day to be proclaimed.

Part 3.4—Duties relating to pollution incidents

Pt 3.4
(Heading and
ss 29–34)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 29
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 30
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 31
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

29 Meaning of *pollution incident*

A *pollution incident* means an incident or a set of circumstances—

- (a) that causes a leak, spill or other unintended or unauthorised deposit or escape of a substance; and
- (b) as a result of which, pollution has occurred or is occurring—

but does not include an incident or a set of circumstances that solely involves the emission of noise.

30 Meaning of *notifiable incident*

A *notifiable incident* means—

- (a) a pollution incident that causes or threatens to cause material harm to human health or the environment; or
- (b) a prescribed notifiable incident—

but does not include a prescribed excluded notifiable incident.

31 Duty to take action to respond to harm caused by pollution incident

If a pollution incident has occurred as a result of an activity (whether by act or omission) and the pollution incident causes or is likely to cause harm to human health or the environment, a person who

is engaging in that activity must, so far as reasonably practicable, restore the affected area to the state it was in before the pollution incident occurred.

32 Duty to notify Authority of notifiable incidents

- (1) This section applies to a person who is engaging or has engaged in an activity that results in a notifiable incident.
- (2) The person must notify the Authority, as soon as practicable, after the person becomes aware or reasonably should have been aware of the occurrence of the notifiable incident.

Note

Section 314 provides that subsection (2) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314. See also section 314(3).

- (3) A person must notify the Authority under subsection (2) regardless of whether the notifiable incident is contained to—
 - (a) a single place or premises; or
 - (b) a place or premises that is occupied by or under the management or control of the person.
- (4) A person commits an offence if the person contravenes subsection (2) in the course of conducting a business or an undertaking.

Penalty: In the case of a natural person,
240 penalty units;

In the case of a body corporate,
1200 penalty units.

- (5) A person is not required to notify the Authority under this section if the person is aware that a notification of a notifiable incident has already

S. 32
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

been made to the Authority in accordance with this section.

Note

See section 72 of the **Criminal Procedure Act 2009** which deals with the evidential burden of proof.

S. 33
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

33 Manner and form of notification of notifiable incidents

- (1) A notification under section 32 must be made in the manner and form approved by the Authority.
- (2) The following information must be provided to the Authority with a notification—
 - (a) the time, date and location of the notifiable incident;
 - (b) the nature of the notifiable incident;
 - (c) the circumstances in which the notifiable incident occurred (including the cause of the notifiable incident, if known);
 - (d) any action taken or proposed to be taken to deal with the notifiable incident;
 - (e) any other prescribed information.
- (3) If any of the information required to be provided under subsection (2) is not known to a person at the time the person notifies the Authority, that information must be provided to the Authority in accordance with this section as soon as practicable after the person becomes aware of the information.

S. 34
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

34 Privilege against self-incrimination does not apply

- (1) A person is not excused from notifying the Authority under section 32 on the grounds that the information provided by the person as part of a notification might tend to incriminate the person or make the person liable to a penalty.

- (2) A notification or any information given by a person as part of a notification under section 32 is not admissible in evidence against the person in a proceeding for an offence or for the imposition of a penalty, other than a proceeding that relates to false or misleading information that is provided by the person in relation to a notification.

Pt 3.5
(Headings
and ss 35–42)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 3.5—Duties relating to contaminated land

Division 1—Core concepts and application of Part

S. 35
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

35 What is *contaminated* land?

- (1) Subject to subsection (2), land is *contaminated* if waste, a chemical substance or a prescribed substance is present on or under the surface of the land, and the waste, chemical substance or prescribed substance—
 - (a) is present in a concentration above the background level; and
 - (b) creates a risk of harm to human health or the environment.
- (2) Land is not contaminated—
 - (a) merely because waste, a chemical substance or a prescribed substance is present in a concentration above the background level in water that is on or above the surface of the land; or
 - (b) if any prescribed circumstances apply to the land.

S. 36
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

36 Background level of waste or substances

For the purposes of this Part, the background level of waste, a chemical substance or a prescribed substance in relation to land is—

- (a) the background level specified in, or determined in accordance with, the regulations or an environment reference

- standard in relation to the waste, chemical substance or prescribed substance; or
- (b) if the regulations or an environment reference standard do not specify, or set out how to determine, a background level for the waste, chemical substance or prescribed substance—the naturally occurring concentration of the waste, chemical substance or prescribed substance on or under the surface of land in the vicinity of the land.

37 What is *notifiable contamination*?

Notifiable contamination, in relation to contaminated land, means contamination that is—

- (a) prescribed notifiable contamination; or
- (b) if the regulations do not prescribe notifiable contamination by a particular waste, chemical substance or prescribed substance, contamination for which the reasonable cost of action to remediate the land is likely to exceed—
- (i) \$50 000; or
- (ii) any other prescribed amount.

S. 37
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

38 Act applies whenever land contaminated

This Act applies to land that is contaminated before, on or after the commencement of this Act.

S. 38
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Division 2—Duties relating to contaminated land

39 Duty to manage contaminated land

S. 39
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) A person in management or control of contaminated land must minimise risks of harm to human health and the environment from the contaminated land so far as reasonably practicable.
- (2) For the purposes of subsection (1), minimising risks of harm to human health and the environment from contaminated land includes (but is not limited to) carrying out any of the following—
 - (a) identification of any contamination that the person knows or ought reasonably to know of;
 - (b) investigation and assessment of the contamination;
 - (c) provision and maintenance of reasonably practicable measures to minimise risks of harm to human health and the environment from the contamination, including undertaking clean up activities where reasonably practicable;
 - (d) provision of adequate information to any person that the person in management or control of the contaminated land reasonably believes may be affected by the contamination, including—
 - (i) sufficient information to identify the contamination; and
 - (ii) the results of investigation and assessment referred to in paragraph (b); and

- (iii) the risks of harm to human health and the environment from the contamination;
- (e) provision of adequate information to enable any person who is reasonably expected to become a person in management or control of the contaminated land to comply with the duty to manage contaminated land.

Note

See section 6 in relation to the concept of minimising risks of harm to human health and the environment.

- (3) A person in management or control of land may recover in a court of competent jurisdiction, as a debt due to the person, any reasonable costs incurred in complying with a duty under section 39(1) or 40(1), including any reasonable costs incurred by the person in taking action under this section, against any person responsible for causing or contributing to contamination of the land.

40 Duty to notify of contaminated land

- (1) A person in management or control of land must notify the Authority if the land has been contaminated by notifiable contamination as soon as practicable after the person becomes aware of, or reasonably should have become aware of, the notifiable contamination.

S. 40
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) A person commits an offence if the person contravenes subsection (1).
- Penalty: In the case of a natural person,
120 penalty units;
In the case of a body corporate,
600 penalty units.
- (3) For the purposes of subsection (1), whether a person in management or control of land becomes aware of, or reasonably should have become aware of, notifiable contamination is determined having regard to—
- (a) the person's skills, knowledge and experience; and
 - (b) whether the person could practicably seek advice regarding the contamination; and
 - (c) any other circumstances of the contamination.
- (4) Subsection (1) does not apply if—
- (a) the person who is required to notify the Authority under subsection (1) is aware that a notification has already been made to the Authority in accordance with this section; or
 - (b) the notifiable contamination is a prescribed exempt notifiable contamination.

S. 41
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

41 Manner and form of notification

- (1) If a person in management or control of land has a duty to notify of notifiable contamination in relation to the land, the person must give notice in a form approved by the Authority.
- (2) The person must provide the following information to the Authority to the extent that the information is known to the person at the time of giving the notice—

- (a) the location of the land;
 - (b) the activity resulting, or suspected as resulting, in the contamination;
 - (c) the nature and extent of the contamination;
 - (d) the nature of the risk of harm to human health and the environment from the contamination;
 - (e) any other prescribed information.
- (3) The information required to be provided under subsection (2) is information that is known to a person at the time the person notifies the Authority.
- (4) If any of the information required to be provided under subsection (2) is not known to a person at the time the person notifies the Authority, that information must be provided to the Authority in accordance with this section as soon as practicable after the person becomes aware of the information.

42 Privilege against self-incrimination abrogated

- (1) A person in management or control of land is not excused from the duty to notify of notifiable contamination in relation to the land on the grounds that the information provided by the person as part of a notification might tend to incriminate the person or make the person liable to a penalty.
- (2) Any information given by a person as part of a notification under this Division is not admissible in evidence against the person in a proceeding for an offence or for the imposition of a penalty, other than a proceeding that relates to false or misleading information that is provided by the person in relation to a notification under this Division.

S. 42
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Ch. 4
(Headings
and ss 43–91)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Chapter 4—Permissions

Pt 4.1
(Heading and
s. 43)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 4.1—Simplified outline

S. 43
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

43 Simplified outline—Chapter 4

- (1) This section sets out a simplified outline of this Chapter.
- (2) This Chapter provides for the issue or grant of the following permissions—
 - (a) development licences;
 - (b) operating licences;
 - (c) pilot project licences;
 - (d) permits;
 - (e) registrations.
- (3) Part 4.2 prohibits persons from engaging in specified or prescribed activities without a permission.

- (4) Part 4.3 sets out—
 - (a) the application, transfer and amendment processes for permissions; and
 - (b) other provisions that apply to permissions generally.
- (5) Part 4.4 sets out provisions that apply to development licences, operating licences and pilot project licences and applications relating to those licences.
- (6) Part 4.5 sets out provisions that apply to permits and applications relating to permits.
- (7) Part 4.6 sets out provisions that apply to registrations and applications relating to registrations.
- (8) Part 4.7 provides that a prohibited person must not engage in a prescribed activity.
- (9) Part 4.8 provides for an environment protection levy that is to be charged, levied and collected by the Authority.

Part 4.2—Permissions required for certain activities

Pt 4.2
(Heading and
ss 44–48)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 44
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

44 Development licences required for development activities

- (1) A person must not engage in one or more of the following activities except as authorised by a development licence in respect of the activity—
 - (a) the construction or installation of plant or equipment for a prescribed development activity;
 - (b) the development of processes or systems for a prescribed development activity;
 - (c) the modification, other than general maintenance, of plant, equipment, processes or systems for a prescribed development activity or of the operation of a prescribed development activity—
 - (i) if the modification creates a risk of material harm to human health or the environment from pollution or waste; or
 - (ii) in prescribed circumstances.

Penalty: In the case of a natural person,
2000 penalty units;

In the case of a body corporate,
10 000 penalty units.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) Subsection (1) does not apply—
- (a) in respect of any action or thing the person takes or does to comply with—
 - (i) a pilot project licence issued to the person that is in force in respect of the activity; or
 - (ii) an authorisation granted to the person under section 157 that is in force in respect of the activity; or
 - (iii) an exemption granted to the person under section 80(1) that is in force in respect of the activity; or
 - (iv) requirements specified under section 48(a) in respect of the activity; or
 - (b) in respect of any action or thing that the person is required to take or do under an improvement notice or environmental action notice; or
 - (c) if a prescribed exemption applies to the person.
- (3) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

S. 45
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

45 Operating licences required for operating activities

- (1) A person must not engage in a prescribed operating activity except as authorised by an operating licence in respect of the activity.

Penalty: In the case of a natural person,
2000 penalty units;

In the case of a body corporate,
10 000 penalty units.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) Subsection (1) does not apply—
- (a) in respect of any action or thing the person takes or does to comply with—
 - (i) a pilot project licence issued to the person that is in force in respect of the activity; or
 - (ii) an authorisation granted to the person under section 157 that is in force in respect of the activity; or
 - (iii) an exemption granted to the person under section 80(2) that is in force in respect of the activity; or
 - (iv) requirements specified under section 48(b) in respect of the activity; or
 - (b) in respect of any action or thing that the person is required to take or do under an improvement notice or environmental action notice; or
 - (c) if a prescribed exemption applies to the person.

- (3) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

46 Permits required for permit activities

- (1) A person must not engage in a prescribed permit activity except as authorised by a permit in respect of the activity.

Penalty: In the case of a natural person,
1000 penalty units;

In the case of a body corporate,
5000 penalty units.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) Subsection (1) does not apply—
- (a) in respect of any action or thing the person takes or does to comply with—
- (i) a pilot project licence issued to the person that is in force in respect of the activity; or
 - (ii) an authorisation granted to the person under section 157 that is in force in respect of the activity; or
 - (iii) an exemption granted to the person under section 82 or 83 that is in force in respect of the activity; or
 - (iv) requirements specified under section 48(c) in respect of the activity; or

S. 46
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No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (b) in respect of any action or thing that the person is required to take or do under an improvement notice or environmental action notice; or
 - (c) if a prescribed exemption applies to the person.
- (3) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

S. 47
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No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

47 Registration required for registration activities

- (1) A person must not engage in a prescribed registration activity, or an activity that is the subject of an Order under section 87(1), except as authorised by a registration in respect of the activity.

Penalty: In the case of a natural person,
500 penalty units;

In the case of a body corporate,
2500 penalty units.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) Subsection (1) does not apply—
- (a) in respect of any action or thing the person takes or does to comply with—
 - (i) requirements specified under section 48(d) in respect of the activity; or
 - (ii) an authorisation granted to the person under section 157 that is in force in respect of the activity; or

- (b) in respect of any action or thing that the person is required to take or do under an improvement notice or environmental action notice; or
 - (c) if a prescribed exemption applies to the person.
- (3) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

48 Determination that person does not require a permission

The Authority may, by notice published in the Government Gazette, specify requirements that a person may meet—

- (a) to comply with section 44 if the person does not hold a development licence; or
- (b) to comply with section 45 if the person does not hold an operating licence; or
- (c) to comply with section 46 if the person does not hold a permit; or
- (d) to comply with section 47 if the person does not hold a registration.

S. 48
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No. 39/2018
s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Pt 4.3
(Heading and
ss 49–68)
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No. 39/2018
s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 4.3—General provisions relating to permissions

S. 49
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

49 Application of this Part

This Part applies subject to anything to the contrary in Part 4.4, 4.5 or 4.6.

S. 50
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

50 Form and contents of applications

- (1) An application for a permission must—
 - (a) be made—
 - (i) in the case of an application made to the Authority, in a form and manner approved by the Authority; or
 - (ii) in the case of an application made to a council, in the prescribed form and manner; and
 - (b) be accompanied by any prescribed fee; and
 - (c) specify whether the application is for—
 - (i) a development licence; or
 - (ii) an operating licence; or
 - (iii) a pilot project licence; or
 - (iv) a permit; or
 - (v) a registration; and

- (d) specify the activity in relation to which the permission is sought; and
 - (e) include any prescribed information.
- (2) The Authority or a council—
- (a) must not deal with an application that does not comply with this section; and
 - (b) must advise an applicant if an application does not comply with this section.
- (3) The Authority or council may require an applicant to provide the Authority or council with information relating to the application that the Authority or council considers necessary.
- (4) The time in which the Authority or council must deal with the application does not include—
- (a) if the Authority or council requires information under subsection (3), the period from the date that the Authority or council makes the request until the date on which the Authority or council receives the information; or
 - (b) any period that the Authority or council and the applicant agree is not to be included in that time.

51 Authority may deal with application after expiry of determination period

- (1) This section applies if, after receiving the application for a licence or permit that complies with section 50, the Authority or a council does not issue or refuses to issue the licence or permit within the period during which the Authority or council must determine the application.
- (2) Nothing in this Chapter prevents the Authority or council from continuing to deal with the application.

S. 51
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Note

The applicant may apply to VCAT for review of a failure to issue or refuse to issue the licence or permit within the period during which the Authority or council must determine the application—see section 4(2) of the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 52
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

52 Notice of applications for development licences to be published

- (1) On receiving an application that complies with section 50 for a development licence, the Authority must ensure that a notice in accordance with subsection (2) is published—
 - (a) on the Internet site of the Authority; and
 - (b) in at least one other publication that the Authority considers appropriate, taking into consideration the Charter of Consultation developed under section 53.
- (2) A notice under subsection (1) must—
 - (a) state that an application for a development licence has been made; and
 - (b) describe the activity that is the subject of the application; and
 - (c) contain any prescribed information; and
 - (d) invite public comments or submissions within the time specified in the notice, being not less than 15 business days from the publication of the notice; and
 - (e) state that, if the notice for the proposed development licence is intended to be combined under section 70(a) with a notice for works given under the **Environment Effects Act 1978**, any submissions referred to in paragraph (d)—

- (i) must be made together with any submissions made for the Environment Effects Statement relating to the works; and
- (ii) despite paragraph (d), must be made within the time limits within which the submissions must be made for that Environment Effects Statement.

53 Authority must develop Charter of Consultation

- (1) The Authority must develop a Charter of Consultation.
- (2) The Charter of Consultation—
 - (a) must include guidelines relating to processes for determining applications for permissions; and
 - (b) must include guidelines for the public notification of, and consultation relating to, applications for permissions; and
 - (c) must include any prescribed matters; and
 - (d) may include any other matters that the Authority considers appropriate.
- (3) The Authority must publish the Charter of Consultation on the Internet site of the Authority.

S. 53
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

54 Permission conditions

- (1) The Authority or a council may issue a permission subject to conditions specified in the permission.
- (2) Without limiting subsection (1), the Authority or council may specify that a permission is subject to a condition—
 - (a) specifying measures the permission holder must take to comply with the general environmental duty when engaging in the permission activity; or

S. 54
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No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (b) specifying measures the permission holder must take to meet the objects set out in section 111 when engaging in the permission activity; or
 - (c) ensuring that the permission activity is engaged in consistently with the Victorian Waste and Resource Recovery Infrastructure Planning Framework; or
 - (d) relating to the commissioning of plant or equipment, including the setting of performance standards for the commissioning of plant or equipment; or
 - (e) relating to the monitoring, testing or analysis of any impacts of engaging in the permission activity; or
 - (f) requiring the permission holder to provide monitoring data, information or performance reports to the Authority or council, the public or both; or
 - (g) relating to consultation with the local community; or
 - (h) requiring the permission holder to report to the Authority or council on compliance with the conditions of the permission; or
 - (i) relating to pollution incident planning, reporting or responses; or
 - (j) relating to the cessation of the permission activity; or
 - (k) requiring the permission holder to provide a financial assurance; or
 - (l) relating to any prescribed matter.
- (3) Without limiting subsection (1), the Authority or council may specify that a permission is subject to a condition—

- (a) that the permission activity must only be engaged in at a specified place or using a specified vehicle; or
 - (b) requiring a person or class of persons approved by the Authority or council to engage in a specified activity.
- (4) For the purposes of subsection (2)(f), the Authority or council may specify in the permission—
- (a) the intervals of time at which any monitoring data, information and performance reports must be supplied to the Authority or council or provided to the public; and
 - (b) the form and manner in which that data and information must be supplied to the Authority or council or provided to the public.

55 Permission fees

The holder of a permission must pay any prescribed fee at the prescribed time or for the prescribed period.

S. 55
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

56 Transfer of licence or permit

- (1) A person may, with the agreement of the holder of a licence or permit, apply for the transfer of that licence or permit to the applicant.
- (2) An application under subsection (1) must be made—
 - (a) in the case of a licence or permit issued by the Authority, to the Authority; or
 - (b) in the case of a permit issued by a council, to that council.

S. 56
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No. 39/2018
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ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (3) An application under subsection (1) must—
- (a) be made—
 - (i) in the case of an application made to the Authority, in a form and manner approved by the Authority; or
 - (ii) in the case of an application made to a council, in the prescribed form and manner; and
 - (b) be accompanied by the prescribed fee; and
 - (c) be accompanied by any information or thing required by the Authority or council.
- (4) The Authority or council must, within 20 business days after receiving an application under subsection (1)—
- (a) refuse to transfer the licence or permit; or
 - (b) transfer the licence or permit subject to any conditions that the Authority or council considers appropriate.
- (5) The Authority or council must refuse to transfer a licence or permit if the Authority or council considers that the applicant is not a fit and proper person to hold a licence or permit.
- (6) The Authority or council must, as soon as practicable after making a decision under subsection (4), give the applicant and holder of the licence or permit written notice stating—
- (a) the decision; and
 - (b) in the case of a decision to transfer the licence or permit, the date on which the transfer takes effect; and
 - (c) in the case of a decision to refuse to transfer the licence or permit, or a decision to transfer the licence or permit subject to conditions—

- (i) the reasons for the decision; and
- (ii) that the applicant may apply to VCAT for review of the decision.

57 Amendment of licence or permit on application

- (1) The holder of a licence or permit may apply for the amendment of the licence or permit.
- (2) An application under subsection (1) must be made—
 - (a) in the case of a licence or permit issued by the Authority, to the Authority; or
 - (b) in the case of a permit issued by a council, to that council.
- (3) An application under subsection (1) must—
 - (a) be made—
 - (i) in the case of an application made to the Authority, in a form and manner approved by the Authority; or
 - (ii) in the case of an application made to a council, in the prescribed form and manner; and
 - (b) be accompanied by the prescribed fee; and
 - (c) be accompanied by any information or thing required by the Authority or council.
- (4) On receiving an application under subsection (1), the Authority or council must—
 - (a) refuse to amend the licence or permit; or
 - (b) amend the licence or permit subject to any conditions that the Authority or council considers appropriate.

S. 57
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No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (5) A decision under subsection (4) must be made within—
- (a) in the case of an application to amend a licence, 42 business days after receiving the application; or
 - (b) in the case of an application to amend a permit made to the Authority—
 - (i) any prescribed period not exceeding 42 business days after receiving the application; or
 - (ii) if no period is prescribed, 15 business days after receiving the application; or
 - (c) in the case of an application to amend a permit made to a council, the prescribed period.
- (6) When determining whether to amend a licence or permit under this section, the Authority or council must take into account—
- (a) in the case of a development licence, the considerations set out in section 69(3); and
 - (b) in the case of an operating licence, the considerations set out in section 74(3); and
 - (c) in the case of a pilot project licence, the considerations set out in section 78(2); and
 - (d) in the case of a permit, the considerations set out in section 81(3) and (4)(b) and (c).
- (7) The Authority must refuse to amend a licence under this section if—
- (a) the Authority considers that the activity specified in the licence as proposed to be amended poses an unacceptable risk of harm to human health or the environment; or

- (b) in the case of an operating licence, the Authority considers the activity specified in the licence as proposed to be amended to be a development activity and the holder of the operating licence does not hold a development licence in respect of the activity; or
 - (c) any prescribed circumstances exist.
- (8) The Authority or council must, as soon as practicable after making a decision under subsection (4), give the holder of the licence or permit written notice stating—
- (a) the decision; and
 - (b) in the case of a decision to amend the licence or permit, the date on which the amendment takes effect; and
 - (c) in the case of a decision to refuse to amend the licence or permit, or to amend the licence subject to conditions—
 - (i) the reasons for the decision; and
 - (ii) that the holder of the licence or permit may apply to VCAT for review of the decision.

58 Amendment of permission on initiative of Authority or council

- (1) The Authority or a council may amend, on its own initiative, a permission issued or granted by it—
- (a) to correct any administrative or clerical errors in the permission; or
 - (b) to make an amendment required under the regulations; or

S. 58
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No. 39/2018
s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (c) in the case of a licence or a permit, to revoke or amend a condition of the licence or permit or to impose a new condition on the licence or permit; or
 - (d) in the case of a registration, to modify the application of the standard conditions to the registration.
- (2) When determining whether to amend a licence or permit under subsection (1)(c), the Authority or council must take into account—
- (a) in the case of a development licence, the considerations set out in section 69(3); and
 - (b) in the case of an operating licence, the considerations set out in section 74(3); and
 - (c) in the case of a pilot project licence, the considerations set out in section 78(2); and
 - (d) in the case of a permit, the considerations set out in section 81(3) and (4)(b) and (c).
- (3) The Authority or council must, as soon as practicable after amending a permission under this section, give the permission holder written notice stating—
- (a) the amendment and the reasons for the amendment; and
 - (b) the date on which the amendment takes effect; and
 - (c) in the case of an amendment made under subsection (1)(c), that the holder of the licence or permit may apply to VCAT for review of the decision.

59 Surrender or revocation of permissions on application

- (1) The holder of a licence or permit may apply for consent to surrender the licence or permit.
- (2) An application under subsection (1) must be made—
 - (a) in the case of a licence or permit issued by the Authority, to the Authority; or
 - (b) in the case of a permit issued by a council, to that council.
- (3) An application under subsection (1) must—
 - (a) be made—
 - (i) in the case of an application made to the Authority, in a form and manner approved by the Authority; or
 - (ii) in the case of an application made to a council, in the prescribed form and manner; and
 - (b) be accompanied by the prescribed fee; and
 - (c) be accompanied by any information or thing required by the Authority or council.
- (4) The Authority or council must, within 20 business days after receiving an application under subsection (1)—
 - (a) consent to the surrender of the licence or permit subject to any conditions that the Authority or council considers appropriate; or
 - (b) refuse to consent to the surrender of the licence or permit.
- (5) The Authority or council may refuse to consent to the surrender of a licence or permit if the Authority or council considers that the holder of

S. 59
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No. 39/2018
s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
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the licence or permit has, when engaging in the licence activity or permit activity—

- (a) contravened the general environmental duty or the duty imposed under section 39; or
 - (b) failed to comply with a condition of the licence or permit.
- (6) The Authority or council must refuse to consent to the surrender of a licence or permit if the Authority or council considers that the holder of the licence or permit is continuing to engage in the licence activity or permit activity.
- (7) The Authority or council must, as soon as practicable after making a decision under subsection (4), give the holder of the licence or permit written notice stating—
- (a) the decision; and
 - (b) in the case of a decision to consent to the surrender of the licence or permit—
 - (i) the date on which the surrender takes effect; and
 - (ii) that the surrender does not take effect unless the holder of the licence or permit complies with any conditions to which the surrender is subject by that date; and
 - (c) in the case of a decision to refuse to consent to the surrender of the licence or permit—
 - (i) the reasons for the decision; and
 - (ii) that the holder of the licence or permit may apply to VCAT for review of the decision.

- (8) The surrender of a licence or permit does not take effect unless the holder of the licence or permit has met any conditions imposed by the Authority or council on the surrender.
- (9) The Authority or council must revoke the following permissions if the holder of the permission requests in writing that it be revoked—
 - (a) a registration;
 - (b) a licence or permit that specifies an activity prescribed for the purposes of this section.
- (10) The Authority or council must give the holder of the permission written notice of a revocation under subsection (9).

60 Suspension of permission

- (1) The Authority or a council may suspend a permission issued or granted by it, in relation to any or all of its permission activities, if—
 - (a) the Authority or council believes on reasonable grounds that the holder of the permission has contravened this Act or the regulations; or
 - (b) the Authority or council does not consider the holder of the permission to be a fit and proper person to engage in those permission activities; or
 - (c) the Authority or council believes on reasonable grounds that the holder of the permission has given materially incorrect or misleading information to the Authority or council or that the permission was obtained or renewed because of materially incorrect or misleading information; or
 - (d) the holder of the permission has not paid any prescribed fee in relation to the permission; or

S. 60
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No. 39/2018
s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
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- (e) the Authority or council is satisfied of any prescribed matter.
- (2) If the Authority or a council proposes to suspend a permission under subsection (1), the Authority or council must give the holder of the permission written notice stating—
- (a) the permission activities in relation to which the Authority or council proposes to suspend the permission; and
 - (b) the reasons for the proposed suspension; and
 - (c) that the holder may, within 10 business days after receiving the notice, make submissions to the Authority or council in relation to the proposed suspension.
- (3) The Authority or council must consider any submission under subsection (2)(c) before deciding whether or not to suspend the permission.
- (4) The Authority or council must, as soon as practicable after making a decision whether or not to make a proposed suspension, give the holder of the permission written notice stating—
- (a) the decision; and
 - (b) in the case of a decision to make the suspension—
 - (i) the reasons for the decision; and
 - (ii) the period of suspension (which must not begin before notice is given); and
 - (iii) that the holder of the permission may apply to VCAT for review of the decision—
 - (A) to make the suspension; or

(B) in respect of the period of suspension.

- (5) During a period of suspension, a permission is not in force in respect of the permission activities to which the suspension relates, other than for any purposes specified in the notice under subsection (4).
- (6) The Authority or council may remove a period of suspension made by it if, before the date on which the period of suspension expires, the Authority or council considers that the holder of the permission has rectified any circumstances on which the Authority or council based its decision to make the suspension.
- (7) The Authority or council may extend a period of suspension made by it if, on the date on which the period of suspension expires, the Authority or council considers that the holder of the permission has not rectified any circumstances on which the Authority or council based its decision to make the suspension.
- (8) If the Authority or council extends a period of suspension under subsection (7), the Authority or council must give the holder of the permission a written notice stating—
- (a) the decision and reasons for the decision; and
 - (b) the period for which the suspension is extended; and
 - (c) that the holder of the permission may apply to VCAT for review of the decision—
 - (i) to extend the suspension; or
 - (ii) in respect of the period of the extension.

S. 61
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

61 Revocation of permission on Authority or council's initiative

- (1) The Authority or a council may revoke a permission issued or granted by it if—
 - (a) the Authority or council believes on reasonable grounds that the holder of the permission has contravened this Act or the regulations; or
 - (b) the Authority or council does not consider the holder of the permission to be a fit and proper person to engage in the permission activities; or
 - (c) the Authority or council believes on reasonable grounds that the holder of the permission has given materially incorrect or misleading information to the Authority or council or that the permission was obtained or renewed because of materially incorrect or misleading information; or
 - (d) the holder of the permission has not paid any fee payable under this Chapter in relation to the permission; or
 - (e) the Authority or council is satisfied of any prescribed matter.
 - (2) The Authority or a council may revoke a permission issued or granted by it if the Authority or council considers that the holder of the permission—
 - (a) is no longer required to hold the permission; or
 - (b) no longer engages in the permission activity.
 - (3) If the Authority or council proposes to revoke a permission under subsection (1), the Authority or council must give the holder of the permission written notice stating—
-

- (a) that the Authority or council proposes to revoke the permission and the reasons for the proposed revocation; and
 - (b) that the holder may, within 10 business days after receiving the notice, make submissions to the Authority or council in relation to the proposed revocation.
- (4) The Authority or council must consider any submission under subsection (3)(b) before deciding whether or not to revoke a permission under subsection (1).
- (5) The Authority or council must, as soon as practicable after making a decision whether or not to revoke a permission under subsection (1), give the holder of the permission written notice stating—
- (a) the decision; and
 - (b) in the case of a decision to revoke the permission—
 - (i) the reasons for the decision; and
 - (ii) the date on which the revocation takes effect; and
 - (iii) that the holder may apply to VCAT for review of the decision to revoke the permission.
- (6) The Authority or council must, as soon as practicable after making a decision to revoke a permission under subsection (2), give the holder of the permission written notice stating—
- (a) the decision; and
 - (b) the reasons for the decision; and
 - (c) the date on which the revocation takes effect.

S. 62
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

62 Complying with permission

A person is taken to perform a duty or satisfy an obligation under this Act if—

- (a) the person is the holder of a permission that provides for how the person is to perform the duty or satisfy the obligation; and
- (b) the person complies with the permission to the extent that the permission provides for performing the duty or satisfying the obligation.

S. 63
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

63 Breach of permission conditions—indictable offence

- (1) A person must not breach a condition of a licence issued to the person.

Penalty: In the case of a natural person,
2000 penalty units;

In the case of a body corporate,
10 000 penalty units.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) A person must not breach a condition of a permit issued to the person.

Penalty: In the case of a natural person,
1000 penalty units;

In the case of a body corporate,
5000 penalty units.

Note

Section 314 provides that subsection (2) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (3) A person must not breach a condition of a registration granted to the person.

Penalty: In the case of a natural person,
500 penalty units;
In the case of a body corporate,
2500 penalty units.

Note

Section 314 provides that subsection (3) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (4) Subsections (1), (2) and (3) do not apply to a breach of—
- (a) a condition that is prescribed for the purposes of section 64; or
 - (b) a condition included in a class of conditions that is prescribed for the purposes of section 64; or
 - (c) a condition in circumstances prescribed for the purposes of section 64.
- (5) An offence under subsection (1), (2) or (3) is an indictable offence.

Note

These offences may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

64 Breach of prescribed permission conditions

A person must not breach—

- (a) a prescribed condition of a permission issued or granted to the person; or
- (b) a condition of a permission issued or granted to the person that is included in a prescribed class of conditions; or

S. 64
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (c) a condition of a permission issued or granted to the person in prescribed circumstances.

Penalty: In the case of a natural person,
120 penalty units;
In the case of a body corporate,
600 penalty units.

Note

An offence against this section is an infringement offence within the meaning of the **Infringements Act 2006** (see section 307).

S. 65
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

65 Continuing effect of conditions

If a provision of this Act or the regulations requires a person to comply with a condition of a permission, the obligation to comply with that condition continues until the person complies with the condition, even if—

- (a) the person has already been convicted of an offence for a failure to comply with the condition; and
(b) the condition required the person to comply within a particular period or before a particular day and that period has ended or that day has passed.

S. 66
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

66 Fit and proper persons

- (1) When determining whether a person is a fit and proper person for the purposes of this Chapter, the Authority or a council must have regard to—
- (a) the compliance with this Act, the **Environment Protection Act 1970**, the regulations and environment protection legislation of the Commonwealth, another State or a Territory by—
- (i) the person; and

- (ii) in the case of a natural person, any body corporate of which the person was an officer; and
 - (iii) in the case of a body corporate, any person who is an officer of the body corporate; and
- (b) whether the person has demonstrated to the Authority or council that the person has the financial capacity to comply with any obligations imposed by a permission; and
- (c) any other prescribed criteria.
- (2) If a person is a prohibited person, the Authority or a council must not determine that the person is a fit and proper person for the purposes of this Chapter unless the Authority or council is satisfied that it is not contrary to the public interest to do so.

67 Priority waste and landfill facilities

The Authority must not issue or grant a permission in relation to a landfill site for receiving priority waste prescribed as Category A priority waste.

S. 67
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

68 Exemptions for transporting reportable priority waste

- (1) The Authority may, on application, grant an exemption from the requirement to hold a permission in connection with the transport of reportable priority waste if the Authority is satisfied that the applicant holds a valid authorisation to transport the reportable priority waste under the law of another State or a Territory of the Commonwealth.

S. 68
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (2) An application for an exemption under subsection (1) must—
 - (a) be made in any form and manner approved by the Authority; and
 - (b) specify the activity in relation to which the exemption is sought; and
 - (c) be accompanied by any prescribed fee; and
 - (d) include any prescribed information.
- (3) On receiving an application that complies with subsection (2), the Authority must, within 20 business days (or any shorter prescribed period) after receiving the application—
 - (a) grant the exemption subject to any conditions the Authority considers appropriate; or
 - (b) refuse to grant the exemption.
- (4) When determining whether to grant an exemption, the Authority must take into account any prescribed matter.
- (5) An exemption granted under subsection (3) may be revoked or amended by a written notice given by the Authority.
- (6) An exemption granted under subsection (3) has no effect unless the conditions to which it is subject are complied with.

Part 4.4—Licences

Division 1—Development licences

Pt 4.4
(Headings
and ss 69–80)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

69 Development licences

- (1) The Authority must, not later than 4 months after receiving an application for a development licence that complies with section 50—
 - (a) issue a development licence subject to any specified conditions that the Authority considers appropriate; or
 - (b) refuse to issue a development licence.
- (2) The Authority must refer an application for a development licence to a prescribed agency for comment in the prescribed circumstances.
- (3) When determining whether or not to issue a development licence, the Authority must take into account—
 - (a) any measures the applicant has taken or proposes to take in order to comply with the general environmental duty when engaging in the activity that is the subject of the application; and
 - (b) the impact of the activity on human health and the environment, including the impact on any environmental values identified in any relevant environment reference standard, taking into account any other activities being or proposed to be engaged in by the applicant or any other person; and

S. 69
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (c) the principles of environment protection; and
 - (d) the best available techniques or technologies;
and
 - (e) whether the activity is otherwise consistent
with this Act and the regulations; and
 - (f) if the regulations require the Authority to
refer the application to a prescribed agency,
any comments or submissions received from
that agency; and
 - (g) any comments and submissions received—
 - (i) in response to the notice of the
application published under section 52;
and
 - (ii) within the time specified in that notice;
and
 - (h) any prescribed matter.
- (4) The Authority must refuse to issue the
development licence if—
- (a) the Authority considers that the activity that
is the subject of an application poses an
unacceptable risk of harm to human health or
the environment; or
 - (b) the Authority determines that the person is
not a fit and proper person to hold a
development licence; or
 - (c) any prescribed circumstances exist.
- (5) The development licence must specify the date on
which the development licence expires.
- (6) If the Authority decides to issue a development
licence, the Authority must, within 5 business
days of issuing the licence, take reasonable steps
to notify each person who made a submission

under section 52 in relation to the application for the licence of the following—

- (a) the decision to issue the licence;
- (b) that certain persons may seek review of the decision under section 434.

70 Joint publication

The notice of an application for a development licence required under section 52 may be combined with—

- (a) if the activity that is the subject of the application is works to which the **Environment Effects Act 1978** applies, any notice given for those works under that Act; or
- (b) if the activity requires a planning permit or the preparation of an amendment to a planning scheme under the **Planning and Environment Act 1987**, any notice required to be given for the application for that planning permit or the preparation of that amendment under that Act.

S. 70
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

71 Conditions of development licences

If a development licence specifies an activity that requires a planning permit or the preparation of an amendment to a planning scheme under the **Planning and Environment Act 1987**, the development licence must specify, as a condition of the development licence, that the development licence does not take effect until the applicant provides a copy of that planning permit or amendment to the Authority.

S. 71
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 72
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

72 Extension of term of development licences

The Authority may, subject to any conditions that the Authority considers appropriate, extend the period during which a development licence remains in force if the Authority is satisfied that the circumstances of the case justify that extension.

S. 73
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

73 Statement as to whether activity specified in development licence completed

- (1) The holder of a development licence may apply, in the form and manner approved by the Authority, for a statement from the Authority as to whether the Authority considers the holder to have completed the activity specified in the development licence to the Authority's satisfaction.
- (2) The Authority must provide a written statement under subsection (1) within 20 business days after receiving an application under that subsection.

Division 2—Operating licences

S. 74
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

74 Operating licences

- (1) Subject to subsection (2), the Authority must, after receiving an application for an operating licence that complies with section 50—
 - (a) issue an operating licence subject to any specified conditions that the Authority considers appropriate; or
 - (b) refuse to issue an operating licence.

- (2) The Authority must issue or refuse to issue an operating licence under subsection (1) within—
- (a) 15 business days after receiving the application if—
 - (i) the applicant holds a development licence in respect of the activity that is the subject of the application; and
 - (ii) the Authority has provided to the applicant a statement under section 73 that the Authority considers the applicant to have completed the activity to the Authority's satisfaction; or
 - (b) in any other case, 42 business days after receiving the application.
- (3) When determining whether or not to issue an operating licence, the Authority must take into account—
- (a) any measures the applicant has taken or proposes to take in order to comply with the general environmental duty when engaging in the activity that is the subject of the application; and
 - (b) the impact of the activity on human health and the environment, including the impact on any environmental values identified in any relevant environment reference standard, taking into account any other activities being or proposed to be carried out by the applicant or any other person; and
 - (c) the principles of environment protection; and
 - (d) the best available techniques or technologies; and
 - (e) whether the activity is otherwise consistent with this Act and the regulations; and

- (f) any prescribed matter.
- (4) The Authority must refuse to issue an operating licence if—
 - (a) the Authority considers that the activity that is the subject of the application poses an unacceptable risk of harm to human health or the environment; or
 - (b) the Authority determines that the person is not a fit and proper person to hold an operating licence; or
 - (c) the Authority considers the activity that is the subject of the application to be a prescribed development activity and the applicant does not hold a development licence in respect of the activity; or
 - (d) any prescribed circumstances exist.
- (5) Nothing in this Chapter prevents—
 - (a) the person who has applied for an operating licence in respect of an activity applying for a development licence in respect of the same activity; or
 - (b) the Authority determining that application for a development licence in accordance with Division 1.

S. 75
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

75 Term of operating licences

- (1) Subject to subsection (2), if the Authority issues an operating licence after the commencement of this Chapter, the Authority must specify on the licence the period during which the licence remains in force.

- (2) An operating licence may not remain in force—
 - (a) in the case of an operating licence that specifies a waste management activity that is engaged in at a current or former landfill site, for a period of more than 99 years; or
 - (b) in any other case, for a period of more than 20 years.

76 Review of operating licences

- (1) The Authority may, in accordance with the regulations, review an operating licence after the operating licence has been in force—
 - (a) for 4 years; or
 - (b) for any longer period determined by the Authority.
- (2) If the Authority proposes to review a licence under subsection (1), the Authority must give at least 20 business days' written notice of the Authority's intention to do so to the holder of the licence.
- (3) After reviewing a licence under subsection (1), the Authority may—
 - (a) vary the conditions of the licence; or
 - (b) revoke the licence.
- (4) When determining whether or not to vary the conditions of a licence or revoke a licence under subsection (3), the Authority must take into account—
 - (a) any measures the holder of the licence has taken or proposes to take in order to comply with the general environmental duty when engaging in the licence activity; and

S. 76
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (b) the impact of the licence activity on human health and the environment, including the impact on any environmental values identified in any relevant environment reference standard, taking into account any other activities being or proposed to be carried out by the holder of the licence or any other person; and
- (c) the principles of environment protection; and
- (d) the best available techniques or technologies; and
- (e) whether the activity is otherwise consistent with this Act and the regulations; and
- (f) any prescribed matter.

Division 3—Pilot project licences

77 Pilot project licences

S. 77
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) A person may apply under section 50 for a pilot project licence in respect of an activity that requires a development licence, an operating licence or a permit.
- (2) The Authority must refuse to issue the pilot project licence if the Authority is satisfied that the activity specified in the application is not a research, development or demonstration activity.
- (3) In determining whether an activity is a research, development or demonstration activity, the Authority must consider—
 - (a) the scale, dimensions, purpose, and duration of the activity; and
 - (b) the risks of harm posed by the activity to human health and the environment from pollution or waste.

78 Consideration of application for pilot project licence

- (1) On receiving an application for a pilot project licence that complies with section 50, the Authority must, within 22 business days of receiving the application, either—
 - (a) issue the pilot project licence subject to any specified conditions that the Authority considers appropriate; or
 - (b) refuse to issue the pilot project licence.
- (2) When determining whether or not to issue a pilot project licence, the Authority must take into account—
 - (a) any measures the applicant has taken or proposes to take in order to comply with the general environmental duty when engaging in the activity that is the subject of the application; and
 - (b) the impact of the activity on human health and the environment, including the impact on any environmental values identified in any relevant environment reference standard, taking into account any other activities being or proposed to be carried out by the applicant or any other person; and
 - (c) the principles of environment protection; and
 - (d) the best available techniques or technologies; and
 - (e) whether the activity is otherwise consistent with this Act and the regulations; and
 - (f) any prescribed matter.

S. 78
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (3) The Authority must refuse to issue a pilot project licence if—
- (a) the Authority determines that the applicant is not a fit and proper person to hold a pilot project licence; or
 - (b) the Authority considers that the activity specified in the application poses an unacceptable risk of harm to human health or the environment; or
 - (c) any prescribed circumstances exist.

S. 79
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

79 Duration and effect of pilot project licence

- (1) A pilot project licence remains in force for the period specified in the licence, which must not be more than 5 years.
- (2) The holder of a pilot project licence is exempted from the requirement to obtain a development licence, an operating licence or a permit in respect of the activities specified in the pilot project licence.

Division 4—Licence exemptions

80 Application for licence exemptions

- (1) A person may apply to the Authority for an exemption from the application of section 44 in respect of a prescribed development activity.
- (2) A person may apply to the Authority for an exemption from the application of section 45 in respect of a prescribed operating activity.
- (3) An application for an exemption under subsection (1) or (2) must—
 - (a) be made in any form and manner approved by the Authority; and
 - (b) specify the activity in relation to which the exemption is sought; and

S. 80
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No. 39/2018
s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (c) be accompanied by any prescribed fee; and
 - (d) include any prescribed information.
- (4) On receiving an application that complies with subsection (3), the Authority must, within 20 business days (or any shorter prescribed period) after receiving the application—
- (a) grant the exemption subject to any conditions the Authority considers appropriate; or
 - (b) refuse to grant the exemption.
- (5) When determining whether to grant an exemption, the Authority must take into account any prescribed matter.
- (6) An exemption granted under subsection (4) may be revoked or amended by a written notice given by the Authority.
- (7) An exemption granted under subsection (4) has no effect unless the conditions to which it is subject are complied with.

Pt 4.5
(Heading and
ss 81–84)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 4.5—Permits

S. 81
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

81 Permits

- (1) On receiving an application for a permit that complies with section 50, the Authority or the council to which the application was made must—
 - (a) issue the permit subject to any conditions that the Authority or council considers appropriate; or
 - (b) refuse to issue the permit.
- (2) A decision under subsection (1) must be made within—
 - (a) in the case of an application made to the Authority—
 - (i) any prescribed period not exceeding 42 business days after receiving the application; or
 - (ii) if no period is prescribed, 15 business days after receiving the application; or
 - (b) in the case of an application made to a council, the prescribed period.
- (3) When determining whether to issue the permit, the Authority or council must take into account any prescribed matter.

- (4) The Authority or council must refuse to issue the permit if—
 - (a) the Authority or council determines that the applicant for the permit is not a fit and proper person to hold the permit; or
 - (b) the Authority or council considers that the activity specified in the application poses an unacceptable risk of harm to human health or the environment; or
 - (c) any prescribed circumstances exist.
- (5) A permit remains in force for—
 - (a) a period of 5 years; or
 - (b) any shorter period prescribed in relation to a particular activity or class of activity.

82 Permit exemptions granted by the Authority

- (1) A person may apply to the Authority for an exemption from the application of section 46 in respect of a prescribed permit activity administered by the Authority.
- (2) An application for an exemption under subsection (1) must—
 - (a) be made in any form and manner approved by the Authority; and
 - (b) specify the activity in relation to which the exemption is sought; and
 - (c) be accompanied by any prescribed fee; and
 - (d) include any prescribed information.
- (3) On receiving an application that complies with subsection (2), the Authority must, within 10 business days (or any shorter prescribed period) after receiving the application—

S. 82
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (a) grant the exemption subject to any conditions the Authority considers appropriate; or
 - (b) refuse to grant the exemption.
- (4) When determining whether to grant an exemption, the Authority must take into account any prescribed matter.
- (5) An exemption granted under subsection (3) has no effect unless the conditions to which it is subject are complied with.

S. 83
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

83 Permit exemptions granted by a council

- (1) A person may apply to a council for an exemption from the application of section 46 in respect of a prescribed permit activity administered by a council.
- (2) An application for an exemption under subsection (1) must—
 - (a) be made in the prescribed form and manner; and
 - (b) specify the activity in relation to which the exemption is sought; and
 - (c) be accompanied by any prescribed fee; and
 - (d) include any prescribed information.
- (3) On receiving an application that complies with subsection (2), a council must, within 10 business days (or any shorter prescribed period) after receiving the application—
 - (a) grant the exemption subject to any conditions the council considers appropriate; or
 - (b) refuse to grant the exemption.

- (4) When determining whether to grant an exemption, a council must take into account any prescribed matter.
- (5) An exemption granted under subsection (3) has no effect unless the conditions to which it is subject are complied with.

84 Renewal of permits

- (1) The holder of a permit may apply for the renewal of the permit—
 - (a) in the case of a permit issued by the Authority, to the Authority; or
 - (b) in the case of a permit issued by a council, to that council.
- (2) An application for renewal must be made at least 15 business days before the day on which the permit is due to expire.
- (3) An application for renewal must—
 - (a) be made—
 - (i) in the case of a permit issued by the Authority, in a form and manner approved by the Authority; or
 - (ii) in the case of a permit issued by a council, in the prescribed form and manner; and
 - (b) be accompanied by any prescribed fee; and
 - (c) include any prescribed information.
- (4) On receiving an application that complies with subsections (2) and (3), the Authority or council must—
 - (a) renew the permit; or
 - (b) refuse to renew the permit.

S. 84
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (5) A decision under subsection (4) must be made within—
- (a) in the case of an application made to the Authority—
 - (i) any prescribed period not exceeding 42 business days after receiving the application; or
 - (ii) if no period is prescribed, 15 business days after receiving the application; or
 - (b) in the case of an application made to a council, the prescribed period.
- (6) If the permit is due to expire before the end of the period described in subsection (5), the permit is taken to remain in force until the end of that period.
- (7) When determining whether to renew a permit, the Authority or council must take into account any prescribed matter.
- (8) A permit may be renewed for—
- (a) a period of not more than 5 years; or
 - (b) any shorter period prescribed in relation to a particular activity or class of activity.
- (9) A permit may be renewed more than once.

Part 4.6—Registrations

Pt 4.6
(Heading and
ss 85–87)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

85 Registration of prescribed activities

S. 85
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) Subject to subsection (3), on receiving an application for a registration that complies with section 50, the Authority is taken to have granted a registration for the activity that is the subject of the application to the applicant subject to any standard conditions.
- (2) Within 10 business days after receiving an application for a registration that complies with section 50, the Authority must notify the applicant—
 - (a) that a registration has been granted; and
 - (b) the standard conditions to which the registration is subject.
- (3) A registration remains in force until—
 - (a) for a period of 5 years or any shorter period prescribed in relation to a particular activity or class of activity; or
 - (b) until the registration is revoked under section 61—whichever is the earlier.

S. 86
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

86 Renewal of registrations

- (1) The holder of a registration may apply to the Authority for the renewal of the registration.
- (2) An application for renewal must be made before the day on which the registration is due to expire.
- (3) An application for renewal must—
 - (a) be in any form and manner approved by the Authority; and
 - (b) be accompanied by any prescribed fee; and
 - (c) include any prescribed information.
- (4) On receiving an application for the renewal of a registration that complies with this section, the Authority is taken to have renewed the registration subject to the standard conditions to which the registration was subject before the renewal.
- (5) Within 10 business days after receiving an application for the renewal of a registration that complies with this section, the Authority must notify the applicant—
 - (a) that the registration has been renewed; and
 - (b) of the standard conditions to which the renewed registration is subject.
- (6) A registration may be renewed for—
 - (a) a period of not more than 5 years; or
 - (b) any shorter period prescribed in relation to a particular activity or class of activity.
- (7) A registration may be renewed more than once.

87 Registration of non-prescribed activities

- (1) The Governor in Council may by Order require a specified activity or class of activity to be subject to section 85, for a period of not more than 3 years, as if it were an activity prescribed to be subject to registration under that section.
- (2) An Order made under this section may exempt persons from the operation of the Order in specified circumstances or if the person meets specified requirements.

S. 87
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Pt 4.7
(Heading and
ss 88–90)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 4.7—Persons prohibited from engaging in prescribed activities

S. 88
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

88 Certain persons prohibited from engaging in particular activities

- (1) A person is a *prohibited person* if—
- (a) within the preceding 10 years, the person has been convicted or found guilty of—
 - (i) an offence involving fraud, dishonesty or violence that was punishable by a term of imprisonment of 3 months or more at the time of the conviction or finding of guilt; or
 - (ii) an indictable offence against this Act or the **Environment Protection Act 1970**; or
 - (iii) an offence that, if committed in Victoria, would constitute an offence referred to in subparagraph (i) or (ii); or
 - (iv) an indictable offence against the **Dangerous Goods Act 1985**, the **Equipment (Public Safety) Act 1994**, the **Occupational Health and Safety Act 2004** or the **Planning and Environment Act 1987**; or
 - (b) the Authority has revoked a permission held by the person under section 61(1); or

- (c) any licence or permit issued to the person under a law of another State or a Territory that the Authority considers to be equivalent to a permission has been revoked on a ground equivalent to one or more of the grounds set out in section 61(1); or
 - (d) the person is an insolvent under administration; or
 - (e) the person is an externally-administered company under the Corporations Act; or
 - (f) in the case of a body corporate—
 - (i) one or more of the officers is a person referred to in paragraph (a), (b), (c) or (d); or
 - (ii) one or more of the officers is or was an officer of another body corporate that is or was a person referred to in paragraph (a), (b), (c) or (d).
- (2) A prohibited person must not engage in an activity that is prescribed for the purposes of this section.

Penalty: In the case of a natural person,
240 penalty units or 2 years
imprisonment or both;

In the case of a body corporate,
1200 penalty units.

Note

Section 314 provides that subsection (2) is a civil penalty provision. The penalties for contravention of these civil penalty provisions are set out in the table in section 314.

- (3) The Minister may recommend that an activity be prescribed for the purposes of this section only if the activity is not a permission activity and either—

- (a) the activity relates to—
 - (i) the receiving, handling, storing, processing or disposal of waste; or
 - (ii) resource recovery; or
 - (b) the Minister is satisfied that the activity poses a serious risk of harm to human health or the environment.
- (4) If, as the result of the operation of Part 11.8, a person who is an officer of a body corporate commits an offence against subsection (2), a sentence of imprisonment must not be imposed on the officer in respect of a conviction or finding of guilt in respect of that offence unless the body corporate was prohibited from engaging in the prescribed activity that was the subject of the offence because the officer is a prohibited person referred to in subsection (1)(a), (b), (c) or (d).

S. 89
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

89 Additional or alternative penalties for prohibited persons

- (1) If—
- (a) a prohibited person who is a natural person commits an offence against section 45, 46 or 47; and
 - (b) the permission activity that was the subject of the offence is prescribed for the purposes of this section—

a court may impose a penalty of up to 2 years imprisonment in addition to, or in place of, the penalty included in section 45, 46 or 47.

- (2) If, as the result of the operation of Part 11.8, a person who is an officer of a body corporate commits an offence against section 45, 46 or 47, a sentence of imprisonment must not be imposed under subsection (1) on the officer in respect of a conviction or finding of guilt in respect of that

offence unless the body corporate was prohibited from engaging in the prescribed activity that was the subject of the offence because the officer is a prohibited person referred to in section 88(1)(a), (b), (c) or (d).

90 Applications by prohibited persons to engage in prescribed activity

- (1) Subject to subsection (4), a prohibited person may apply to the Authority for authorisation—
 - (a) to engage in an activity prescribed for the purposes of section 88; or
 - (b) to be an officer of a body corporate that engages in an activity prescribed for the purposes of section 88.
- (2) An application under this section must—
 - (a) be in the form approved by the Authority; and
 - (b) contain the information required by the Authority; and
 - (c) be accompanied by the documents required by the Authority; and
 - (d) be accompanied by any prescribed fee.
- (3) The Authority must, not later than 25 business days after receiving an application under this section—
 - (a) accept the application; or
 - (b) refuse the application.
- (4) The Authority may accept an application—
 - (a) if the Authority is satisfied that it is not contrary to the public interest to do so; and

S. 90
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (b) subject to any conditions the Authority considers appropriate to protect the public interest.

Part 4.8—Environment protection levy

Pt 4.8
(Heading and
s. 91)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

91 Environment protection levy

S. 91
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) Subject to and in accordance with this section, there is to be charged, levied and collected by the Authority a levy at the rate of 3 per cent of the fee prescribed for the purposes of this section in respect of any activity—
 - (a) for which a permission is required under this Act; and
 - (b) that has been prescribed as an activity in respect of which the levy is required to be paid.
- (2) The levy is payable at the same time as the prescribed fee is payable under this Part.
- (3) The Authority may after having regard to the record of compliance with the conditions applying to a permission in respect of any person liable to pay the levy, exempt the person in whole or in part from the payment of the levy as the Authority sees fit.
- (4) If the levy in respect of any activity is not paid at the same time as the prescribed fee is payable under this Part, the Authority must suspend the permission or the application of the permission to the extent that it applies to that person until the levy is paid and the amount of the levy which is outstanding bears interest at such rate per centum

per annum as is set out in section 172(2) of the
Local Government Act 1989.

Chapter 5—Environment reference standards, compliance codes and position statements

Ch. 5
(Headings and ss 92–109)
inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

Part 5.1—Simplified outline

Pt 5.1
(Heading and s. 92)
inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

92 Simplified outline—Chapter 5

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 5.2 provides for the making, preparation and review of environment reference standards for assessing and reporting on environmental conditions in the whole or any part of Victoria.
- (3) Part 5.3 provides for the making of compliance codes that provide guidance on how a person may comply with a duty or obligation under this Act.
- (4) Part 5.4 enables the Authority to make a position statement setting out—
 - (a) how a provision of this Act or the regulations would apply to a class of persons or in specified circumstances; or

S. 92
inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

- (b) how the Authority would exercise a discretion under a provision of this Act or the regulations.
- (5) The effect of compliance codes and position statements is set out in Parts 5.3 and 5.4 respectively.

Part 5.2—Environment reference standards

Pt 5.2
(Heading and
ss 93–99)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

93 Environment reference standards

S. 93
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) The Governor in Council, on the recommendation of the Minister, may by Order published in the Government Gazette make an environment reference standard to be used to assess and report on environmental conditions in the whole or any part of Victoria.
- (2) Without limiting subsection (1), an environment reference standard must identify environmental values to be achieved or maintained in the whole or any part of Victoria.
- (3) An environment reference standard must specify—
 - (a) whether the area to which the standard applies is the whole or a part of Victoria; and
 - (b) if the standard does not apply to the whole of Victoria, the boundaries of the area to which the standard applies; and
 - (c) the elements of the environment to which the standard relates; and
 - (d) the environmental values identified for the area, or any part of the area, to which the standard applies.

- (4) An environment reference standard may specify indicators and objectives to be used to measure whether an environmental value specified in the environment reference standard is being achieved or maintained.
- (5) For the purposes of subsection (4), an environment reference standard may specify one or more of the following indicators or objectives—
 - (a) ambient environmental quality pollutant measures;
 - (b) ambient environmental quality ecological measures;
 - (c) measures of human health or the health of other species;
 - (d) targets for emissions of pollutants.

S. 94
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

94 Application of the Subordinate Legislation Act 1994 to environment reference standards

- (1) Section 12F(1)(a) of the **Subordinate Legislation Act 1994** applies to an environment reference standard as if the reference to a significant economic or social burden were a reference to a significant impact.
- (2) The **Subordinate Legislation Act 1994** applies to an environment reference standard as if a reference to a regulatory impact statement were a reference to an impact assessment prepared under section 95(1).
- (3) Section 12H(1), (2) and (4) of the **Subordinate Legislation Act 1994** do not apply to an environment reference standard.

95 Preparation of environment reference standards

- (1) Before recommending that the Governor make an environment reference standard, the Minister must ensure that an impact assessment for the standard is prepared that contains—
 - (a) the objectives and purposes of the standard; and
 - (b) a description of the methods used to prepare the standard; and
 - (c) any indicators and objectives for measuring whether environmental values are being achieved or maintained, other than those specified in the standard, that were considered during the preparation of the standard; and
 - (d) a description of the monitoring, evaluation and reporting requirements of the standard; and
 - (e) a description of the intended operation and impact of the standard.
- (2) When determining whether to recommend whether an environment reference standard should be made, the Minister must take the principles of environment protection into account.

S. 95
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

96 Environment reference standard may incorporate NEPM

- (1) Environment reference standards may apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published—
 - (a) as in force at a particular time; or

S. 96
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (b) as amended, formulated, issued, prescribed or published from time to time.
- (2) Without limiting subsection (1), the Governor in Council may, subject to subsection (3), incorporate the whole or any part of a national environment protection measure in an environment reference standard.
- (3) For the purposes of subsection (2), the Minister must consult with the National Environment Protection Council before recommending that an environment reference standard be made if it is proposed that the standard is to incorporate a measure that is more stringent than a national environment protection measure.

S. 97
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

97 Review of environment reference standards

- (1) Before the expiry of each review period, the Minister must determine whether an environment reference standard is to be—
 - (a) retained with or without amendment; or
 - (b) revoked.
- (2) Before determining whether to retain or revoke an environment reference standard under subsection (1), the Minister must ensure that notice of the review is published in—
 - (a) the Government Gazette; and
 - (b) any publication that the Minister considers appropriate.
- (3) A notice under subsection (2) must—
 - (a) summarise the environment reference standard; and
 - (b) specify where a copy of the standard can be obtained; and

- (c) invite public comments or submissions on the standard within the time specified in the notice, being not less than 28 days from the publication of the notice.
- (4) After considering any public comments or submissions received in response to the notice under subsection (3)(c), the Minister must—
 - (a) retain the standard without amendment; or
 - (b) retain the standard with amendments; or
 - (c) replace the standard; or
 - (d) revoke the standard.
- (5) The replacement of an environment reference standard under subsection (4)(c) must be prepared in accordance with section 95.
- (6) In this section—

review period, in relation to an environment reference standard, means the 10-year period that begins on the later of the following days—

 - (a) the day on which the standard is made;
 - (b) the day on which notice of a review of the standard is published in the Government Gazette.

98 Notice of review determination

- (1) If the Minister determines under section 97 to revoke an environment reference standard or retain an environment reference standard without amendment, the Minister must ensure that notice of that determination—
 - (a) is published in any publication that the Minister considers appropriate; and

S. 98
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

(b) is given in writing to any person who made a comment or submission in accordance with section 97(3)(c) in relation to that determination.

(2) A notice under subsection (1) must be given and published as soon as practicable after the determination has been made.

99 Consideration of environment reference standards

The Minister must take into account environment reference standards when making a decision relating to—

- (a) whether to recommend the making of regulations under this Act; or
- (b) whether to recommend the making of a compliance code; or
- (c) whether to declare an issue to be an issue of environmental concern.

S. 99
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 5.3—Compliance codes

Pt 5.3
(Heading and
ss 100–104)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

100 Compliance codes

- (1) For the purposes of providing practical guidance to any person who has a duty or obligation under this Act, the Governor in Council may make an Order approving a compliance code.
- (2) The order approving a compliance code takes effect on the day notice of the order is published in the Government Gazette, or any later day specified in the order.

S. 100
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

101 Content of compliance codes

A compliance code may apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person or body—

- (a) as in force at a particular time; or
- (b) as amended, formulated, issued, prescribed or published from time to time.

S. 101
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

102 Communication of compliance codes

- (1) The Authority must publish a compliance code made under section 100 on the Internet site of the Authority.
- (2) The Authority must make available for inspection without charge at the office of the Authority during normal business hours—

S. 102
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (a) any compliance code made under section 100; and
- (b) any document containing any matter that is applied, adopted or incorporated in a compliance code.

S. 103
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

103 Effect of compliance codes

A person is taken to perform a duty or satisfy an obligation under this Act if—

- (a) a compliance code provides for how a person performs the duty or satisfies the obligation; and
- (b) the person complies with the compliance code to the extent that the compliance code provides for performing the duty or satisfying the obligation.

S. 104
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

104 No penalty for failure to comply with compliance codes

A failure to comply with a compliance code does not give rise to any civil or criminal penalty.

Part 5.4—Position statements

Pt 5.4
(Heading and
ss 105–109)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

105 Authority may make position statements

- (1) The Authority may make a position statement by publishing a notice of the position statement in the Government Gazette.
- (2) The position statement takes effect on the day notice of the position statement is published in the Government Gazette, or on any later day specified in the notice.

S. 105
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

106 Communication of position statements

The Authority must publish any position statement made under section 105 on the Internet site of the Authority.

S. 106
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

107 Content of position statements

- (1) A position statement of the Authority may state—
 - (a) the Authority's opinion on how a provision of this Act or the regulations would apply to a class of persons or to a set of circumstances; or
 - (b) how the Authority would exercise a discretion under a provision of this Act or the regulations.

S. 107
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (2) For the purposes of subsection (1)(b), the Authority exercises a discretion if the Authority—
 - (a) forms an opinion as to the existence of a fact; or
 - (b) attains a state of mind; or
 - (c) makes a determination; or
 - (d) exercises a power; or
 - (e) refuses or fails to do any of those things.

S. 108
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

108 Consultation on position statements

- (1) Before making a position statement under section 105, the Authority must comply with this section.
- (2) The Authority must—
 - (a) prepare a draft position statement; and
 - (b) publish notice of the draft position statement and a request for comment on the draft position statement within a specified period—
 - (i) in the Government Gazette; and
 - (ii) on the Internet site of the Authority; and
 - (iii) in any other publication intended for general circulation in Victoria that the Authority considers appropriate; and
 - (c) publish a copy of the draft position statement on the Internet site of the Authority.
- (3) After the expiry of the specified period, the Authority—
 - (a) must consider any comments received by the Authority within the specified period; and
 - (b) may make the position statement in accordance with section 105 with or without modifications to the draft position statement.

109 Effect of position statements

- (1) A position statement does not give rise to—
- (a) a legal right, expectation, duty or obligation that would not otherwise be conferred or imposed on any person; or
 - (b) any liability of, or other claim against, the Authority; or
 - (c) any defence that would not otherwise be available to any person.
- (2) Without limiting subsection (1), a position statement does not affect any matter specified in subsection (1)(a), (b) or (c) that is otherwise provided for under this Act.

S. 109
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Ch. 6
(Headings
and ss 110–
152)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Chapter 6—Waste

Pt 6.1
(Heading and
s. 110)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 6.1—Simplified outline

S. 110
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

110 Simplified outline—Chapter 6

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 6.2 provides for the objects of this Chapter.
- (3) Part 6.3 provides for the powers and appointment of litter enforcement officers and offences in relation to the disposal and removal of litter and other waste.
- (4) Part 6.4 provides for duties in relation to industrial waste.
- (5) Part 6.5 provides for duties and controls in relation to priority waste.
- (6) Part 6.6 provides for the administration of the waste levy scheme.

Part 6.2—Objects

Pt 6.2
(Heading and
s. 111)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

111 Objects

- (1) The objects of this Chapter are—
- (a) to minimise litter and waste disposal by encouraging the management of waste in accordance with the waste management hierarchy; and
 - (b) to promote waste reduction, resource recovery and resource efficiency; and
 - (c) to minimise the impact on human health and the environment from waste generation and waste disposal.
- (2) It is the intention of the Parliament that in the administration of this Chapter regard should be given to the objects of this Chapter.

S. 111
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 6.3—Litter and other waste

Division 1—Preliminary matters

Pt 6.3
(Headings
and ss 112–
132)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 112
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 113
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

112 Definitions

In this Part—

dangerous litter means litter that is wholly or partly comprised of one or more of the following—

- (a) oil, fuel, grease, paint or solvents;
- (b) a lit cigarette or a lit cigarette butt;
- (c) glass;
- (d) a syringe;
- (e) any substance, material or other thing prescribed by the regulations;

litter means a quantity of waste that does not exceed 50 litres;

place includes a receptacle.

113 Governor in Council may declare body to be a litter authority

The Governor in Council may, by Order published in the Government Gazette, declare any body to be a litter authority for the purposes of this Part.

Division 2—Appointment of litter enforcement officers

114 Litter enforcement officers

- (1) The Authority may appoint a person as a litter enforcement officer.
- (2) A litter authority may appoint an employee of the litter authority, or a member of a class of employee of the litter authority, as a litter enforcement officer in relation to—
 - (a) any bus, tram, watercraft, rail vehicle or aircraft owned or managed by the litter authority that is being used for a public purpose; or
 - (b) in the case of a litter authority that is a council, any land or waters in the council's municipal district; or
 - (c) any land or waters under the control or management of the litter authority; or
 - (d) any offence under this Part that may result in waste appearing on land or waters under the control or management of the litter authority (regardless of where the offence occurs).
- (3) The Secretary, being the body corporate established by Part 2 of the **Conservation, Forests and Lands Act 1987**, may appoint a person as a litter enforcement officer in respect of any land managed under a relevant law within the meaning of that Act.

S. 114
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Division 3—Offences in relation to littering and other waste

115 Unlawful deposit of waste

S. 115
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) A person must not deposit waste that is litter other than in the circumstances specified in subsection (5).

Penalty: In the case of a natural person,
20 penalty units;

In the case of a body corporate,
100 penalty units.

- (2) A person must not deposit waste that is dangerous litter other than in the circumstances specified in subsection (5).

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (3) A person must not deposit waste of more than 50 litres but not more than 1000 litres other than in the circumstances specified in subsection (5).

Penalty: In the case of a natural person,
100 penalty units;

In the case of a body corporate,
500 penalty units.

- (4) A person must not deposit waste of more than 1000 litres other than in the circumstances specified in subsection (5).

Penalty: In the case of a natural person,
240 penalty units;

In the case of a body corporate,
1200 penalty units.

- (5) A person does not contravene subsection (1), (2), (3) or (4), as the case requires, if the person—
- (a) deposits the waste in or on premises or a place that—
 - (i) is provided for the deposit of waste; and
 - (ii) is appropriate for waste of that size, shape, nature or volume; or
 - (b) deposits the waste in or on premises or a place in such a way that it cannot leave the premises or place without human assistance and the person—
 - (i) owns, controls or is in possession of the premises or place; or
 - (ii) is acting with the express consent of another person who owns, controls or is in possession of the premises or place; or
 - (c) is authorised to deposit the waste as the case requires, by or under an Act or a Commonwealth Act; or
 - (d) deposits the waste as a consequence of a lawful activity and it is not reasonable for the person to avoid that consequence; or
 - (e) accidentally deposits the waste and it is not reasonably possible for the person to retrieve the waste.
- (6) Two or more deposits of waste in or on premises or a place may be taken to be one deposit for the purposes of subsection (1), (2), (3) or (4) if the 2 or more deposits constitute a connected series of deposits.

- (7) A reference in this section to the deposit of waste includes a reference to waste that—
- (a) is blown from premises or a place; or
 - (b) falls or escapes from premises or a place.

S. 116
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

116 Liability of owners and drivers of vehicles in relation to littering of waste

- (1) Subject to sections 117 and 118, if waste is deposited from a vehicle contrary to section 115(1), (2), (3) or (4) the persons specified in subsection (2) are taken to have committed an offence against whichever of those subsections is applicable.
- (2) For the purposes of subsection (1), the following persons are specified—
- (a) the driver of the vehicle;
 - (b) the registered owner of the vehicle;
 - (c) a person authorised by the registered owner to use the vehicle (*the authorised user*) at the time the offence was committed.
- (3) Without limiting subsection (2), the registered owner of a vehicle is taken to have committed an offence against section 115(1), (2), (3) or (4) if—
- (a) a person deposits waste at premises or a place contrary to whichever of those subsections is applicable; and
 - (b) that person was seen arriving at or leaving the premises or place in the registered owner's vehicle.
- (4) A Court must not find a person guilty of an offence because of the operation of this section unless the Court is satisfied that no other person has been found guilty of an offence constituted by the depositing of the waste referred to in subsection (1), (2), (3) or (4), and—

- (a) it is not practicable to discover who deposited the waste; or
 - (b) it is not possible to file a charge-sheet against the person who deposited the waste; or
 - (c) it is unlikely that the filing of a charge-sheet against the person who deposited the waste would result in a finding of guilt.
- (5) If the registered owner or the authorised user of a vehicle is taken to have committed an offence as a result of the operation of subsection (1), a Court must not find the registered owner or the authorised user guilty of the offence unless the Court is satisfied that it is not possible to file a charge-sheet against the driver of the vehicle at the time of the offence.

117 Exceptions to liability of owners and drivers of vehicles in relation to littering of waste

- (1) A person specified in section 116(2) is not taken to have committed an offence against section 115(1), (2), (3) or (4) if the waste was deposited from a vehicle and—
- (a) the vehicle is a train, tram, bus, ferry, passenger vessel, passenger plane or other public transport vehicle; and
 - (i) the waste was deposited by a passenger of that vehicle; and
 - (ii) the vehicle was being used for a public purpose at the time of the offence; or
 - (b) the vehicle is a commercial passenger vehicle within the meaning of the **Commercial Passenger Vehicle Industry Act 2017** and the waste was deposited by a passenger of the commercial passenger vehicle at the time of the offence; or

S. 117
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (c) the person provides a written statement in accordance with section 118.
- (2) The registered owner or the authorised user of a vehicle is not taken to have committed an offence against section 115(1), (2), (3) or (4) if the registered owner's vehicle was a stolen vehicle at the time of the offence.

S. 118
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

118 Written statement

- (1) A person specified in section 116(2) is not taken to have committed an offence against section 115(1), (2), (3) or (4) if the person provides a written statement in accordance with this section to—
 - (a) a litter enforcement officer; or
 - (b) the litter authority that appointed the litter enforcement officer referred to in paragraph (a).
- (2) A written statement under subsection (1) must—
 - (a) be in a form approved by the Authority; and
 - (b) state that the person specified in section 116(2) did not deposit the waste and either—
 - (i) saw another person deposit the waste; or
 - (ii) did not see who deposited the waste but reasonably believes that another person was in or near the vehicle at the time the waste was deposited; and
 - (c) contain sufficient information to identify and locate the person referred to in paragraph (b)(i) or (ii); and
 - (d) be provided within 10 business days of the person being issued with an infringement notice or served with a charge-sheet.

- (3) If a person specified in section 116(2) is not a natural person, the person must provide to a litter enforcement officer a written statement that is made by another person who was driving the vehicle at the time of the offence.
- (4) A written statement that complies with this section is admissible as evidence of the matters stated in it in any proceedings.

Division 4—Removal of waste and objects or things

119 Litter enforcement officer may request persons to remove waste

A person who deposits waste in or on premises or a place must remove the waste if—

- (a) the waste is deposited in contravention of this Part or a litter enforcement officer reasonably believes that the waste is deposited in contravention of this Part; and
- (b) the person is requested to do so by a litter enforcement officer.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

120 Court may order person to remove waste

- (1) If a Court finds a person guilty of an offence against this Part, the Court may—
 - (a) instead of, or in addition to, any other penalty, order the person to do one of the following actions within a specified time and under the supervision of a person nominated by the Court (*the supervisor*)—
 - (i) to clear away and remove waste deposited by the person;

S. 119
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 120
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (ii) to clear away and remove waste deposited in or on any land or waters;
or
 - (b) in addition to any other penalty, order the person to pay a sum of compensation for the removal of the waste to another person who, or a body which, has management or control of the land or waters where the offence occurred.
- (2) In addition to an order made under subsection (1)(a), the Court may also order that if the person contravenes the order made under subsection (1)(a), the person must pay a fine of not more than 40 penalty units.
- (3) The following apply to an order made under subsection (1)(a)—
 - (a) if the person complies with the order—the supervisor must send a statement to that effect to the person;
 - (b) if the person contravenes the order—the Court may, on the application of the supervisor—
 - (i) issue a summons requiring the person to show cause as to why the fine referred to in subsection (2) should not be imposed on the person; and
 - (ii) make any order under this Act which it considers appropriate in respect of the person.
- (4) An order made under subsection (1)(b) to pay a sum of compensation is to be treated as a debt due to a person who, or a body which, has management or control of the land or waters where the offence occurred.

121 Waste abatement notice

- (1) The Authority, any other litter authority or a litter enforcement officer may issue a person with a waste abatement notice if the Authority, the litter authority or the litter enforcement officer (as the case requires) reasonably believes that the person—
- (a) has deposited waste or any other object or thing in or on premises or a place that causes risks of harm to human health or the environment; or
 - (b) has deposited waste or any other object or thing in or on premises or a place in such a way as to make the premises or place disorderly or detrimentally affect its proper use; or
 - (c) has engaged in or proposes to engage in an activity—
 - (i) that causes, or is likely to cause, the deposit of waste in contravention of this Part; or
 - (ii) that causes, or is likely to cause, the deposit of waste or any other thing in a way that makes, or is likely to make, premises or a place disorderly or detrimentally affect its proper use; or
 - (d) has deposited waste in contravention of this Part.
- (2) Despite subsection (1), a litter authority (other than the Authority) must not issue a waste abatement notice under that subsection unless the deposit of waste, object or thing or activity occurs on or in relation to land or waters of which the litter authority has management or control.

S. 121
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (3) A waste abatement notice in relation to waste or an object, thing or activity may require the person to whom it is issued to take one or more of the following actions—
- (a) to remove or dispose of the waste or the object or thing within a specified time or in a specified manner;
 - (b) to restore any premises or place affected by the waste or the object, thing or activity to a state as close as practicable to the state it was in immediately before the waste or the object or thing was deposited or the activity was engaged in;
 - (c) to modify the way in which the person engages in the activity;
 - (d) to do, or not do, specified things to ensure that the person does not contravene this Part within a specified time or in a specified manner;
 - (e) to take any other action in relation to the waste or the object, thing or activity that is specified in the notice within a specified time or in a specified manner.
- (4) A waste abatement notice must—
- (a) specify the name and address of the person to whom the notice is issued; and
 - (b) state the grounds on which the notice is issued; and
 - (c) specify the actions that the person must take to comply with the notice; and
 - (d) specify the period within which the person must comply with the notice; and
 - (e) set out the penalty for failing to comply with the notice.

- (5) A person must not, without reasonable excuse, refuse or fail to comply with a waste abatement notice issued under subsection (1).

Penalty: In the case of a natural person,
40 penalty units;

In the case of a body corporate,
200 penalty units.

- (6) If a person referred to in subsection (1) has deposited waste at a place or on premises in contravention of this Part and cannot be located, the Authority, any other litter authority or a litter enforcement officer may, by written notice, direct the occupier of the place or premises to remove or dispose of the waste within the time specified in the notice.

- (7) An occupier who receives a notice under subsection (6) must comply with that notice, unless the occupier has a reasonable excuse.

Penalty: In the case of a natural person,
40 penalty units;

In the case of a body corporate,
200 penalty units.

- (8) The Authority, any other litter authority or a litter enforcement officer may vary or revoke a waste abatement notice issued under subsection (1) at any time by serving a written notice of variation or revocation on the person to whom the waste abatement notice applies.

- (9) A reference under this section to an object or thing does not include a reference to a fixture.

S. 122
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

122 Litter authority may take action following failure to comply with waste abatement notice

- (1) If a person fails to comply with a waste abatement notice issued under section 121(1) or a notice issued under section 121(6), the Authority or a litter authority may remove or dispose of the waste or the object or thing.
- (2) The Authority or other litter authority may recover any reasonable costs incurred by it in taking action under this section.
- (3) The reasonable costs referred to in subsection (2) are to be treated as a debt due to the Authority or other litter authority that is payable by a person who fails to comply with a waste abatement notice or a notice under section 121(6).
- (4) Subsection (3) does not apply if an occupier fails to comply with a notice under section 121(6) because the occupier has a reasonable excuse.

S. 123
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

123 Occupier may recover cost of removing waste

- (1) An occupier of a place or premises may recover any reasonable costs in complying with a notice under section 121(6), including any reasonable costs incurred by the occupier in taking action under this section.
- (2) The reasonable costs referred to in subsection (1) are to be treated as a debt due to the occupier that is payable by a person who deposited the waste or the object or thing.

Division 5—Powers of litter enforcement officers and other matters

124 Powers of entry of litter enforcement officers

For the purposes of performing a function or duty or exercising a power under this Part, a litter enforcement officer may enter a part of premises or a place, at any reasonable time, if—

- (a) that part is not being used as residential premises; and
- (b) the officer reasonably believes that an offence against section 115(1), (2), (3) or (4) or section 121(5) or (7) is being, or is likely to be, committed at any part of the premises or place that is not being used for residential premises.

S. 124
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

125 Litter enforcement officer may ask person's name and address

- (1) If a litter enforcement officer reasonably believes that a person is committing, is likely to commit or has committed an offence under this Part, the officer may request the person to state the person's name and ordinary place of residence or business.
- (2) In making a request of a person under subsection (1), a litter enforcement officer must—
 - (a) inform the person of the reasons for the officer's reasonable belief; and
 - (b) give the person sufficient information to enable the person to understand the nature of the offence the officer reasonably believes that the person is likely to commit or has committed.

S. 125
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (3) A natural person must not, without reasonable excuse, fail to comply with a request made under subsection (1).

Penalty: 20 penalty units.

- (4) A natural person must not, in response to a request under subsection (1), state—
- (a) a false name; or
 - (b) an address that is not the person's ordinary place of residence or business.

Penalty: 20 penalty units.

- (5) If a litter enforcement officer reasonably believes that a person has stated a false name or address in response to a request under subsection (1), the officer may request that the person produce proof of the person's name or address.

- (6) A natural person must not, without reasonable excuse, fail to comply with a request made under subsection (5).

Penalty: 20 penalty units.

- (7) A person does not contravene subsection (3) or (6) if, at the time of making a request under subsection (1) or (5) (as the case requires), a litter enforcement officer does not inform the person that it is an offence to fail to comply with the officer's request.

S. 126
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

126 Litter enforcement officer to produce proof of identity and official status

While exercising a power under this Part, a litter enforcement officer must produce proof of the officer's identity and official status if requested to do so.

127 Waste information gathering notice

- (1) This section applies to a person that a litter enforcement officer reasonably believes—
 - (a) previously had possession of waste; or
 - (b) was responsible for commissioning the production or distribution of, material that became waste.
- (2) For the purposes of performing a function or duty or exercising a power under this Part, the litter enforcement officer may issue a waste information gathering notice on the person requiring the person to provide to the litter enforcement officer any relevant information or the class of information in relation to the waste specified in the notice.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a waste information gathering notice issued under subsection (2).

Penalty: In the case of a natural person,
10 penalty units;
In the case of a body corporate,
50 penalty units.
- (4) Subsection (3) does not apply if the information sought by a waste information gathering notice is not within the person's knowledge or in the person's possession.
- (5) If the information sought by a waste information gathering notice is not within the person's knowledge or in the person's possession, the person must advise the litter enforcement officer of this if requested to do so by the litter enforcement officer.

S. 127
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (6) A person must provide the information sought by a waste information gathering notice in writing if requested to do so by the litter enforcement officer.
- (7) A person who fails to comply with a request of the litter enforcement officer under subsection (5) or (6) is taken to have committed an offence against subsection (3).
- (8) A reference to waste in this section and section 128 includes a reference to any substance that constitutes waste, regardless of whether that substance was waste at the time it was in the person's possession.

S. 128
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

128 Form of waste information gathering notice

- (1) A waste information gathering notice must—
 - (a) specify the name and address of the person to whom the notice is issued; and
 - (b) state the grounds on which the notice is issued; and
 - (c) specify the actions that the person must take to comply with the notice; and
 - (d) specify the period within which the person must comply with the notice; and
 - (e) set out the penalty for failing to comply with the notice.
- (2) A waste information gathering notice may request the following information—
 - (a) how, when and where the waste came into or left the person's possession;
 - (b) if the waste has left the person's possession—the name and address of another person who currently has possession of the waste;

- (c) the name and address of another person who was involved in commissioning the production or distribution of material that became waste.

129 Extension of time under waste information gathering notice

A litter enforcement officer may, by written notice given to the person to whom a waste information gathering notice has been issued—

- (a) extend the period for complying with the notice, if the litter enforcement officer is satisfied that the circumstances of the case justify an extension; and
- (b) revoke or amend a requirement specified in the notice.

S. 129 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

130 Court orders

- (1) A litter enforcement officer may apply to the Court for an order compelling a person to comply with a waste information gathering notice.
- (2) A litter enforcement officer may apply for an order under subsection (1) whether or not a proceeding has been commenced for an offence against this Act or the regulations.

S. 130 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

131 Reports of littering offences to Authority or council

- (1) A person who sees another person committing an offence under this Part may inform the Authority or the relevant council of this by giving the Authority or the council (as the case requires) a signed written report containing—
- (a) the date, approximate time and place of the offence; and
- (b) the nature of the waste; and

S. 131 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

(c) any evidence of the identity of the person who is alleged to have committed the offence.

(2) On receiving a written report under subsection (1), the Authority or the council may take further action against the person who is alleged to have committed the offence.

S. 132
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

132 Offence to supply false or misleading information

(1) A person must not provide false or misleading information or documents to any person or body in connection with—

- (a) a written statement under section 118; or
- (b) a notice under section 127(2); or
- (c) a report under section 131.

(2) A person who contravenes subsection (1) commits an offence.

Penalty: In the case of a natural person,
40 penalty units;

In the case of a body corporate,
200 penalty units.

Part 6.4—Duties relating to industrial waste

Pt 6.4
(Heading and
ss 133–137)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

133 Duties of persons depositing industrial waste

S. 133
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) A person must not deposit or abandon industrial waste at a place or premises, unless the place or premises is authorised to receive industrial waste.

Note

See section 3(1) for the definition of *authorised to receive industrial waste*.

- (2) A person must not deposit industrial waste at a place or premises that is authorised to receive industrial waste without obtaining the consent of—
- (a) the holder of the permission authorising the place or premises to receive industrial waste; or
 - (b) the occupier or person in management or control of the place or premises.

Note

Section 314 provides that subsections (1) and (2) are civil penalty provisions. The penalties for contravention of these civil penalty provisions are set out in the table in section 314.

- (3) A person who contravenes subsection (1) or (2) commits an offence.

Penalty: In the case of a natural person,
2000 penalty units;

In the case of a body corporate,
10 000 penalty units.

- (4) An offence under subsection (3) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

S. 134
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

134 Duties of persons receiving industrial waste

- (1) A person in management or control of a place or premises must not receive industrial waste at the place or premises, unless the place or premises is authorised to receive industrial waste.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) A person who contravenes subsection (1) commits an offence.

Penalty: In the case of a natural person,
2000 penalty units;

In the case of a body corporate,
10 000 penalty units.

- (3) An offence under subsection (2) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

135 Duty of persons involved in transporting industrial waste

S. 135
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) This section applies to a person who has the management or control of industrial waste and who proposes to relinquish management or control of the industrial waste to another person for the purposes of transporting the industrial waste.
- (2) Before relinquishing management or control of the industrial waste, the person must take all reasonable steps to ensure that the industrial waste is or will be—
 - (a) transported to a place or premises that is authorised to receive industrial waste; and
 - (b) received at a place or premises that is authorised to receive industrial waste.

Note

Section 314 provides that subsection (2) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (3) A person who contravenes subsection (2) commits an offence.

Penalty: In the case of a natural person,
2000 penalty units;

In the case of a body corporate,
10 000 penalty units.

- (4) An offence under subsection (3) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

- (5) For the purposes of subsection (2), taking reasonable steps includes (but is not limited to) the following—

- (a) identifying and classifying the industrial waste;
 - (b) providing to a person who is collecting, consigning, transferring or transporting the industrial waste sufficient information regarding the industrial waste to enable transportation to a place or premises that is authorised to receive industrial waste;
 - (c) verifying that a place or premises that is proposed to receive industrial waste is authorised to receive industrial waste.
- (6) For the purposes of subsection (2), a place or premises in another State or Territory of the Commonwealth is authorised to receive industrial waste if the industrial waste may be transported to, and received at, the place or premises under the law of the State or Territory in which the place or premises is located.

S. 136
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

136 Repeat industrial waste offenders

If—

- (a) a natural person commits an offence (the *current offence*) against section 133(3), 134(2) or 135(3); and
- (b) during the 5 years before the commission of the current offence, the person has been convicted of an offence (the *relevant offence*) against section 133(3), 134(2) or 135(3)—

a Court may impose a penalty of up to 2 years imprisonment in addition to, or in place of, the penalty included in section 133(3), 134(2) or 135(3).

137 Offence to supply false or misleading information or conceal information in connection with industrial waste

- (1) A person who has the management or control of industrial waste must not—
- (a) provide false or misleading information or documents to the Authority or any other person or body in connection with—
 - (i) the type, properties and classification of the industrial waste; or
 - (ii) the risks of harm to human health or the environment from the industrial waste; or
 - (b) conceal information or documents from the Authority or any other person or body in connection with—
 - (i) the type, properties and classification of the industrial waste; or
 - (ii) the risks of harm to human health or the environment from the industrial waste; or
 - (c) falsely represent to the Authority or any other person or body that the person is authorised to receive industrial waste; or
 - (d) provide false or misleading information in a document required to be provided by the person under this Part or the regulations.

S. 137
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) A person who contravenes subsection (1) commits an offence.

Penalty: In the case of a natural person,
500 penalty units;
In the case of a body corporate,
2500 penalty units.

- (3) An offence under subsection (2) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Part 6.5—Duties and controls relating to priority waste

Pt 6.5
(Heading and
ss 138–143)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

138 What is *priority waste*?

Priority waste is any waste, including municipal waste and industrial waste, that is prescribed to be priority waste for the purposes of—

- (a) eliminating or reducing risks of harm to human health or the environment posed by the waste; or
- (b) ensuring the priority waste is managed in accordance with this Part; or
- (c) facilitating waste reduction, resource recovery and resource efficiency.

S. 138
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

139 Duties of persons managing priority waste

- (1) A person who has the management or control of priority waste must classify the priority waste in accordance with this Act and the regulations.
- (2) A person who has the management or control of priority waste must take all reasonable steps to ensure that—
 - (a) the priority waste is contained in a manner that prevents its escape; and
 - (b) the priority waste is isolated in a manner that ensures resource recovery remains practicable; and

S. 139
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (c) a person who collects, consigns, transfers or transports the priority waste is provided the following, where reasonably available—
- (i) information regarding the nature and type of the priority waste;
 - (ii) information regarding any risks of harm to human health or the environment that exist in relation to the priority waste;
 - (iii) any other information that can reasonably be expected to be necessary for the person to comply with a duty in relation to the priority waste under this Act.

Note

Section 314 provides that subsections (1) and (2) are civil penalty provisions. The penalties for contravention of these civil penalty provisions are set out in the table in section 314.

- (3) A person who contravenes subsection (1) or (2) commits an offence.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

140 Duty to investigate alternatives to waste disposal

- (1) A person who has the management or control of priority waste must—
- (a) take all reasonable steps to identify and assess alternatives to waste disposal for the priority waste, including—
 - (i) reuse and recycling of the priority waste; and

S. 140
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (ii) if the person produced or generated the priority waste, avoiding producing or generating similar priority waste in the future; and
- (b) have regard to the following in making a decision relating to management of the priority waste—
 - (i) alternatives to waste disposal identified and assessed under paragraph (a);
 - (ii) any guidelines issued by the Authority relating to alternatives to waste disposal for that type of priority waste;
 - (iii) the objects of this Chapter.
- (2) For the purposes of subsection (1)(a), taking reasonable steps includes (but is not limited to) the following—
 - (a) considering any guidelines issued by the Authority relating to alternatives to waste disposal for that type of priority waste;
 - (b) considering any other relevant guidelines or publications;
 - (c) considering the availability of any relevant technology used in resource recovery;
 - (d) consulting a person or body with relevant expertise relating to alternatives to waste disposal for that type of priority waste.

141 Guidelines for alternatives to waste disposal

- (1) The Authority may issue guidelines setting out alternatives to waste disposal for a type of priority waste.
- (2) The Authority must consult with Sustainability Victoria before issuing guidelines under this section.

S. 141
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (3) The Authority must cause to be published guidelines issued under this section—
- (a) in the Government Gazette; and
 - (b) on the Internet site of the Authority.

S. 142
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

142 Duty to notify of transaction in reportable priority waste

- (1) A person undertaking a prescribed transaction in connection with reportable priority waste must—
- (a) record the prescribed transaction details in the prescribed manner and form; and
 - (b) provide the prescribed transaction details to a prescribed person in the prescribed manner and form.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

The Governor in Council may make regulations prescribing additional controls for particular types of priority waste, including reportable priority waste.

- (2) A person who contravenes subsection (1) commits an offence.

Penalty: In the case of a natural person,
240 penalty units;

In the case of a body corporate,
1200 penalty units.

S. 143
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

143 Duty of persons transporting reportable priority waste

- (1) A person must not—
- (a) transport reportable priority waste other than in accordance with a permission; or

- (b) cause or permit the transport of reportable priority waste other than where the reportable priority waste is transported in accordance with a permission.

Notes

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

The Governor in Council may make regulations prescribing additional controls for particular types of priority waste, including reportable priority waste.

- (2) A person who contravenes subsection (1) commits an offence.

Penalty: In the case of a natural person,
240 penalty units;

In the case of a body corporate,
1200 penalty units.

- (3) It is a defence to a charge for an offence constituted by a contravention of subsection (1)(b) if a person took all reasonable steps to prevent a contravention of that subsection.
- (4) For the purposes of subsection (1)(b), causing or permitting the transport of reportable priority waste includes consigning reportable priority waste for transport.

Note

Section 68 deals with exemptions from a requirement to hold a permission in connection with the transport of reportable priority waste.

Part 6.6—Waste levy scheme

Pt 6.6
(Heading and
ss 144–152)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

144 Definitions

S. 144
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

In this Part—

liable person means a person who—

- (a) holds a permission that requires or authorises the person to carry out a prescribed levy activity on premises subject to the waste levy; or
- (b) does not hold a permission that requires or authorises the person to carry out a prescribed levy activity on premises subject to the waste levy but should have held a permission for the prescribed levy activity;

premises subject to the waste levy means premises at which a prescribed levy activity is conducted.

145 Requirement to pay waste levy

S. 145
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) A liable person must pay to the Authority a waste levy for each tonne of waste (other than priority waste) that is received at premises subject to the waste levy.
- (2) A liable person must pay to the Authority a waste levy for each tonne of priority waste that is received at premises subject to the waste levy.

- (3) Subject to subsection (4), the amount of the waste levy payable under subsections (1) and (2) is the amount specified in Schedule 2 for the relevant premises, period, type and category of waste.
- (4) The amount of the waste levy payable under subsection (2) for priority waste (other than Category A waste, Category B waste, Category C waste, Category D waste or packaged waste asbestos)—
- (a) is an amount—
- (i) prescribed by the regulations; and
- (ii) that is not more than the amount of the waste levy payable for Category C waste specified in Table 2 of Schedule 2 for that period; or
- (b) if no amount is prescribed by the regulations, is an amount that would be payable under Table 1 of Schedule 2 as if the waste that is received was not priority waste.
- (5) The waste levy must be paid to the Authority in accordance with section 147.

146 Minister may waive the requirement to pay waste levy

- (1) The Minister may waive the requirement to pay a waste levy under section 145 for the purposes of—
- (a) the disposal of waste generated from a temporary emergency; or
- (b) the temporary relief of a public nuisance or a community hardship.
- (2) A waiver under subsection (1) may specify—
- (a) the area to which it applies; and

S. 146
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (b) the waste or types and categories of waste to which it applies; and
 - (c) the premises subject to the waste levy to which it applies; and
 - (d) the period of time (not exceeding 120 days) for which the waiver applies; and
 - (e) any conditions on the waiver that the Minister considers appropriate.
- (3) A waiver must be published in the Government Gazette.
- (4) If a liable person fails to comply with a condition on a waiver—
- (a) the waiver has no effect in relation to the liable person; and
 - (b) the Authority may take appropriate action against the person under section 152.
- (5) A waiver takes effect on—
- (a) the day on which it is published in the Government Gazette under subsection (3); or
 - (b) any other day specified in the waiver.

S. 147
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

147 Payment of waste levy to the Authority

A liable person must—

- (a) calculate in accordance with section 145 and the regulations, the amount of the waste levy payable; and
- (b) deduct from the amount under paragraph (a) any prescribed allowable rebate; and
- (c) if, after deducting any prescribed allowable rebate from the amount under paragraph (a), the resulting amount is a positive amount, pay that amount to the Authority within the prescribed time or at prescribed intervals.

148 Calculation of levy that results in negative amount

- (1) If a liable person's calculation of the amount of the waste levy payable, less any prescribed allowable rebate, under section 147 results in a negative amount, the Authority must, within 21 business days of receiving the prescribed information referred to in section 150, pay that amount to the liable person.
- (2) The Authority is not liable to pay any interest in respect of any amount that it is required to pay under this section.
- (3) If the Authority has commenced an assessment under section 151, the time in which the Authority must pay an amount under subsection (1) does not include the period from the date that the Authority commences the assessment until the date on which the Authority completes the assessment.

S. 148
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

149 Agreement to offset amount owing

- (1) This section applies if a liable person is owed an amount from the Authority under section 148.
- (2) A liable person and the Authority may agree that the amount owed to the liable person is to be deducted from any future payment that the liable person makes to the Authority instead of being paid by the Authority in accordance with section 148(1).

S. 149
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

150 Requirement to provide prescribed information regarding calculations of waste levy and allowable rebates to Authority

- (1) A liable person must provide to the Authority—
 - (a) the prescribed information detailing how the amount of the waste levy payable was calculated under section 147; and

S. 150
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (b) the prescribed information detailing how any prescribed allowable rebate was calculated; and
 - (c) any other prescribed information.
- (2) The information referred to in subsection (1) must be provided to the Authority—
- (a) in a form approved by the Authority; and
 - (b) at the time of making a payment to the Authority under section 147 or at any other prescribed time.

S. 151
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

151 Assessment by the Authority of waste levy liability

- (1) The Authority may, at any time—
- (a) assess a liable person's calculations of—
 - (i) the amount of the waste levy payable; and
 - (ii) any prescribed allowable rebate; or
 - (b) assess any other matter that is relevant to determining a liable person's liability to pay the waste levy.
- (2) If the Authority conducts an assessment under subsection (1), the Authority must, as soon as practicable—
- (a) notify the liable person of the assessment; and
 - (b) issue a notice of assessment to the liable person after the Authority completes the assessment.
- (3) A notice of assessment must include—
- (a) the Authority's calculation of the amount of the waste levy payable by the liable person; and

- (b) the Authority's calculation of any prescribed allowable rebate; and
 - (c) if the Authority's calculations under paragraph (a) or (b) differ from any calculations provided by the liable person, the Authority's assessment of any amount owed by the liable person or owing to the liable person; and
 - (d) any other prescribed information.
- (4) In conducting an assessment, the Authority must have regard to any amount that the liable person has already paid to the Authority under section 147.
- (5) In conducting an assessment, the Authority may—
- (a) seek any information it sees fit to verify any information provided by the liable person under section 150(1) or any other relevant matter; or
 - (b) conduct an audit or cause an audit to be conducted of the information provided by the liable person under section 150(1) or any other relevant matter.
- (6) If, after completing an assessment, the Authority determines that an amount is owed by the liable person under this Part, the Authority may require, under a notice of assessment, that the liable person pay that amount within 21 business days from the date the notice of assessment is issued.
- (7) If, after completing an assessment, the Authority determines that an amount is owing to the liable person under this Part—
- (a) if section 148(3) applies, the Authority must pay the amount to the liable person before the day that is 21 business days after the Authority receives that information under

section 150(1) from the liable person as a result of the operation of section 148(1), less the number of days that had elapsed before the Authority commenced the assessment; or

- (b) if section 148(3) does not apply, the Authority must pay the amount to the liable person within 21 business days from the date the notice of assessment is issued.

S. 152
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

152 Rights and powers of the Authority if waste levy is not paid

- (1) If a liable person fails to comply with section 150, the Authority may suspend the permission or part of the permission held by the liable person as it relates to premises subject to the waste levy, until the liable person provides the information required under section 150 to the Authority.
- (2) If a liable person fails to pay to the Authority any amount required under this Part when it is due, the Authority may—
 - (a) suspend the permission or part of the permission held by the person as it relates to premises subject to the waste levy and in respect of which the amount is due, until the person pays that amount (including any accrued interest) to the Authority; or
 - (b) recover the amount (including any accrued interest) in the Magistrates' Court as a debt due to the Authority, at any time after the payment is due.
- (3) Interest is to accrue on any amount required to be paid under this Part from the date it falls due at the annual rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983**.

- (4) The jurisdictional limit for a civil proceeding specified under section 100(1) of the **Magistrates' Court Act 1989** does not apply to an order made by the Magistrates' Court under this section.
- (5) Any outstanding amount required to be paid under this Part by a liable person is a charge on the land held by the liable person.

Chapter 7—Environmental management

Ch. 7
(Headings
and ss 153–
177)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 7.1—Simplified outline

Pt 7.1
(Heading and
s. 153)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 153
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

153 Simplified outline—Chapter 7

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 7.2 enables a substance to be declared to be an environmentally hazardous substance and provides for the making of orders to prohibit, control or regulate environmentally hazardous substances.
- (3) Part 7.3 provides for the making of orders requiring the managers of land or infrastructure, for the purposes of preventing or minimising risk of harm to human health or the environment from pollution or waste—
 - (a) to take specified actions in relation to the land or infrastructure; or
 - (b) to take specified matters into account in relation to the land or infrastructure; or

- (c) to comply with a specified document, code, standard or rule in relation to the land or infrastructure.
- (4) Part 7.4 enables the Authority to authorise a temporary discharge, emission, deposit, storage, treatment or handling of waste in the case of a temporary emergency, a public nuisance or other specified circumstances.
- (5) Part 7.5 enables an order to be made declaring an issue to be an issue of environmental concern and specifying the persons or class of persons required to address that issue.
- (6) Part 7.6 prohibits the emission of unreasonable and aggravated noise.

Part 7.2—Environmentally hazardous substances

Pt 7.2
(Heading and
ss 154, 155)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 154
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

154 Orders relating to environmentally hazardous substances

- (1) The Governor in Council, on the recommendation of the Minister, may by Order published in the Government Gazette—
 - (a) declare a substance to be an environmentally hazardous substance; and
 - (b) prohibit, control or regulate that substance.
- (2) The Minister must not recommend that the Governor make an Order under subsection (1) unless the Minister is satisfied that the substance that is the subject of the Order is—
 - (a) highly hazardous; or
 - (b) poses a serious risk of harm to human health or the environment.
- (3) An Order made under subsection (1)—
 - (a) must specify the substance that is the subject of the order; and
 - (b) must declare that substance to be an environmentally hazardous substance; and
 - (c) may specify that the order applies to a specified area or class of person or body; and
 - (d) may impose specified notification and reporting requirements on persons or bodies that produce, store, treat, handle, use, supply,

- transport, recycle, reuse or dispose of that substance; and
- (e) may prohibit or impose requirements on the production, storage, treatment, handling, use, supply, transport, recycling, reuse or disposal of the substance, either generally or subject to conditions; and
 - (f) may impose requirements on the testing, assessment or detection of the substance, either generally or subject to conditions; and
 - (g) may adopt, with or without modification, the whole or part of any national standard or code or other standard or code related to the substance; and
 - (h) may require a financial assurance from persons or bodies that produce, store, treat, handle, use, supply, transport, recycle, reuse or dispose of the substance; and
 - (i) may contain any prescribed information.
- (4) An Order under subsection (1) may provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the Order, whether unconditionally or on specified conditions and either wholly or to the extent specified.

155 Failure to comply with Orders relating to environmentally hazardous substances

- (1) A person to whom an Order made under section 154(1) applies must comply with that Order.

Penalty: In the case of a natural person,
500 penalty units;

In the case of a body corporate,
2500 penalty units.

S. 155
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Environment Protection Act 2017
No. 51 of 2017
Part 7.2—Environmentally hazardous substances

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) An offence against subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Part 7.3—Obligations for managers of land or infrastructure

Pt 7.3
(Heading and
s. 156)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

156 Obligations of managers of land or infrastructure

S. 156
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) The Governor in Council may by Order published in the Government Gazette, for the purposes of minimising risks of harm to human health or the environment from pollution or waste, require a council, public sector body or infrastructure manager—
- (a) to take a specified action in relation to land or infrastructure managed, operated or controlled by that council, public sector body or infrastructure manager; or
 - (b) to take into account a specified matter when managing land, managing or operating infrastructure or planning the management of land or infrastructure; or
 - (c) to comply with a specified document, code, standard or rule, subject to any modification specified in the order, when managing land, managing or operating infrastructure or planning the management of land or infrastructure.

- (2) Without limiting subsection (1), an Order under that subsection may—
- (a) apply to a specified council, public sector body or infrastructure manager or to a specified class of council, public sector body or infrastructure manager; or
 - (b) specify the land or infrastructure in relation to which the order applies; or
 - (c) apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard or rule formulated, issued, prescribed or published—
 - (i) as in force at a particular time; or
 - (ii) as amended, formulated, issued, prescribed or published from time to time.
- (3) An Order under subsection (1) takes effect on the day it is published in the Government Gazette or on any later day specified in the Order.
- (4) In this section—
- infrastructure* includes—
- (a) roads and traffic facilities and installations; and
 - (b) sewerage, storm water drainage and water supply systems; and
 - (c) wastewater treatment and septic tank systems; and
 - (d) electricity and gas transmission and distribution networks; and
 - (e) telecommunication networks; and
 - (f) works to improve water edges and water quality; and

- (g) wharves, marinas and boat launching and berthing facilities; and
- (h) public transport facilities and installations; and
- (i) public parks and public spaces and related facilities and installations;

infrastructure manager means a person or body that—

- (a) manages or operates infrastructure; or
- (b) manages or controls the design, construction or maintenance of infrastructure.

Pt 7.4
(Heading and
ss 157, 158)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 7.4—Authorisation of discharges or disposal

S. 157
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

157 Authority may authorise emergency storage, use etc. of waste

- (1) Despite anything to the contrary in or under this Act, the Authority may, on application under this section, authorise—
 - (a) the discharge, emission or deposit of waste from any place or premises into the environment; or
 - (b) the storage, treatment, handling or disposal of waste on or from any place or premises.
- (2) The Authority must not grant an authorisation under this section unless it is satisfied that the authorised activity will not have significant adverse effects on human health or the environment, and that the authorisation is for the purposes of—
 - (a) meeting a temporary emergency; or
 - (b) providing for the temporary relief of a public nuisance or community hardship; or
 - (c) enabling the commissioning, repair, decommissioning or dismantling of any item of plant or equipment.
- (3) An authorisation under this section has no effect unless the conditions to which it is subject are complied with.

- (4) An application for an authorisation under this section—
 - (a) must be made in the manner and form approved by the Authority; and
 - (b) must be accompanied by the prescribed fee (if any).
- (5) The Authority—
 - (a) must determine an application under this section in a timely, efficient and fair manner; and
 - (b) may do so with as little formality and technicality as possible.
- (6) The Authority may grant an authorisation under this section subject to such conditions as the Authority considers appropriate.
- (7) An authorisation granted under this section is subject to a condition that the authorised activity must cease within the time specified in the authorisation, being a period of no more than 120 days from the day on which the authorisation is granted.

158 Complying with authorisation

A person is taken to perform a duty or satisfy an obligation under this Act if—

- (a) the person has been granted an authorisation under section 157 that provides for how the person is to perform the duty or satisfy the obligation; and
- (b) the person complies with the authorisation to the extent that the authorisation provides for performing the duty or satisfying the obligation.

S. 158
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 7.5—Issues of environmental concern

Pt 7.5
(Heading and
ss 159–164)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 159
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

159 Notice of proposed declaration and notice of decision

- (1) The Minister may propose that an issue be declared to be an issue of environmental concern if the Minister reasonably believes that declaration would promote a purpose or an object of this Act.
- (2) Subject to section 163, if the Minister proposes that an issue is to be declared an issue of environmental concern, the Minister must ensure a notice in accordance with subsection (3) is published—
 - (a) in the Government Gazette; and
 - (b) on the Internet site of the Authority; and
 - (c) in or on at least one other publication or Internet site that the Minister considers appropriate.
- (3) A notice under subsection (2) must—
 - (a) describe the nature and scope of the issue that is the subject of the proposed declaration; and
 - (b) state the reasons for, and the objectives of, the proposed declaration; and
 - (c) describe the persons or class of persons that would be required to address the issue of environmental concern; and

- (d) describe the operation and impacts of the proposed declaration including, but not limited to the actions that a person or class of persons described in paragraph (c) could take to address the issue of environmental concern; and
 - (e) invite public comments or submissions within the time specified in the notice, being not less than 20 business days from the publication of the notice, as to—
 - (i) the need for the proposed declaration; and
 - (ii) whether the persons who would be required to address the issue of environmental concern would consider participating in a better environment plan; and
 - (iii) alternative methods of addressing the issue of environmental concern.
- (4) After considering any comments or submissions received under subsection (3)(e), the Minister must ensure that a notice advising of the decision to make or not to make the proposed declaration is published—
- (a) in the Government Gazette; and
 - (b) on the Internet site of the Authority; and
 - (c) in or on at least one other publication or Internet site that the Minister considers appropriate.
- (5) Notice of a decision under subsection (4) must be published as soon as practicable after the decision has been made.

S. 160
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

160 Declaration of issue of environmental concern

- (1) After notice of a decision to make a proposed declaration is published under section 159(4), the Governor in Council may by Order published in the Government Gazette declare that the issue that is the subject of the proposed declaration is an issue of environmental concern.
- (2) An Order under subsection (1) must—
 - (a) describe the nature and scope of the issue that is the subject of the declaration; and
 - (b) describe the operation and impacts of the declaration including, but not limited to—
 - (i) the person or class of persons required to address the issue of environmental concern; and
 - (ii) actions that the person or class of persons described in subparagraph (i) may take to address the issue of environmental concern; and
 - (c) invite the submission of a proposed better environment plan to address the issue of environmental concern; and
 - (d) set out the actions that may be taken if the issue of environmental concern is not addressed.
- (3) On or before the sixth sitting day after an Order has been published in the Government Gazette under subsection (1), a copy of the Order must be laid before each House of the Parliament.
- (4) An Order may be disallowed in whole or in part by either House of the Parliament.

161 Amendment or revocation of declaration of issue of environmental concern

- (1) The Governor in Council may by Order published in the Government Gazette revoke or amend an Order under section 160(1).
- (2) Subject to subsection (3), section 160(2), (3) and (4) apply to an Order under subsection (1) as if an Order under that subsection were an Order under section 160(1).
- (3) Section 160(2), (3) and (4) do not apply to an Order under subsection (1) that—
 - (a) revokes an Order under section 160(1); or
 - (b) makes only a machinery or administrative amendment to an Order under section 160(1).

S. 161
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

162 Consideration of issues of environmental concern when issuing remedial notices

- (1) This section applies if—
 - (a) the Authority proposes to issue a remedial notice to a person; and
 - (b) the proposed remedial notice would require the person to carry out an action or do a thing to minimise a risk of harm to human health or the environment that relates to an issue of environmental concern; and
 - (c) the person is required to address that issue of environmental concern.
- (2) For the purposes of determining whether to issue the remedial notice, the Authority must take into account any better environment plan that addresses the issue of environmental concern.

S. 162
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

(3) In this section—

remedial notice means—

- (a) an environmental action notice; or
- (b) an improvement notice; or
- (c) a notice to investigate; or
- (d) a prohibition notice.

S. 163
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

163 Combination of notice of proposed declaration with notice of proposed statutory rule or legislative instrument

(1) This section applies if—

- (a) the Minister proposes that an issue is to be declared an issue of environmental concern; and
- (b) a regulatory impact statement is prepared under section 7 or 12E of the **Subordinate Legislation Act 1994** for a proposed statutory rule or proposed legislative instrument that relates to the proposed issue of environmental concern.

(2) The notice of the proposed declaration required under section 159(2) may be combined with the notice required under section 11 or 12I of the **Subordinate Legislation Act 1994**.

S. 164
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

164 Combination of notices of decision

(1) This section applies if—

- (a) notice of a decision to make or not make a proposed declaration must be published under section 159(4); and
- (b) a regulatory impact statement is prepared under section 7 or 12E of the **Subordinate Legislation Act 1994** for a proposed statutory rule or proposed legislative

instrument that relates to the proposed issue of environmental concern.

- (2) Notice of decision to make or not make a proposed declaration required under section 159(4) may be combined with the notice required under section 12 or 12J of the **Subordinate Legislation Act 1994**.

Part 7.6—Control of unreasonable and aggravated noise

Division 1—Meaning of residential premises

Pt 7.6
(Headings
and ss 165–
177)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 165
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

165 Meaning of residential premises

In this Part—

residential premises—

- (a) means any premises used primarily for residential purposes, including but not limited to the following—
 - (i) any land, building or appurtenances used for or in connection with residential premises;
 - (ii) an outbuilding situated on land used for or in connection with residential premises; and
- (b) does not include land at any time when construction, demolition or removal of residential premises (other than maintenance or repair of an existing building) is being carried out on the land.

Division 2—Unreasonable and aggravated noise

166 Unreasonable noise

A person must not, from a place or premises that are not residential premises—

- (a) emit an unreasonable noise; or
- (b) permit an unreasonable noise to be emitted.

Note

Unreasonable noise is defined in section 3(1).

167 Unreasonable noise from residential premises

- (1) A person must not—
 - (a) emit an unreasonable noise from residential premises; or
 - (b) permit an unreasonable noise to be emitted from residential premises.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

- (2) Without limiting subsection (1), a person is taken to emit an unreasonable noise from residential premises if the person uses a prescribed item, except in a case of emergency—
 - (a) at any time prescribed as a prohibited time; and
 - (b) if noise emitted by that item can be heard in a habitable room in residential premises other than premises in which the item is being used, whether or not a window or door in that room is open.
- (3) For the purposes of subsection (2), a *habitable room* means a room other than a kitchen, storage area, bathroom, laundry, toilet or pantry.

S. 166
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 167
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 168
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

168 Aggravated noise

A person must not emit or permit to be emitted noise that is prescribed to be aggravated noise.

Penalty: In the case of a natural person,
500 penalty units;

In the case of a body corporate,
2500 penalty units.

Note

Section 314 provides that this section is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

S. 169
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

169 Unreasonable noise from entertainment venues

- (1) If a police officer receives a complaint from a person who lives near an entertainment venue and is aggrieved by unreasonable noise emitted from the entertainment venue the police officer may—
 - (a) enter the entertainment venue; and
 - (b) direct any person apparently in charge of the entertainment venue to take any action that the police officer reasonably considers necessary to abate the unreasonable noise.
- (2) A direction under subsection (1)(b)—
 - (a) given before midnight takes effect at midnight and remains in force until 8 o'clock in the morning; or
 - (b) given after midnight takes effect immediately and remains in force until 8 o'clock in the morning.

- (3) A person must comply with a direction given to the person under subsection (1)(b).

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

Division 3—Enforcement

170 Persons who may take proceedings for certain offences

- (1) This section applies despite anything to the contrary in section 347.
- (2) Proceedings for an offence against section 167(1) may only be taken by—
- (a) a person claiming to be directly affected by the alleged offence; or
 - (b) a police officer; or
 - (c) a residential noise enforcement officer.
- (3) Proceedings for an offence against section 169(3) may only be taken by a police officer.
- (4) Proceedings for an offence against section 175(4) may only be taken by—
- (a) a police officer; or
 - (b) a residential noise enforcement officer.
- (5) Proceedings for an offence against section 177 may only be taken by a police officer.
- (6) Proceedings for an offence against section 172(6) may only be taken by a residential noise enforcement officer.

S. 170
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 171
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

171 Residential noise enforcement officers

- (1) A council may appoint as a residential noise enforcement officer a person who is an employee, or a member of a class of employee, of the council.
- (2) An appointment under subsection (1)—
 - (a) is subject to any conditions or limitations specified in the appointment; and
 - (b) is subject to any prescribed conditions or limitations; and
 - (c) may at any time be varied or revoked by the council that made the appointment.

S. 172
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

172 Residential noise improvement notices

- (1) A council may issue a person with a residential noise improvement notice if the council reasonably believes that the person—
 - (a) has contravened a provision of this Part or the regulations relating to the emission of noise from residential premises in circumstances that make it likely that the contravention is continuing or will re-occur; or
 - (b) is likely to contravene a provision of this Part or the regulations relating to the emission of noise from residential premises.
- (2) A residential noise improvement notice may require the person to whom it is issued—
 - (a) to abate the noise; or
 - (b) to do any other thing that the council reasonably considers necessary to prevent or minimise the noise.

- (3) A requirement contained in a residential noise improvement notice may be expressed to be general or limited in operation as to particular times, places or circumstances.
- (4) A residential noise improvement notice must—
 - (a) specify the name and address of the person to whom the notice is issued; and
 - (b) state the grounds on which the notice is issued; and
 - (c) specify the actions that the person must take to comply with the notice; and
 - (d) specify the period within which the person must comply with the notice; and
 - (e) set out the penalty for failing to comply with the notice; and
 - (f) state that the person may apply to VCAT for review of the decision to issue the notice.
- (5) A council may, by notice in writing given to the person to whom a residential noise improvement notice has been issued—
 - (a) extend the period during which the person must comply with the notice if the council is satisfied that the circumstances of the case justify an extension of that period; and
 - (b) revoke or amend any requirement specified in the notice.
- (6) A person to whom a residential noise improvement notice is issued must comply with the notice.

Penalty: In the case of a natural person,
120 penalty units;
In the case of a body corporate,
600 penalty units.

S. 173
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

173 Proceedings for offences not affected by residential noise improvement notices

The issue of a residential noise improvement notice does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the residential noise improvement notice was issued.

S. 174
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

174 Injunctions relating to residential noise

- (1) On an application by a council or a police officer, a Court may grant an injunction, in such terms as the Court considers appropriate, if the Court is satisfied that—
 - (a) a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of a provision of this Act or the regulations; and
 - (b) that contravention relates to the emission of noise from residential premises.
- (2) Without limiting subsection (1), an order under that subsection may—
 - (a) restrain a person from engaging in specified conduct that the Court reasonably considers to be the source of, or contributing to, the emission of noise; or
 - (b) require a person to do a specified act or thing that the Court considers reasonably necessary to prevent, minimise or remedy the contravention.
- (3) A council or a police officer may apply for an injunction under subsection (1) whether or not proceedings have been taken for—
 - (a) an offence against this Act or the regulations;
or

- (b) a contravention of a civil penalty provision under this Act.
- (4) The power of a Court to grant an injunction under subsection (1) may be exercised whether or not the conduct—
 - (a) is likely to result in substantial damage to any person; or
 - (b) is likely to result in an infringement of the rights of any person.
- (5) An application for an order under subsection (1) may be made ex parte.

175 Unreasonable noise directions

- (1) This section applies to a person who—
 - (a) a police officer or a residential noise enforcement officer reasonably suspects is committing or has committed an offence against section 167(1); or
 - (b) is apparently in charge of residential premises on which a police officer or a residential noise enforcement officer reasonably suspects an offence against section 167(1) is being committed or has been committed.
- (2) A police officer or residential noise enforcement officer may direct a person to take any action that the officer considers necessary to stop a suspected offence or to prevent a suspected offence from recurring.
- (3) A direction given under subsection (2) remains in force for the period specified in the direction not exceeding 72 hours after the direction is given.

S. 175
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (4) A person must comply with a direction given to the person under subsection (2).

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

S. 176
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

176 Entry orders

- (1) On the application of a police officer, a court officer may make an order enabling the police officer, using such force as is reasonably necessary, to enter residential premises for the purpose of investigating the emission of unreasonable noise if the court officer is satisfied that no other measure would be effective to abate the noise.
- (2) A police officer may apply to a court officer for an order under subsection (1) if the police officer—
- (a) is of or above the rank of senior constable;
and
 - (b) reasonably believes that no other measure would be effective to abate the unreasonable noise.
- (3) An order under subsection (1) may be made subject to any conditions that the court officer considers appropriate.
- (4) A police officer using such force as is reasonably necessary may enter any residential premises from which unreasonable noise is emitted to investigate the emission if an order to that effect has been made under subsection (1).
- (5) After entering any residential premises under an order under subsection (1) and investigating the emission of noise, the police officer may give any direction under section 175(2) that the police

officer considers necessary to abate the unreasonable noise.

177 Obstruction of police officer

A person must not—

- (a) hinder, delay or obstruct a police officer in taking any action authorised by an order under section 176; or
- (b) if the person is the occupier of any place or premises, refuse to permit a police officer to take any action authorised by an order under that section.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 177
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Ch. 8
(Headings
and ss 178–
240)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Chapter 8—Better environment plans, environmental audits and other matters

Pt 8.1
(Heading and
s. 178)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 8.1—Simplified outline

S. 178
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

178 Simplified outline—Chapter 8

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 8.2 provides for better environment plans.
- (3) Part 8.3 provides for the appointment of environmental auditors and the conduct of preliminary risk screen assessments and environmental audits.
- (4) Part 8.4 provides for the Authority to require financial assurances.
- (5) Part 8.5 provides for the appointment of advisory panels for the purposes of providing advice to the Authority.
- (6) Part 8.6 provides for the establishment of a conference of interested persons.

Part 8.2—Better environment plans

Pt 8.2
(Heading and
ss 179–188)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

179 Definition

In this Part—

participant, in a better environment plan, means a person who has entered into the better environment plan.

S. 179
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

180 Purposes of better environment plans

The purposes of better environment plans are—

- (a) to enable persons to develop innovative ways to comply with this Act or to exceed compliance with this Act; and
- (b) to facilitate voluntary collaboration between persons who must comply with this Act and the Authority for the purposes of achieving the purposes of this Act and objective of the Authority.

S. 180
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

181 Submission of proposed better environment plans

- (1) A person may submit a proposed better environment plan to the Authority.
- (2) A submission under subsection (1) must contain the following information—
 - (a) the objectives of the proposed better environment plan including, but not limited to, the risk of harm to human health or the

S. 181
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

environment that the proposed plan addresses;

- (b) the participants in the proposed plan;
- (c) any other person who is likely to be affected by the proposed plan and whether that person has been consulted, or will be consulted, in relation to the proposed plan;
- (d) the actions or responsibilities that each participant must undertake under the proposed plan;
- (e) the reporting requirements for each participant under the proposed plan;
- (f) the time or day by which the participants must undertake any action required under the proposed plan;
- (g) the time period during which the proposed plan is to be in force.

(3) A submission under subsection (1) must—

- (a) be made in the manner and form approved by the Authority; and
- (b) contain any prescribed information; and
- (c) be accompanied by any prescribed fee.

182 Authority may accept proposed better environment plans

- (1) On receiving a submission that complies with section 181, the Authority must, within 30 business days after receiving the submission—
 - (a) accept the proposed better environment plan; or
 - (b) refuse to accept the proposal.

S. 182
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (2) When determining whether to accept a proposed better environment plan, the Authority must take into account—
 - (a) any guidelines issued under section 188; and
 - (b) any prescribed matter.
- (3) The Authority may—
 - (a) require the person who made the submission to provide the Authority with information relating to the proposed better environment plan that the Authority considers necessary to determine whether to accept the proposed plan; and
 - (b) require the person who made the submission to provide that information within the time period specified in the request.
- (4) If the Authority requires information under subsection (3), the time in which the Authority must deal with the submission does not include the period from the date that the Authority makes the request until the date on which the Authority receives the information.
- (5) The Authority may accept a proposed better environment plan—
 - (a) if the Authority is satisfied that—
 - (i) the objectives of the proposed plan are consistent with the purposes set out in section 180; and
 - (ii) the implementation of the proposed plan is likely to deliver the objectives of the proposed plan; and
 - (b) subject to any conditions the Authority considers appropriate.

- (6) The Authority must, as soon as practicable after making a decision whether or not to accept a proposed better environment plan, give the person who made the submission written notice stating—
- (a) the decision; and
 - (b) in the case of a decision to refuse to accept the proposed plan, the reasons for the decision.

S. 183
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

183 Participant must notify Authority of change in circumstances

A participant in a better environment plan must notify the Authority as soon as practicable after becoming aware of any circumstances that materially affect—

- (a) any objective of the plan; or
- (b) the capacity of any participant to comply with the plan.

S. 184
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

184 Amendment or revocation of better environment plans and removal of participants

- (1) A participant in a better environment plan may apply to the Authority for the amendment of the better environment plan.
- (2) On receiving an application under subsection (1), the Authority may—
 - (a) refuse to amend the better environment plan;
or
 - (b) amend the plan subject to any conditions that the Authority considers appropriate.
- (3) If the amendment proposed in an application under subsection (1) affects any action or responsibility that a participant must undertake under a better environment plan, the Authority may amend the plan only if that participant consents to the amendment in writing.

- (4) The Authority on its own motion may amend or revoke a better environment plan or remove a participant from a better environment plan if—
 - (a) the Authority becomes aware of any circumstances that materially affect—
 - (i) any objective of the plan; or
 - (ii) the capacity of any participant to comply with the plan; or
 - (b) the submission of the proposed plan contained false or misleading information; or
 - (c) a participant in the plan withdraws from the plan under section 185; or
 - (d) the Authority reasonably considers that the implementation of the plan is failing to deliver any objective of the plan.
- (5) Within 5 business days after amending or revoking a better environment plan or removing a participant from a better environment plan under this section, the Authority must notify in writing each participant in the plan of that amendment, revocation or removal.
- (6) The amendment or revocation of a better environment plan or the removal of a participant from a better environment plan under this section takes effect on the day specified in the notice under subsection (5) of the amendment, revocation or removal, which must not be fewer than 5 business days after the amendment, revocation or removal is made.

S. 185
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

185 Withdrawal from better environment plans

A participant in a better environment plan may withdraw from that plan if the participant gives at least 20 business days' notice to—

- (a) the Authority; and
- (b) all other participants in the plan.

S. 186
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

186 Effect of compliance with better environment plans

A participant in a better environment plan is taken to perform a duty or satisfy an obligation under this Act if—

- (a) a better environment plan makes provision for how the participant performs the duty or satisfies the obligation; and
- (b) the participant complies with the better environment plan to the extent that the plan makes provision for performing that duty or satisfying that obligation.

S. 187
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

187 Failure to comply with better environment plans

If a participant does not comply with a better environment plan, the Authority may—

- (a) suspend the operation of the plan; or
- (b) suspend the participation of the participant in the plan; or
- (c) remove the participant from the plan; or
- (d) revoke the plan.

S. 188
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

188 Guidelines

The Authority may issue guidelines relating to better environment plans, including but not limited to guidelines relating to—

- (a) the content of better environment plans; and
- (b) the circumstances in which better environment plans may be used; and

- (c) the objectives for which better environment plans may be used; and
- (d) the preparation and submission of better environment plans; and
- (e) the acceptance and amendment of better environment plans.

Part 8.3—Environmental audit system

Pt 8.3
(Headings
and ss 189–
217)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

189 Purpose of Part

S. 189
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

The purpose of this Part is to provide for—

- (a) the appointment of environmental auditors;
and
- (b) a system of preliminary risk screen
assessments and environmental audits—

for use in the planning, approving, regulating,
managing or conducting of activities and in the
protection of human health and the environment.

Division 1—Environmental auditors

190 Functions of environmental auditors

S. 190
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) An environmental auditor has the following
functions—
 - (a) to conduct preliminary risk screen
assessments and environmental audits;
 - (b) to prepare preliminary risk screen assessment
statements, preliminary risk screen
assessment reports, environmental audit
statements and environmental audit reports;
 - (c) to perform any function conferred on an
environmental auditor under this or any other
Act;

- (d) to perform any prescribed function of an environmental auditor.
- (2) In carrying out any function of an environmental auditor under this or any other Act, an environmental auditor must have regard to—
 - (a) any guidelines issued by the Authority under section 203; and
 - (b) any relevant environment reference standard made under Part 5.2; and
 - (c) any relevant compliance code made under Part 5.3; and
 - (d) any prescribed matter.

191 Application for appointment as environmental auditor

- (1) The Authority may, in writing, appoint a natural person to be an environmental auditor in accordance with this Division.
- (2) A natural person may make an application to the Authority for appointment as an environmental auditor.
- (3) An application for appointment must—
 - (a) be made in the manner and form approved by the Authority; and
 - (b) provide any information required by the Authority; and
 - (c) be accompanied by any prescribed application fee unless the person has been exempted under section 196(2).
- (4) The Authority may refer an application for appointment to the advisory panel referred to in section 192.

S. 191
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (5) If the Authority considers it necessary for the purposes of determining an application for appointment, the Authority may require the applicant to do one or more of the following—
- (a) to provide further information to the Authority within a specified time;
 - (b) to appear before the advisory panel for an interview;
 - (c) to undergo an examination by the advisory panel as to the applicant's suitability for appointment.

S. 192
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

192 Advisory panel for application for appointment as environmental auditor

- (1) The Authority may by instrument appoint an advisory panel.
- (2) Section 235 applies to an advisory panel appointed for the purposes of this Division.
- (3) The functions of an advisory panel appointed for the purposes of this Division are—
 - (a) to make recommendations to the Authority regarding the suitability of an applicant for appointment as an environmental auditor; and
 - (b) to provide any other advice to the Authority on the Authority's request.
- (4) An advisory panel appointed for the purposes of this Division must have regard to any relevant guidelines issued under section 203.

S. 193
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No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

193 Determination by Authority of application for appointment as environmental auditor

- (1) The Authority may approve or refuse an application for appointment as an environmental auditor.

- (2) In making a decision to approve or refuse an application for appointment, the Authority must have regard to—
- (a) any relevant guidelines issued under section 203; and
 - (b) if an advisory panel has made a recommendation on the application, the advisory panel's recommendation; and
 - (c) any prescribed matter.
- (3) The Authority may refuse an application for appointment—
- (a) if the applicant fails to comply with section 191(3) or a requirement of the Authority under section 191(5); or
 - (b) if, in the opinion of the Authority, the applicant fails to satisfy the requirements of the guidelines issued under section 203 in relation to eligibility for appointment as an environmental auditor; or
 - (c) if the applicant was previously appointed as an environmental auditor and, in the last 2 years before the date the application was made, the Authority revoked, suspended or refused to renew the appointment; or
 - (d) if the applicant was previously appointed as an environmental auditor in another jurisdiction and the appointment was revoked or suspended; or
 - (e) if the applicant had previously made an application for appointment as an environmental auditor in another jurisdiction and the application was refused; or
 - (f) if the applicant provided false or misleading information to the Authority in the application; or

- (g) for any other reason that the Authority considers sufficient; or
- (h) for any other prescribed reason.

S. 194
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No. 39/2018
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amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

194 Refusal of application for appointment as environmental auditor

- (1) If the Authority proposes to refuse an application for appointment as an environmental auditor, the Authority must give written notice to the applicant that—
 - (a) the Authority intends to refuse the application for appointment and the reasons for the proposed refusal; and
 - (b) the applicant may make submissions to the Authority in relation to the proposed refusal.
- (2) The Authority must not refuse an application for appointment unless the Authority—
 - (a) has given written notice to the applicant under subsection (1); and
 - (b) has given the applicant a reasonable opportunity to make submissions; and
 - (c) has taken into consideration any submissions made by the applicant.

S. 195
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No. 39/2018
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

195 Approval of application for appointment as environmental auditor

- If the Authority decides to approve an application for appointment as an environmental auditor, the Authority must notify the applicant in writing of—
- (a) the Authority's decision; and
 - (b) any conditions to which the appointment is subject; and
 - (c) the period of appointment (not exceeding 3 years).

196 Application fee

- (1) Subject to subsection (2), a person must not be appointed as an environmental auditor unless the person has paid the prescribed application fee to the Authority.
- (2) The Authority may exempt a person from the payment of the prescribed application fee under subsection (1).

S. 196
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No. 39/2018
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ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

197 Conditions on appointment of environmental auditor

- (1) The Authority may appoint a person as an environmental auditor—
 - (a) unconditionally; or
 - (b) subject to conditions specified in the environmental auditor's instrument of appointment; or
 - (c) subject to any prescribed conditions.
- (2) In addition to subsection (1), at any time during the appointment of an environmental auditor, the Authority may by written notice—
 - (a) impose conditions or further conditions on the appointment; or
 - (b) vary or revoke any of the conditions to which the appointment is subject.
- (3) In making a decision to impose, vary or revoke conditions on the appointment of an environmental auditor, the Authority must have regard to any relevant guidelines issued under section 203.
- (4) A condition imposed on an appointment under subsection (1)(b), (c) or (2)(a) or a variation or revocation of a condition under subsection (2)(b) takes effect on the date specified by the Authority

S. 197
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No. 39/2018
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3/2020 ss 42–
44, 47/2020
s. 26).

or the date on which the environmental auditor is notified by the Authority, whichever is the later.

S. 198
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No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

198 Reappointment of environmental auditors

- (1) An environmental auditor may make an application to the Authority for reappointment as an environmental auditor.
- (2) An application for reappointment must—
 - (a) be made in the manner and form approved by the Authority; and
 - (b) provide any information required by the Authority; and
 - (c) be made within the prescribed time; and
 - (d) be accompanied by the prescribed application fee.
- (3) If the Authority considers it necessary for the purpose of determining an application for reappointment, the Authority may require the applicant to provide further information to the Authority within a specified time.
- (4) The Authority may approve or refuse an application for reappointment.

S. 199
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No. 39/2018
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amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

199 Refusal of application for reappointment as environmental auditor

- (1) The Authority may refuse an application for reappointment—
 - (a) on any of the grounds referred to in section 193(3)(a), (b), (c), (d), (e) or (f); or
 - (b) if the refusal of the application for reappointment is justified having regard to—
 - (i) the quality of the environmental auditor's work in relation to preliminary risk screen assessments or environmental audits conducted during

- the environmental auditor's appointment; or
 - (ii) the quality of the environmental auditor's work in relation to any prescribed function of an environmental auditor; or
 - (iii) any formal or informal disciplinary action taken against the environmental auditor under this Act; or
 - (iv) any other matter that the Authority considers to be relevant to the environmental auditor's suitability for reappointment; or
 - (v) for any other prescribed reason.
- (2) In making a decision to approve or refuse an application for reappointment, the Authority must have regard to any relevant guidelines issued under section 203.
- (3) If the Authority proposes to refuse an application for reappointment under this section, the Authority must give written notice to the environmental auditor that—
- (a) the Authority intends to refuse an application for reappointment and the reasons for the proposed refusal; and
 - (b) the environmental auditor may make submissions to the Authority in relation to the proposed refusal.
- (4) The Authority must not refuse an application for reappointment unless the Authority—
- (a) has given the environmental auditor written notice under subsection (3); and

- (b) has given the environmental auditor a reasonable opportunity to make submissions; and
 - (c) has taken into consideration any submissions made by the environmental auditor.
- (5) If the Authority decides to approve an application for reappointment, the Authority must give written notice to the environmental auditor of—
- (a) the Authority's decision; and
 - (b) any conditions to which the reappointment is subject; and
 - (c) the period of reappointment (not exceeding 3 years).

S. 200
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3/2020 ss 42–
44, 47/2020
s. 26).

200 Revocation or suspension of appointment of environmental auditors

- (1) The Authority may suspend or revoke the appointment of an environmental auditor if—
- (a) in the opinion of the Authority, the environmental auditor does not satisfy the requirements of the guidelines issued under section 203 in relation to eligibility for appointment as an environmental auditor; or
 - (b) the environmental auditor has contravened—
 - (i) this Act; or
 - (ii) the regulations; or
 - (iii) a condition of the environmental auditor's appointment; or
 - (c) the environmental auditor is not carrying out a sufficient amount of preliminary risk screen assessments or environmental audits to justify continued appointment as an environmental auditor; or

- (d) the environmental auditor is appointed as an environmental auditor in another jurisdiction and that appointment has been changed because of conduct that would (if it occurred in Victoria) authorise revocation or suspension of the environmental auditor's appointment under this Act; or
- (e) the environmental auditor provided false or misleading information to the Authority in an application for appointment or reappointment; or
- (f) the environmental auditor has contravened a prescribed matter; or
- (g) the suspension or revocation of the appointment is justified having regard to—
 - (i) the quality of the environmental auditor's work in relation to preliminary risk screen assessments or environmental audits conducted during the environmental auditor's appointment; or
 - (ii) the quality of the environmental auditor's work in relation to any prescribed function of an environmental auditor; or
 - (iii) any other matter that the Authority considers to be relevant to the environmental auditor's suitability for appointment; or
- (h) any of the following circumstances apply to a preliminary risk screen assessment or an environmental audit conducted by the environmental auditor—
 - (i) the environmental auditor is an associate of the person who is undertaking the activity or who owns or

- occupies any part of the site that is the subject of the preliminary risk screen assessment or the environmental audit;
- (ii) the environmental auditor has a direct or indirect pecuniary or personal interest in any part of the activity or the site that is the subject of the preliminary risk screen assessment or the environmental audit;
 - (iii) the preliminary risk screen assessment or the environmental audit conducted by the environmental auditor involves the environmental auditor reviewing—
 - (A) any aspect of work previously carried out by the environmental auditor or an associate of the environmental auditor; or
 - (B) a statement or report previously prepared by the environmental auditor or an associate of the environmental auditor.
- (2) The Authority may revoke the appointment of an environmental auditor who is suspended.
- (3) Despite subsection (1)(h)(iii), the Authority must not suspend or revoke the appointment of an environmental auditor if the preliminary risk screen assessment or the environmental audit was conducted by the environmental auditor in accordance with guidelines issued under section 203 or with the approval of the Authority.

201 Matters to which Authority must have regard in deciding a suspension or revocation of appointment of environmental auditor

- (1) In making a decision to suspend or revoke the appointment of an environmental auditor, the Authority must have regard to any relevant guidelines issued under section 203.
- (2) If the Authority proposes to suspend or revoke the appointment of an environmental auditor under this section (including a proposed revocation of the appointment of an environmental auditor that is suspended), the Authority must give written notice to the environmental auditor that—
 - (a) the Authority intends to suspend or revoke the environmental auditor's appointment and the reasons for the proposed suspension or revocation; and
 - (b) the environmental auditor may make submissions to the Authority in relation to the proposed revocation or suspension.
- (3) The Authority must not suspend or revoke the appointment of an environmental auditor unless the Authority—
 - (a) has given written notice to the environmental auditor under subsection (2); and
 - (b) has given the environmental auditor a reasonable opportunity to make submissions; and
 - (c) has taken into consideration any submissions made by the environmental auditor.
- (4) If the Authority decides to suspend the appointment of an environmental auditor, the Authority must give written notice to the environmental auditor that the environmental auditor's appointment is suspended—

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44, 47/2020
s. 26).

- (a) for a specified period; or
 - (b) until the fulfilment of specified conditions set by the Authority; or
 - (c) until further notice by the Authority.
- (5) If the Authority decides to suspend the appointment of an environmental auditor under subsection (4)(b), the Authority must give written notice to the environmental auditor that the environmental auditor's appointment will be reinstated as soon as practicable after the Authority is satisfied that the environmental auditor has fulfilled the specified conditions.
- (6) If the Authority decides to revoke the appointment of an environmental auditor, the Authority must give written notice to the environmental auditor that the environmental auditor's appointment has been revoked and the reasons for the revocation.

S. 202
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No. 39/2018
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Nos 27/2019
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3/2020 ss 42–
44, 47/2020
s. 26).

202 When does a suspension or revocation take effect?

- (1) A suspension of the appointment of an environmental auditor under section 200 has effect—
- (a) for the period specified by the Authority; or
 - (b) if no period is specified in a notice under section 201(4)(a) or the appointment is suspended until the fulfilment of specified conditions under section 201(4)(b), for the period—
 - (i) commencing on the date specified in the notice given under section 201(4) or the date on which the Authority notifies the environmental auditor of the suspension, whichever is the later; and
 - (ii) ending on the date the Authority notifies the environmental auditor that the environmental auditor's

appointment has been reinstated or revoked.

- (2) The appointment of an environmental auditor is taken not to be in force during the period in which a suspension has effect.
- (3) A revocation of the appointment of an environmental auditor takes effect on the date specified in the notice given under section 201(6) or the date on which the Authority notifies the environmental auditor of the revocation, whichever is the later.

203 Guidelines for environmental auditors

The Authority may issue guidelines relating to—

- (a) the appointment and reappointment of environmental auditors; and
- (b) the suspension or revocation of the appointment of environmental auditors; and
- (c) conditions with which environmental auditors must comply; and
- (d) the performance of environmental auditors' functions under this or any other Act.

S. 203
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44, 47/2020
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Division 2—Preliminary risk screen assessments

204 Preliminary risk screen assessment

- (1) A person may engage an environmental auditor to conduct a preliminary risk screen assessment.
- (2) The purpose of a preliminary risk screen assessment is—
 - (a) to assess the likelihood of the presence of contaminated land; and
 - (b) to determine if an environmental audit is required; and

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ss 12–30,
3/2020 ss 42–
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s. 26).

- (c) if an environmental audit is required, to recommend a scope for the environmental audit.

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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

205 Preliminary risk screen assessment statement

- (1) On completion of a preliminary risk screen assessment, an environmental auditor must prepare a preliminary risk screen assessment statement accompanied by a preliminary risk screen assessment report.
- (2) An environmental auditor must, within 5 business days of completing a preliminary risk screen assessment statement and a preliminary risk screen assessment report, send a copy of the preliminary risk screen assessment statement and the preliminary risk screen assessment report to—
- (a) the Authority; and
 - (b) the relevant planning authority within the meaning of the **Planning and Environment Act 1987**; and
 - (c) the responsible authority within the meaning of the **Planning and Environment Act 1987**.

Penalty: 240 penalty units.

S. 206
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ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

206 What is included in a preliminary risk screen assessment statement?

- (1) A preliminary risk screen assessment statement must—
- (a) specify the scope of the assessment including—
 - (i) the site in respect of which the assessment was conducted; and
 - (ii) the use or proposed use for which the site is being assessed; and

- (iii) the elements of the environment assessed; and
 - (iv) the standards considered in the assessment; and
 - (v) any assumptions made by the environmental auditor during the assessment or any limitations on the assessment; and
 - (vi) any exclusions from the assessment and the rationale for these exclusions; and
- (b) state the environmental auditor's assessment that—
- (i) an environmental audit is not required for the purposes specified in the statement; or
 - (ii) an environmental audit is required for the purposes specified in the statement; and
- (c) if an environmental audit is required under paragraph (b)(ii)—set out the proposed scope of the environmental audit; and
- (d) state the name of the person who engaged the environmental auditor to conduct the assessment; and
- (e) be signed by the environmental auditor; and
- (f) state the environmental auditor's contact details; and
- (g) include any other prescribed matter.
- (2) If the preliminary risk screen assessment statement states that an environmental audit is required, the Authority may—

- (a) review the proposed scope of the environmental audit set out by the environment auditor in the statement; and
 - (b) endorse the proposed scope or determine a revised scope of the environmental audit.
- (3) Before endorsing the proposed scope of an environmental audit under subsection (2)(b), the Authority may request that the environmental auditor provide further information in relation to the proposed scope.
- (4) If the Authority decides to review the proposed scope of an environmental audit under subsection (2)(a), the Authority must complete the review within 30 business days of receiving the preliminary risk screen assessment statement and the preliminary risk screen assessment report.
- (5) If the Authority makes a request for information under subsection (3), the time in which the Authority must complete the review under subsection (4) does not include the period from the date that the Authority makes the request until the date on which the Authority receives the information.

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44, 47/2020
s. 26).

207 What is included in a preliminary risk screen assessment report?

A preliminary risk screen assessment report must include—

- (a) a review of the information collected by the preliminary risk screen assessment; and
- (b) the reasons for the findings in the preliminary screen risk assessment statement; and
- (c) any other prescribed matter.

Division 3—Environmental audits

208 Environmental audits

- (1) A person may engage an environmental auditor to conduct an environmental audit.
- (2) The purpose of an environmental audit is—
 - (a) to assess the nature and extent of the risk of harm to human health or the environment from contaminated land, waste, pollution or any activity; and
 - (b) to recommend measures to manage the risk of harm to human health or the environment from contaminated land, waste, pollution or any activity; and
 - (c) to make recommendations to manage the contaminated land, waste, pollution or activity.
- (3) Subject to subsection (4), an environmental auditor must, before conducting an environmental audit, submit a proposed scope of the audit to the Authority together with any supporting documentation in a manner and form approved by the Authority.
- (4) Subsection (3) does not apply if—
 - (a) a preliminary risk screen assessment has already been conducted; and
 - (b) the Authority has previously endorsed a proposed scope or previously determined a revised scope of the environmental audit under section 206(2)(b); and
 - (c) the environmental auditor has not proposed amendments to the proposed scope or the revised scope.

S. 208
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44, 47/2020
s. 26).

- (5) The Authority may—
 - (a) review the proposed scope of an environmental audit provided under subsection (3) or section 206(1)(c); and
 - (b) endorse the proposed scope or determine a revised scope of the environmental audit.
- (6) Before endorsing the proposed scope under subsection (5)(b), the Authority may request that an environmental auditor provide further information in relation to the proposed scope.
- (7) If the Authority decides to review the proposed scope under subsection (5)(a), the Authority must complete the review within 30 business days of receiving the proposed scope of the environmental audit from an environmental auditor under this section.
- (8) If the Authority makes a request for information under subsection (6), the time in which the Authority must complete the review under subsection (7) does not include the period from the date that the Authority makes the request until the date on which the Authority receives the information.

S. 209
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ss 12–30,
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44, 47/2020
s. 26).

209 Environmental auditor must notify the Authority of environmental audit

If an environmental auditor is engaged to conduct an environmental audit, the environmental auditor must, within 5 business days after receiving a request to conduct the audit, send to the Authority a statement in writing specifying—

- (a) the name of the person who has engaged the environmental auditor to conduct the audit;
and
- (b) the location of the site of the proposed audit;
and

(c) the proposed completion date of the audit.

Penalty: 240 penalty units.

210 Environmental audit statement

- (1) On completion of an environmental audit, an environmental auditor must prepare an environmental audit statement accompanied by an environmental audit report.
- (2) An environmental auditor must, within 5 business days of completing an environmental audit statement and an environmental audit report, send a copy of the environmental audit statement and the environmental audit report to the Authority and—
 - (a) if the audit relates to a risk of harm to human health or the environment from contaminated land or potentially contaminated land, to the relevant planning authority and the responsible authority within the meaning of the **Planning and Environment Act 1987**; or
 - (b) if required by the Authority, to the relevant planning authority and the responsible authority within the meaning of the **Planning and Environment Act 1987**.

Penalty: 240 penalty units.

211 What is included in an environmental audit statement?

An environmental audit statement must—

- (a) specify the scope of the environmental audit including—
 - (i) the site or the activity in respect of which the audit was conducted; and
 - (ii) the use or proposed use for which the site is being audited (if applicable); and

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s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (iii) the elements of the environment in respect of which the audit assessed; and
 - (iv) the standards and reference documents considered in the audit; and
 - (v) any assumptions made by the environmental auditor during the audit or any limitations on the audit; and
 - (vi) any exclusions from the audit and the rationale for these exclusions; and
- (b) if the environmental audit assessed the use or proposed use of a site in relation to the risk of harm to human health or the environment from contaminated land, waste or pollution, state the environmental auditor's assessment that—
- (i) the site is suitable for the purposes specified in the statement; or
 - (ii) the site is suitable for the purposes specified in the statement if the recommendations made in the statement are complied with; or
 - (iii) the site is not suitable for the purposes specified in the statement at the time the statement was prepared; and
- (c) specify the results of the environmental audit and any recommendations; and
- (d) state the name of the person who engaged the environmental auditor to conduct the audit; and
- (e) be signed by the environmental auditor; and
- (f) state the environmental auditor's contact details; and
- (g) include any other prescribed matter.

212 What is included in an environmental audit report?

An environmental audit report must include—

- (a) a review of all relevant information collected by the environmental audit; and
- (b) the reasons for the findings and any recommendations in the environmental audit statement; and
- (c) any other prescribed matter.

S. 212
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No. 39/2018
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44, 47/2020
s. 26).

Division 4—Offences and other matters

213 Withdrawal, amendment or issue of new preliminary risk screen assessment statement or environmental audit statement

- (1) If an environmental auditor believes that the environmental auditor has issued a preliminary risk screen assessment statement or an environmental audit statement that is incorrect, the environmental auditor may withdraw the preliminary risk screen assessment statement or the environmental audit statement and either—
 - (a) conduct another preliminary risk screen assessment and issue a new preliminary risk screen assessment statement or conduct another environmental audit and issue a new environmental audit statement; or
 - (b) issue a new preliminary risk screen assessment statement or a new environmental audit statement.
- (2) Despite subsection (1), an environmental auditor may amend a preliminary risk screen assessment statement or an environmental audit statement to correct—
 - (a) any clerical mistake or an unintentional error or omission; or

S. 213
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No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
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s. 26).

- (b) any figure that is miscalculated; or
 - (c) any misdescription of any person, thing or property.
- (3) If an environmental auditor withdraws a preliminary risk screen assessment statement or an environmental audit statement under subsection (1), the environmental auditor must, within 5 business days of the withdrawal, notify the Authority and—
- (a) if the audit relates to a risk of harm to human health or the environment from contaminated land or potentially contaminated land, the relevant planning authority and the responsible authority within the meaning of the **Planning and Environment Act 1987**; or
 - (b) if required by the Authority, the relevant planning authority and the responsible authority within the meaning of the **Planning and Environment Act 1987**.

Penalty: 240 penalty units.

- (4) If an environmental auditor has issued a new preliminary risk screen assessment statement or a new environmental audit statement under subsection (1)(b) or amended a preliminary risk screen assessment statement or an environmental audit statement under subsection (2), the environmental auditor must, within 5 business days of amending or issuing it, send a copy of the amended or new preliminary risk screen assessment statement or the amended or new environmental audit statement to—
- (a) the Authority; and
 - (b) the relevant planning authority within the meaning of the **Planning and Environment Act 1987**; and
-

(c) the responsible authority within the meaning of the **Planning and Environment Act 1987**.

- (5) If an environmental auditor is for any reason unable to perform the functions and duties of an environmental auditor during the environmental auditor's appointment, the Authority may withdraw a preliminary risk screen assessment statement or an environmental audit statement issued by the environmental auditor that is incorrect.
- (6) If the Authority withdraws an incorrect preliminary risk screen assessment statement or an incorrect environmental audit statement under subsection (5), the Authority must, within 5 business days of the withdrawal, notify the relevant planning authority and the responsible authority within the meaning of the **Planning and Environment Act 1987** of the withdrawal.
- (7) Subsection (6) does not apply if the relevant planning authority and the responsible authority have not been sent a copy of the withdrawn preliminary risk screen assessment statement or environmental audit statement under section 205(2) or 210(2).

214 Obligation of person in management or control to provide copy of preliminary risk screen assessment statement or environmental audit statement

- (1) If a preliminary risk screen assessment statement or an environmental audit statement has been issued in respect of a site, the person in management or control of the site must provide a copy of the preliminary risk screen assessment statement or the environmental audit statement (as the case requires) to any person who proposes to become the person in management or control of the site.

S. 214
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44, 47/2020
s. 26).

- (2) If a person who previously had management or control of a site fails to comply with subsection (1), the person who currently has management or control of the site may, within 12 months of becoming the person in management or control, recover in a Court from the person who previously had management or control, any reasonable costs incurred in complying with the preliminary risk screen assessment statement or the environmental audit statement.

S. 215
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44, 47/2020
s. 26).

215 False or misleading preliminary risk screen assessment statement or environmental audit statement

- (1) When carrying out any function under this Act or any other Act, an environmental auditor must not—
- (a) issue a preliminary risk screen assessment statement that is false or misleading; or
 - (b) issue an environmental audit statement that is false or misleading; or
 - (c) issue any other document that is false or misleading.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) Without limiting subsection (1), a statement or document may be false or misleading for the purposes of this section if it contains a material defect, omission or irregularity.
- (3) A person who contravenes subsection (1) commits an offence.

Penalty: 500 penalty units.

- (4) An offence under subsection (3) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

216 Environmental auditor must notify the Authority of imminent state of danger

- (1) When carrying out any function under this Act or any other Act, an environmental auditor must notify the Authority as soon as practicable after the environmental auditor becomes aware of—
- (a) an imminent state of danger to human health or the environment from pollution or waste; or
 - (b) any circumstances, which if not addressed, are likely to become an imminent state of danger to human health or the environment from pollution or waste; or
 - (c) any other prescribed matter.

Penalty: 500 penalty units.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

S. 216
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 217
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

217 Fees to be paid by environmental auditor

- (1) An environmental auditor must, within 5 business days of completing a preliminary risk screen assessment statement and a preliminary risk screen assessment report, pay the prescribed fee to the Authority.
- (2) An environmental auditor must, within 5 business days of completing an environmental audit statement and an environmental audit report, pay the prescribed fee to the Authority.

Part 8.4—Financial assurances

Pt 8.4
(Heading and
ss 218–234)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

218 Purposes of this Part

The purposes of this Part are—

- (a) to provide for financial assurances as security for the Authority for the costs and expenses of remediation or clean up activities; and
- (b) to enable the Authority to implement financial assurances.

S. 218
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

219 Authority may require financial assurance

- (1) The Authority may require a person undertaking a particular activity to provide a financial assurance if any of the following apply—
 - (a) the Authority determines that provision of a financial assurance by the person is a condition of a prescribed permission;
 - (b) the Authority determines that provision of a financial assurance by the person is a condition of a site management order;
 - (c) the Authority determines that provision of a financial assurance by the person is a condition of an environmental action notice;
 - (d) an Order relating to environmentally hazardous substances requires the person to provide a financial assurance.

S. 219
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (2) The Authority may only make a determination under subsection (1)(a),(b) or (c) if the Authority is satisfied, having regard to the prescribed risk assessment criteria, that a financial assurance is necessary as security for the costs and expenses of remediation or clean up in connection with the particular activity.
- (3) If the Authority requires a person to provide a financial assurance, the Authority must notify the person in writing of the form and amount of the financial assurance.
- (4) If a person is given notice under subsection (3), the person must provide the financial assurance within a period, not less than 30 business days, to be specified by the Authority.

S. 220
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

220 Form of financial assurance

- (1) Subject to subsection (2), the Authority may determine, having regard to the prescribed risk assessment criteria, the form of a financial assurance.
- (2) A financial assurance must be provided in the form of—
 - (a) a guarantee provided by a body that is permitted to use the expression "bank" under section 66 of the Banking Act 1959 of the Commonwealth; or
 - (b) bonds; or
 - (c) any other form of security that the Authority considers appropriate; or
 - (d) any combination of paragraph (a), (b) or (c).

221 Amount of financial assurance

- (1) Subject to subsection (2), the Authority may determine the amount of a financial assurance.
- (2) In determining the amount of a financial assurance, the Authority must have regard to—
 - (a) a reasonable estimate of the costs and expenses of remediation or clean up activities for the particular activity; and
 - (b) any method for calculating the amount of financial assurances published by the Authority; and
 - (c) if the Authority has required an independent assessment for the purpose of determining the amount of a financial assurance and the independent assessment has been provided within the specified period, the independent assessment.

S. 221
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

222 Independent assessment of amount of financial assurance

- (1) For the purpose of determining the amount of a financial assurance, the Authority may require a person to provide an independent assessment of a matter contained in the prescribed risk assessment criteria, within a period specified by the Authority.
- (2) If the Authority requires a person to provide an independent assessment under subsection (1), the person must pay any costs associated with obtaining the independent assessment.
- (3) An independent assessment required by the Authority under subsection (1) must be conducted by a suitably qualified person.

S. 222
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 223
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

223 Method for calculating financial assurance amount

- (1) The Authority may publish, by notice in the Government Gazette, a method for calculating financial assurance amounts.
- (2) The method takes effect on the day notice is published in the Government Gazette, or on any later day if specified in the notice.
- (3) The Authority must publish the method on the Internet site of the Authority.

S. 224
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

224 Costs associated with financial assurance

A person who is required to provide a financial assurance is responsible for all reasonable costs incurred by the Authority that are associated with—

- (a) providing the financial assurance; and
- (b) determining the form and amount of a financial assurance.

S. 225
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

225 Authority may review financial assurance

- (1) Subject to subsection (2), the Authority may review the following—
 - (a) the requirement for a person to provide a financial assurance;
 - (b) the amount of a financial assurance;
 - (c) the form of a financial assurance.
- (2) The Authority may review a financial assurance if—
 - (a) a prescribed permission issued or granted with a condition requiring the holder of the permission to provide a financial assurance is reviewed or varied; or

- (b) the financial assurance was provided as a condition of a site management order and the order is varied; or
- (c) the financial assurance was provided as a condition of an environmental action notice and the notice is varied; or
- (d) the financial assurance was provided as a condition of an Order relating to environmentally hazardous substances and the Order is varied; or
- (e) the Authority publishes an updated method for calculating the amount of a financial assurance that is relevant to the particular activity that the financial assurance is provided in relation to; or
- (f) the person who provided the financial assurance requests a review of the form or amount of the financial assurance; or
- (g) the Authority is satisfied, having regard to the prescribed risk assessment criteria, that there is a variation to the estimate of the costs and expenses of remediation or clean up activities for the particular activity that the financial assurance is provided in relation to.

226 Authority may amend financial assurance

- (1) Subject to subsection (2), the Authority may amend the following—
 - (a) the form of a financial assurance;
 - (b) the amount of a financial assurance;
 - (c) the form and the amount of a financial assurance.

S. 226
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (2) If following a review, the Authority proposes to amend a financial assurance, the Authority must—
 - (a) notify the person who provided the financial assurance in writing; and
 - (b) invite the person who provided the financial assurance to make a submission on the proposed amendment, within 20 business days after the date of notice; and
 - (c) consider any submissions from the person who provided the financial assurance.
- (3) If the Authority decides to amend a financial assurance, the Authority must notify the person in writing of the decision.
- (4) On amending a financial assurance, the Authority—
 - (a) may make any changes the Authority considers necessary to implement that amendment in an instrument or document; and
 - (b) despite anything to the contrary in this Act or the regulations, may make any changes the Authority considers necessary to implement the amendment in a permission, site management order or an environmental action notice by complying only with this section.
- (5) If a person is given notice under subsection (3) and is required to provide a further form, amount or form and amount of a financial assurance, the person must provide the further requirement within a period, not less than 30 business days, to be specified by the Authority.

227 Authority may make a claim on financial assurance

- (1) This section applies if—
 - (a) the Authority determines that the person who provided a financial assurance has failed to conduct the remediation or clean up activities required by this Act or the regulations; or
 - (b) the Authority has exercised clean up powers in accordance with section 294(1) in connection with the particular activity that the financial assurance was provided in relation to.
- (2) The Authority may make a claim on a financial assurance for any reasonable costs incurred, or that the Authority considers are likely to be incurred, by the Authority in conducting the remediation or clean up activities.
- (3) The Authority may make a claim on a financial assurance with respect to a power specified in subsection (1)(b) whether or not any costs incurred by the Authority in conducting the remediation or clean up activities are the result of an act or omission before the financial assurance was provided.
- (4) If the Authority makes a claim under this section and the costs incurred by the Authority in conducting the remediation or clean up activities exceed the amount of the financial assurance, the Authority may recover as a debt due to the Crown in a court of competent jurisdiction any reasonable costs incurred by the Authority in conducting the remediation or clean up activities.
- (5) If the Authority makes a claim under this section, nothing in this Part prevents the Authority from making a further claim for reasonable costs incurred, or that the Authority considers are likely

S. 227
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

to be incurred, in conducting clean up or remediation activities.

- (6) Any money recovered under this section is to be paid into the Consolidated Fund.

S. 228
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

228 Procedure for claim on financial assurance in the event of a person's failure to remediate or clean up

- (1) Before the Authority makes a claim on a financial assurance for a matter specified in section 227(1)(a), the Authority must—
- (a) notify the person who provided the financial assurance in writing; and
 - (b) invite the person who provided the financial assurance to make a submission on the Authority's intention to make a claim within 20 business days of the date of the notice; and
 - (c) consider any submissions made within the period specified in paragraph (b).
- (2) The Authority may proceed with the claim 10 business days after the day the Authority receives any submissions or within the period specified in subsection (1)(b), whichever occurs first.
- (3) The Authority must notify the person who provided the financial assurance of a decision under subsection (2) in writing within 5 business days of the day of the decision.

S. 229
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

229 Procedure for claim on financial assurance in the event of immediate or serious risk

If the Authority makes a claim on a financial assurance for a matter specified in section 227(1)(b), the Authority must—

- (a) notify the person who provided the financial assurance in writing within 10 business days of the date of the claim; and
- (b) give reasons for making the claim.

Note

See section 294(1) for the Authority's power to conduct a clean up if there is an immediate or serious risk of harm to human health or the environment from pollution, waste or contaminated land.

230 Notice to replenish financial assurance

- (1) If the Authority makes a claim on a financial assurance, the Authority may require the person who provided the financial assurance to replenish the amount of the financial assurance by giving notice in writing.
- (2) A notice under subsection (1) must set out the amount the person is required to provide to replenish the amount of the financial assurance consequent to the claim.
- (3) If a person is given notice under subsection (1), the person must provide the amount required to replenish the financial assurance within a period, not less than 30 business days, to be specified by the Authority.

S. 230
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

231 Specified conditions for release of financial assurance

- (1) The Authority must release all or part of a financial assurance (as the case requires) if the financial assurance is—
 - (a) provided as a condition of a prescribed permission and the person who provided the financial assurance no longer holds the permission; or

S. 231
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (b) provided as a condition of a site management order and the site management order no longer applies to the person who provided the financial assurance; or
 - (c) provided as a condition of an environmental action notice and the notice no longer applies to the person who provided the financial assurance; or
 - (d) provided as a condition of an Order relating to environmentally hazardous substances and the Order no longer applies to the person who provided the financial assurance; or
 - (e) no longer required following a review of the financial assurance; or
 - (f) amended following a review of the financial assurance.
- (2) If the Authority releases all or part of a financial assurance, the Authority must notify the person who provided the financial assurance in writing.

S. 232
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

232 Application for release of financial assurance

- (1) A person who provides a financial assurance under this Part may apply at any time to the Authority for the release of all or part of the financial assurance.
- (2) In considering an application under subsection (1), the Authority must—
 - (a) have regard to the prescribed risk assessment criteria; and
 - (b) notify the person of the Authority's decision within 40 business days after the date the application is received.
- (3) If, in considering an application under subsection (1), the Authority determines further information is required the Authority may—

- (a) request the person to provide further information; and
- (b) extend the period specified in subsection (2)(b).

233 Transfer of financial assurance

- (1) The Authority may transfer a financial assurance if—
 - (a) a person is required to provide a financial assurance under section 219; and
 - (b) that financial assurance may be released or partly released to the person under section 231 or 232; and
 - (c) the person is required to provide another financial assurance under section 219.
- (2) The Authority must notify the person in writing of a decision to transfer a financial assurance.
- (3) On transferring a financial assurance, the Authority may make any changes the Authority considers necessary to implement the transfer in an instrument or document.
- (4) If a person is given notice under subsection (2) and is required to provide a further amount as a financial assurance, the person must provide the further amount of the financial assurance within a period, not less than 30 business days, to be specified by the Authority.

S. 233
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

234 Enforcement of financial assurance

- (1) A person must not refuse or fail to do any of the following within the specified period—
 - (a) provide a financial assurance;
 - (b) provide a further amount as a financial assurance following amendment by the Authority;

S. 234
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (c) replenish the amount of a financial assurance consequent to a claim on the financial assurance.
- (2) If a person refuses or fails to fulfil a requirement specified in subsection (1) when it is due, the Authority may—
- (a) suspend a permission issued or granted with a condition requiring the holder of the permission to provide a financial assurance, until the person fulfils the requirement; or
 - (b) issue a prohibition notice in relation to the particular activity for which the financial assurance is provided.

Part 8.5—Advisory panels

Pt 8.5
(Heading and
s. 235)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

235 Advisory panels

S. 235
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) The Authority may establish advisory panels for the purpose of providing advice to the Authority on any matter arising from the administration of this Act or the regulations.
- (2) The Authority may determine—
 - (a) the process for establishing an advisory panel; and
 - (b) the terms of reference for an advisory panel; and
 - (c) matters relating to the procedure of an advisory panel, including but not limited to—
 - (i) the extent to which a panel can regulate its own proceedings; and
 - (ii) reporting requirements; and
 - (iii) whether the panel may call for submissions; and
 - (d) the terms and conditions of the appointment of members of an advisory panel.
- (3) The Authority may appoint any person to be a member of an advisory panel that the Authority is satisfied has the appropriate level of expert knowledge, skills or experience.

- (4) One member must be appointed as the chairperson of the advisory panel.
- (5) A member of the advisory panel is appointed for the period (not exceeding 5 years) specified in the instrument of appointment.
- (6) A member of the advisory panel is eligible for reappointment.
- (7) A member of an advisory panel must be paid any allowances and expenses that are determined by the Authority.
- (8) The Authority must have regard to, but is not bound by, any advice provided by an advisory panel.

Part 8.6—Conference of interested persons

Pt 8.6
(Heading and
ss 236–240)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

236 Authority may establish conference of interested persons

S. 236
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) The Authority may establish a conference of interested persons in relation to any matter or decision under consideration by the Authority.
- (2) A conference established under this section is for the purposes of—
 - (a) assisting in the just resolution of the matter or decision under consideration by the Authority; and
 - (b) providing an informal means for the Authority to consider the matter or decision.
- (3) Subject to any rules made under section 239(1), in establishing a conference of interested persons the Authority may determine the procedure for—
 - (a) the convening and the conduct of the conference of interested persons; and
 - (b) the making of recommendations arising out of the conference of interested persons.

(4) In this section—

interested person means any of the following—

- (a) a person, body or public entity that the Authority considers has an interest in the matter or decision under consideration by the Authority;
- (b) a person holding technical or scientific expertise that the Authority considers relevant to the matter or decision under consideration by the Authority;
- (c) a public entity that has requested to be consulted in relation to the matter or decision under consideration by the Authority.

S. 237
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

237 Appointment of convenor

- (1) In establishing a conference of interested persons under section 236, the Authority must appoint a person as the convenor of the conference.
- (2) The function of a convenor appointed under subsection (1) is—
 - (a) to convene the conference of interested persons; and
 - (b) to preside at the conference of interested persons; and
 - (c) for the purposes of section 238, to make any recommendations to the Authority arising out of the conference of interested persons.

S. 238
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

238 Recommendations and additional material from conference of interested persons

- (1) A recommendation to the Authority arising out of a conference of interested persons may include any comments, discussion or resolutions of the conference of interested persons.

- (2) A recommendation to the Authority and any comments, discussion or resolutions of the conference of interested persons is not binding on the Authority.
- (3) A recommendation to the Authority and any comments, discussion or resolutions of the conference of interested persons must be considered by the Authority in the taking of any action in relation to the matter or decision under consideration by the Authority that the conference of interested persons was established in relation to, only to the extent that the recommendation or the comments, discussion or resolutions are a relevant consideration for the matter or decision.

239 Rules for conferences of interested persons

- (1) The Authority may make rules relating to conferences of interested persons by publishing a notice of the rules in the Government Gazette.
- (2) The rules made under subsection (1) take effect on the day the notice of the rules is published in the Government Gazette, or on any later day specified in the notice.
- (3) The Authority must publish the rules made under subsection (1) on the Internet site of the Authority.

S. 239
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

240 Participation to be voluntary

- (1) A conference of interested persons is voluntary and an interested person is under no obligation to attend.
- (2) An interested person may withdraw from a conference of interested persons at any time.

S. 240
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Chapter 9—Authorised officers, analysts and other appointments

Ch. 9
(Headings
and ss 241–
269)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 9.1—Simplified outline

Pt 9.1
(Heading and
s. 241)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 241
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

241 Simplified outline—Chapter 9

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 9.2 enables the Authority to appoint persons as authorised officers and analysts and to other prescribed roles.
- (3) Part 9.3 sets out the powers of entry and inspection of authorised officers and persons assisting authorised officers.
- (4) An authorised officer may—
 - (a) request information for the purposes of assisting with an investigation under this Act; and
 - (b) give directions to address immediate risks of harm to human health or the environment from pollution or waste.

- (5) The Authority may require persons to provide the Authority with information for the purposes of performing its functions and exercising its powers under this Act and the regulations.
- (6) A person must not obstruct or assault, intimidate or threaten an authorised officer performing a function or exercising a duty under this Act and the regulations.

Pt 9.2
(Headings
and ss 242–
245)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 242
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 9.2—Appointment of authorised officers and analysts and appointments to other roles

Division 1—Authorised officers

242 Authorised officers

- (1) The Authority may appoint as an authorised officer, for the purposes specified in the instrument of appointment, a person who is an officer or employee, or a member of a class of officer or employee, of—
 - (a) the Authority; or
 - (b) a public sector body; or
 - (c) a council; or
 - (d) the Environment Protection Authority established under the Protection of the Environment Administration Act 1991 of New South Wales; or
 - (e) the Environment Protection Authority established under the Environment Protection Act 1993 of South Australia.
- (2) A public sector body or council to which the Authority has delegated a power or function under section 437(1) may by instrument appoint an employee or class of employee as an authorised officer for the purposes of the power or function delegated to the body or council.
- (3) An appointment under subsection (1) or (2)—
 - (a) is subject to any conditions or limitations specified in the appointment; and

- (b) is subject to any prescribed conditions or limitations; and
- (c) may at any time be varied, suspended or revoked by the person or body who made the appointment.

243 Authorised officers' identity cards

- (1) A person or body must issue an identity card to each person that the person or body appoints as an authorised officer.
- (2) An identity card issued under subsection (1) must—
 - (a) contain the name of the person to whom it is issued; and
 - (b) contain a photograph of the person; and
 - (c) state that the person is an authorised officer for the purposes of this Act.
- (3) Authorised officers must produce their identity card for inspection if asked to do so when performing a function or exercising a power under this Act.
- (4) If a person to whom an identity card has been issued under subsection (1) ceases to be an authorised officer, the person must return the identity card to the person or body that issued the identity card as soon as practicable.

S. 243
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

244 Directions in respect of authorised officers

- (1) The Authority may give directions in respect of—
 - (a) the qualifications or training a person must have before the person may be appointed as an authorised officer; or
 - (b) the procedure for appointing a person as an authorised officer; or
 - (c) the conduct of authorised officers.

S. 244
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (2) A person or body who is given a direction under subsection (1) must comply with that direction.

Division 2—Other appointments by Authority

245 Authority may appoint analysts and prescribed roles

S. 245
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) The Authority may appoint as an analyst, for the purposes specified in the instrument of appointment, any natural person or class of natural person.
- (2) The Authority may appoint as the holder of a prescribed role, for the purposes specified in the instrument of appointment, any person or class of person.
- (3) The Authority may, in an instrument of appointment under subsection (1) or (2)—
- (a) specify the term of the appointment; and
 - (b) impose conditions on the appointment.
- (4) The Authority may suspend, vary or revoke an appointment under subsection (1) or (2).
- (5) The Authority must not appoint a person under subsection (1) or (2) unless the person has paid any prescribed fee.

Part 9.3—Inspection and inquiry powers

Division 1—Powers of entry and inspection

246 Authorised officer may enter and inspect any place or premises

- (1) For the purpose of performing a function or duty or exercising a power under this Act, an authorised officer may enter and inspect a place or premises.
- (2) Without limiting subsection (1), an authorised officer may enter and inspect a place or premises for the following purposes—
 - (a) determining if a person has contravened this Act or the regulations;
 - (b) monitoring compliance with this Act or the regulations;
 - (c) determining if there is a risk of harm to human health or the environment from pollution, waste or contaminated land;
 - (d) inspecting or testing equipment or a vehicle.
- (3) An authorised officer may exercise a power to enter and inspect a place or premises—
 - (a) at any reasonable time; and
 - (b) at any other time, if the authorised officer reasonably believes there is an immediate risk of material harm to human health or the environment.

Pt 9.3
(Headings
and ss 246–
269)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 246
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 247
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

247 Entry and inspection of a place or premises when open to the public

An authorised officer may enter and inspect a place or premises that is, at the time of entry, open to the public.

S. 248
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

248 Residential premises

- (1) An authorised officer must not enter and inspect premises that are used only for residential purposes except—
 - (a) with the consent of the occupier for the time being of the premises; or
 - (b) under the authority of a search warrant; or
 - (c) if the authorised officer reasonably believes that a person has contravened, is contravening or is about to contravene, a provision of this Act or the regulations; or
 - (d) if the authorised officer reasonably believes there is an immediate risk of material harm to human health or the environment.
- (2) An authorised officer may only exercise a power to enter and inspect residential premises in circumstances specified in subsection (1)(c) or (d) in a part of the premises that the authorised officer believes is necessary to enter and inspect for the purpose of determining if—
 - (a) a person has contravened, is contravening or is about to contravene, a provision of this Act or the regulations; or
 - (b) if there is an immediate risk of material harm to human health or the environment.

249 Announcement on entry

- (1) Immediately on entering a place or premises under this Division, an authorised officer must take all reasonable steps to notify the occupier or apparent occupier for the time being of the place or premises of the entry and produce the authorised officer's identity card for inspection by that person.
- (2) An authorised officer is not required to notify, or produce the authorised officer's identity card for inspection by a person if—
 - (a) to do so would unreasonably interfere with performing a function or duty or exercising a power under this Act or cause unreasonable delay; or
 - (b) the person has been notified in advance of the entry.

S. 249
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

250 Persons assisting authorised officer

- (1) An authorised officer may request the assistance of any person for the purpose of entry and inspection of a place or premises and the taking of any other action under this Division.
- (2) The occupier or person in management or control of a place or premises must allow the person assisting an authorised officer access to the place or premises.

S. 250
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (3) If an authorised officer uses the assistance of an interpreter—
- (a) an enquiry or request made by the interpreter on the authorised officer's behalf is taken to be made by the authorised officer; and
 - (b) an answer given to the interpreter is taken to be given to the authorised officer.

S. 251
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

251 Powers on entry

- (1) An authorised officer who enters a place or premises under this Division may do or cause to be done any thing or action the authorised officer reasonably believes is necessary for the purpose of performing a function or duty or exercising a power under this Act.
- (2) Without limiting subsection (1), an authorised officer who enters a place or premises under this Division may do all or any of the following that the authorised officer reasonably believes is necessary for the purpose of performing a function or duty or exercising a power under this Act—
- (a) inspect, examine and make enquiries about a thing at the place or premises;
 - (b) take and remove samples of a substance or thing at the place or premises;
 - (c) carry out testing and examination;
 - (d) take photographic, audio, video or any other type of recording;
 - (e) examine, copy or take extracts from a document;
 - (f) inspect, examine or test any plant, equipment, vehicle, or other thing;
 - (g) bring equipment or materials to the place or premises;

- (h) seize and remove a thing connected with a suspected contravention of this Act or the regulations;
 - (i) request the assistance of a person at the place or premises;
 - (j) take any other action.
- (3) For the purposes of subsection (2)(c) and (f), an authorised officer may carry out or cause to be carried out any testing and examination of a thing, including testing of a thing that results in the destruction of that thing.
- (4) An authorised officer must take reasonable steps to—
- (a) minimise disruption caused by entry and inspection of a place or premises and of taking any action under this section; and
 - (b) ensure the authorised officer does not remain at a place or premises any longer than is reasonably necessary.

252 Authorised officer may require production of documents

- (1) An authorised officer who enters a place or premises under this Division may do all or any of the following for the purpose of performing a function or duty or exercising a power under this Act—
- (a) require a person to produce a document or part of a document, located at the place or premises, that is in the person's possession or control;
 - (b) examine the document or part of the document;

S. 252
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No. 39/2018
s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (c) retain the document or part of the document for as long as is reasonably necessary to fulfil the purpose that it is required for;
 - (d) take extracts from and make copies of the document or part of the document.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a request under subsection (1).

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 253
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

253 Authorised officer may require information or answers

- (1) An authorised officer who enters a place or premises under this Division may require a person at the place or premises to give any information or answer any question for the purpose of performing a function or duty or exercising a power under this Act.
- (2) An authorised officer must only require information or answers from a person if the authorised officer reasonably believes that the person has knowledge of a matter or thing relevant to another person's compliance with this Act or the regulations.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a request under subsection (1).

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

254 Report to be given about entry and inspection of place or premises

- (1) An authorised officer who enters and inspects a place or premises under this Division must give a report concerning the entry to the occupier or apparent occupier for the time being of the place or premises when, or as soon as practicable after, the authorised officer leaves the place or premises.
- (2) The report must be in writing and include the following—
 - (a) the time of the entry and departure;
 - (b) the purpose of the entry and inspection;
 - (c) a description of any actions taken at the place or premises;
 - (d) a summary of any observations of the authorised officer at the place or premises;
 - (e) the procedure for contacting the Authority and the authorised officer for further details of the entry and inspection.

S. 254
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Division 2—Information gathering notices

255 Authority may serve information gathering notice

- (1) For the purpose of performing a function or duty or exercising a power under this Act, the Authority may serve an information gathering notice on a person requiring the person to do all or any of the following—
 - (a) provide to the Authority any information or class of information specified in the notice before a specified time and in a specified manner;
 - (b) produce to the Authority a document or class of document specified in the notice that is in the person's possession, custody or control,

S. 255
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No. 39/2018
s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- before a specified time and in a specified manner;
- (c) to appear before the Authority at a time and place specified in the notice to do all or any of the following—
- (i) to give information specified in the notice, either orally or in writing;
 - (ii) to produce a document or class of document specified in the notice that is in the person's possession, custody or control.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

S. 256
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

256 Form of information gathering notice

An information gathering notice must—

- (a) be in writing; and
- (b) specify the following matters—
 - (i) the person on whom it is served;
 - (ii) the purpose of the information gathering notice;
 - (iii) the period for complying with the notice, being not less than 10 business days; and
- (c) in the case of a natural person, explain that the person may refuse or fail to give the information specified in the information gathering notice if giving that information would tend to incriminate the person.

Note

Under section 268 it is a reasonable excuse for a natural person to refuse or fail to give information if the giving of the information would tend to incriminate the person. However that excuse does not apply to the production of a document.

257 Extension of time under information gathering notice

The Authority may, by written notice given to the person on whom an information gathering notice has been served—

- (a) extend the period for complying with the notice, if the Authority is satisfied that the circumstances of the case justify an extension; and
- (b) revoke or amend a requirement specified in the notice.

S. 257
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

258 Court orders

- (1) The Authority may apply to the Court for an order compelling a person to comply with an information gathering notice.
- (2) The Authority may apply for an order under subsection (1) whether or not a proceeding has been commenced for an offence against this Act or the regulations.

S. 258
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Division 3—Power to ask person's name and address

259 Authorised officer may ask person's name and address

- (1) An authorised officer may ask a person to state the person's name and address if the authorised officer reasonably believes that the person—

S. 259
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (a) may be able to assist in the investigation of an indictable offence against this Act that has been committed or is suspected of having been committed; or
 - (b) has committed, is committing or is about to commit an offence against this Act or the regulations.
- (2) The authorised officer must—
- (a) inform the person of the reasons for the authorised officer's belief; and
 - (b) if subsection (1)(b) applies, give the person sufficient information to enable the person to understand the nature of the offence the authorised officer believes that the person has committed, is committing or is about to commit.
- (3) If an authorised officer asks a natural person to state the person's name and address, the person must not do any of the following—
- (a) refuse or fail to comply;
 - (b) state a name that is false in a material particular;
 - (c) state an address other than the person's full and correct address.

Penalty: 20 penalty units.

Division 4—Power to give directions

260 Authorised officer may give directions

- (1) An authorised officer may give a direction to a person to do, or cause to be done, any action or thing that the authorised officer reasonably believes is necessary to address the existence or likely existence of an immediate risk of material harm to human health or the environment.

S. 260
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No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (2) A person must not, without reasonable excuse, refuse or fail to comply with a direction given to the person under subsection (1).

Penalty: In the case of a natural person,
500 penalty units;

In the case of a body corporate,
2500 penalty units.

- (3) A direction under subsection (1) may be given orally or in writing.
- (4) An offence under subsection (2) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

- (5) The Authority must pay to a person any reasonable costs incurred by the person in complying with a direction given under subsection (1).
- (6) Subsection (5) does not apply if the person caused or permitted the situation giving rise to the authorised officer's reasonable belief of the existence or likely existence of an immediate risk of material harm to human health or the environment.
- (7) The Authority may recover in a court of competent jurisdiction as a debt due to the Authority any payment made under subsection (5) from a person who caused or permitted the situation giving rise to the authorised officer's reasonable belief of the existence or likely existence of an immediate risk of material harm to human health or the environment.
- (8) Any costs recovered under this section are to be paid into the Consolidated Fund.

Division 5—Search warrants

261 Authorised officer may apply for search warrants

S. 261
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to a place or premises if the authorised officer reasonably believes that—
 - (a) there is, or may be within the next 72 hours, a particular thing (including a document) at the place or premises; and
 - (b) the particular thing may afford evidence of the commission of an offence against this Act or the regulations.
- (2) A magistrate may issue the search warrant if the magistrate is satisfied by evidence given under oath or affirmation, whether oral or by affidavit, of the authorised officer's reasonable belief.
- (3) The search warrant may authorise an authorised officer and any assistants the authorised officer considers necessary—
 - (a) to enter the place or premises named or described in the warrant; and
 - (b) to search for the thing named or described in the warrant.
- (4) In addition to any other requirement, the search warrant must state the following—
 - (a) the offence suspected;
 - (b) the place or premises to be searched;
 - (c) a description of the thing that the search is made for;
 - (d) any conditions that the warrant is subject to;
 - (e) whether entry is authorised to be made at any time or during specified hours;

- (f) that the warrant authorises entry on only one occasion;
 - (g) a day, not later than 7 days after the day the warrant is issued, that the warrant ceases to have effect;
 - (h) that the warrant is issued in accordance with the **Magistrates' Court Act 1989**.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) The rules that apply to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to search warrants issued under this section.

262 Announcement before entry on warrant

- (1) Before executing a search warrant, the authorised officer executing the warrant or any assistant to the authorised officer must—
- (a) announce that the authorised officer is authorised by the warrant to enter the place or premises to be searched; and
 - (b) give any person at the place or premises an opportunity to allow that entry.
- (2) Subsection (1) does not apply if the authorised officer reasonably believes that complying with subsection (1) would frustrate the effective execution of the search warrant.

S. 262
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

263 Copy of warrant to be given to occupier

If an occupier or apparent occupier is present at a place or premises that is named or described in a search warrant at the time an authorised officer executes the search warrant, the authorised officer must—

- (a) produce the authorised officer's identity card for inspection; and

S. 263
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No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (b) give that person a copy of the execution copy of the warrant.

Division 6—Return and forfeiture of seized things

264 Return of seized things

S. 264
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) As soon as possible after an authorised officer seizes or obtains a thing (including a document) under this Part, the Authority must return the thing to the owner unless—
- (a) the Authority considers it necessary to retain the thing because it may afford evidence in a proceeding that has been, or may be, commenced for an offence against this Act or the regulations; or
 - (b) the thing is forfeited to the Authority under section 265; or
 - (c) the Authority is otherwise authorised, whether by an Act or other law or by a court order, to retain, destroy or dispose of the thing.
- (2) The Authority may return the thing unconditionally or on such terms and conditions as the Authority considers appropriate to minimise risks of harm to human health or the environment from pollution or waste.
- (3) If the Authority imposes terms or conditions on the return of a thing, the owner must comply with the terms and conditions.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

265 Forfeiture of seized things

- (1) Any thing (including a document) that an authorised officer has seized and retained under this Part is forfeited to the Authority if the Authority—
 - (a) cannot find the owner despite making reasonable enquiries; or
 - (b) cannot return it to the owner despite making reasonable efforts; or
 - (c) considers it necessary to retain the thing to prevent the commission of an offence against this Act or the regulations.
- (2) If a thing is forfeited to the Authority under subsection (1)(c), the Authority must give the owner written notice and set out how the owner may apply to VCAT for review of the decision to forfeit the thing, unless the Authority cannot find the owner despite making reasonable enquiries.

S. 265
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Division 7—Offences relating to authorised officers

266 Obstruction of authorised officer

If an authorised officer is performing a function or duty or exercising a power under this Act, a person must not do any of the following—

- (a) hinder, delay or obstruct the authorised officer or any person assisting the authorised officer;
- (b) conceal from the authorised officer the location or existence of any person or thing;

S. 266
inserted by
No. 39/2018
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ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (c) use abusive, threatening or insulting language to the authorised officer or any person assisting the authorised officer.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 267
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

267 Assault, intimidation or threatening of authorised officer

If an authorised officer is performing a function or duty or exercising a power under this Act, a person must not do any of the following——

- (a) assault the authorised officer or any person assisting the authorised officer;
- (b) directly or indirectly intimidate or threaten the authorised officer or any person assisting the authorised officer;
- (c) attempt to assault, intimidate or threaten the authorised officer or any person assisting the authorised officer.

Penalty: In the case of a natural person, 2 years imprisonment, or 240 penalty units, or both;

In the case of a body corporate,
1200 penalty units.

Division 8—General

268 Protection against self-incrimination

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information, or do any other thing that the person is required to do, under this Part if the giving of the information or the doing of the thing would tend to incriminate the person.

S. 268
inserted by
No. 39/2018
s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce under this Part if the production of the document would tend to incriminate the person.

269 Motor vehicle compliance

If a police officer or an officer authorised under section 13 of the **Road Safety Act 1986** lawfully stops a motor vehicle, an authorised officer may conduct any inspection, measurement or test in relation to the motor vehicle, for the purpose of performing a function or duty or exercising a power under this Act.

S. 269
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No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Chapter 10—Notices

Ch. 10
(Headings
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298)
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s. 26).

Part 10.1—Simplified outline

Pt 10.1
(Heading and
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44, 47/2020
s. 26).

S. 270
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No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

270 Simplified outline—Chapter 10

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 10.2 enables the Authority to issue improvement and prohibition notices in circumstances where the Authority believes that a person—
 - (a) is contravening this Act; or
 - (b) is not complying with a permission under this Act; or
 - (c) is likely to cause harm to human health or the environment from pollution or waste.
- (3) Part 10.3 enables the Authority to issue notices to investigate and environmental action notices in circumstances where the Authority believes that—
 - (a) land is or may be contaminated; or

- (b) a pollution incident has occurred; or
 - (c) industrial waste is at a place or premises unlawfully; or
 - (d) there is a risk to human health or the environment arising from pollution or the depositing, storage or handling of waste.
- (4) Part 10.4 enables the Authority to issue a site management order in circumstances where the Authority believes that long-term management of the site is necessary because contamination, pollution or waste poses a risk of harm to human health or the environment.
- (5) Part 10.5 enables the Authority to issue non disturbance notices in order to facilitate the performance of its functions or exercise of its powers under this Act.
- (6) Part 10.6 deals with general matters relating to notices, such as amendment, notification and continuing effect of notices.
- (7) Part 10.7 enables the Authority to redirect obligations under a notice or order from a body corporate to a related entity or an officer of the body corporate.
- (8) Part 10.8 sets out the offences relating to notices and orders under this Chapter.
- (9) Part 10.9 enables the Authority—
- (a) to exercise clean up powers when it believes there is immediate or serious risk of harm to human health or the environment arising from pollution, waste or contamination; and
 - (b) to recover costs of conducting activities under this Chapter.

Part 10.2—Improvement and prohibition notices

Division 1—Improvement notices

Pt 10.2
(Headings
and ss 271,
272)
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No. 39/2018
s. 7 (as
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ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 271
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

271 Improvement notices

- (1) The Authority or an authorised officer may issue a person with an improvement notice if the Authority or authorised officer reasonably believes that the person—
 - (a) is contravening or has contravened a provision of this Act, the regulations or a subordinate instrument made under this Act;
or
 - (b) is not complying or has not complied with a permission issued or granted under this Act;
or
 - (c) has engaged in or proposes to engage in an activity that has caused or is likely to cause harm to human health or the environment from pollution or waste.
- (2) An improvement notice may require the person to whom it is issued—
 - (a) to take any action that the Authority or authorised officer reasonably considers necessary to remedy the contravention, or the matters or activities that are causing the contravention; or
 - (b) to remedy the activity that has caused or is likely to cause harm to human health or the environment from pollution or waste.

- (3) A requirement contained in an improvement notice may include directions as to the measures to be taken for the purpose of remedying the matters referred to in subsection (2), including but not limited to clean up measures.
- (4) An improvement notice must—
 - (a) specify the name and address of the person to whom the notice is issued; and
 - (b) state the grounds on which the notice is issued; and
 - (c) specify the actions that the person must take to comply with the notice; and
 - (d) specify the period within which the person must comply with the notice; and
 - (e) set out the penalty for failing to comply with the notice; and
 - (f) specify how the person may seek review of the decision to issue the notice.

Division 2—Prohibition notices

272 Prohibition notices

- (1) The Authority or an authorised officer may issue a person with a prohibition notice if the Authority or authorised officer reasonably believes—
 - (a) that the person—
 - (i) is contravening or has contravened a provision of this Act, the regulations or a subordinate instrument made under this Act; or
 - (ii) is not complying or has not complied with a permission granted under this Act; or

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No. 39/2018
s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (iii) has engaged in or proposes to engage in an activity that has caused or is likely to cause harm to human health or the environment from pollution or waste; and
 - (b) that, having regard to the immediacy of the risk and degree of harm that could occur, prohibiting the person from engaging in an activity is necessary to prevent or minimise any harm to human health or the environment from pollution or waste.
- (2) A prohibition notice may—
 - (a) prohibit the person to whom it is issued from engaging in the activity, whether or not the person is engaging in the activity at the time the notice is issued; and
 - (b) require the person to do any other thing that the Authority or authorised officer reasonably considers necessary to prevent or minimise the harm or risk of the harm.
- (3) A prohibition notice must—
 - (a) specify the name and address of the person to whom the notice is issued; and
 - (b) state the grounds on which the notice is issued; and
 - (c) specify the actions that the person must take to comply with the notice; and
 - (d) specify the date from which the prohibition takes effect and the period within which the person must do any other thing required by the notice; and

- (e) set out the penalty for failing to comply with the notice; and
- (f) specify how the person may seek review of the decision to issue the notice.

Pt 10.3
(Headings
and ss 273,
274)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 10.3—Notices to investigate and environmental action notices

Division 1—Notice to investigate

S. 273
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

273 Notice to investigate

- (1) The Authority or an authorised officer may issue a person referred to in subsection (2) with a notice to investigate if the Authority or the authorised officer reasonably believes any of the following circumstances exist—
 - (a) land is or may be contaminated;
 - (b) a pollution incident has occurred;
 - (c) industrial waste is at a place or premises unlawfully;
 - (d) there is a risk of harm to human health or the environment arising from pollution or the depositing, storage or handling of waste.
- (2) For the purposes of subsection (1), a notice to investigate may be issued to any of the following—
 - (a) the person who the Authority or authorised officer reasonably believes caused or permitted the circumstances which are the subject of the notice (the *relevant circumstances*);
 - (b) the current owner or occupier of the land at which the relevant circumstances exist;

- (c) the owner or occupier of the land at which the relevant circumstances exist, at the time the relevant circumstances first came into being.
- (3) A notice to investigate may require the person to whom it is issued to do any or all of the following—
- (a) investigate whether the relevant circumstances exist;
 - (b) investigate 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;
 - (c) to report to the Authority on, or provide the Authority with, any specified information regarding the investigation;
 - (d) conduct the investigation in the manner and within the time specified by the notice.
- (4) A notice to investigate must—
- (a) specify the name and address of the person to whom the notice is issued; and
 - (b) state the grounds on which the notice is issued; and
 - (c) specify the actions that the person must take to comply with the notice; and
 - (d) specify the period within which the person must comply with the notice; and
 - (e) set out the penalty for failing to comply with the notice; and
 - (f) specify how the person may seek a review of the decision to issue the notice.

Division 2—Environmental action notice

274 Environmental action notice

S. 274
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) The Authority or an authorised officer may issue a person referred to in subsection (2) with an environmental action notice if the Authority or the authorised officer reasonably believes any of the following circumstances exist—
 - (a) land is or may be contaminated;
 - (b) a pollution incident has occurred or is occurring that has caused, or is likely to cause, harm to human health or the environment;
 - (c) industrial waste is at a place or premises unlawfully;
 - (d) any other circumstances exist arising from pollution or the depositing, storage or handling of waste that have caused or are likely to cause harm to human health or the environment;
 - (e) a person referred to in subsection (2) was issued with a notice to investigate and has failed to comply with that notice.
- (2) For the purposes of subsection (1), an environmental action notice may be issued to any of the following—
 - (a) the person who the Authority or authorised officer reasonably believes caused or permitted the circumstances which are the subject of the notice (the *relevant circumstances*);
 - (b) the current owner or occupier of the land at which the relevant circumstances exist;

- (c) the owner or occupier of the land at which the relevant circumstances exist, at the time the relevant circumstances first came into being.
- (3) An environmental action notice must—
- (a) specify the name and address of the person to whom the notice is issued; and
 - (b) state the grounds on which the notice is issued; and
 - (c) specify the actions that the person must take to comply with the notice; and
 - (d) specify the period within which the person must comply with the notice; and
 - (e) set out the penalty for failing to comply with the notice; and
 - (f) specify how the person may seek a review of the decision to issue the notice.
- (4) The Authority or an authorised officer may specify in an environmental action notice any condition, requirement, restriction, performance standard or level that the Authority or the authorised officer thinks fit, including a requirement to do any or all of the following—
- (a) to take the clean up measures as specified in the notice;
 - (b) to take waste to a place or premises that may lawfully accept that waste;
 - (c) to cease accepting industrial waste at a place or premises where it cannot be lawfully accepted;
 - (d) to reduce stockpiles of waste at a place or premises;

- (e) to remediate contaminated land through active or passive measures, or a mixture of both;
 - (f) if the notice is issued in the circumstances of a person's failure to comply with a notice to investigate, to do any of the things specified in the notice to investigate that have not been done.
- (5) An environmental action notice applies notwithstanding anything to the contrary in—
- (a) the **Planning and Environment Act 1987** or any regulations, planning scheme or permit made, approved or granted under that Act; and
 - (b) the **Building Act 1993** or any regulations or permit made or granted under that Act.
- (6) A person in management or control of land may recover in a court of competent jurisdiction, as a debt due to the person, any reasonable costs incurred in complying with an environmental action notice, including any reasonable costs incurred by the person in taking action under this section, against any person responsible for causing or contributing to contamination of the land.

Part 10.4—Site management orders

Pt 10.4
(Heading and
ss 275–277)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

275 Site management orders

S. 275
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) Subject to subsection (4), the Authority may issue a site management order in respect of any site (other than a prescribed site) if the Authority reasonably believes that long-term management of the site is necessary because land on the site is contaminated, or there is harm or a risk of harm to human health or the environment from pollution or waste.
- (2) For the purposes of subsection (1), the Authority may consider harm that would be caused or would be likely to be caused if—
 - (a) an existing measure is not maintained or modified; or
 - (b) a new measure is not put in place; or
 - (c) a specific event, activity or land use takes place on the site.
- (3) A site management order may be issued to any of the following persons—
 - (a) the current owner or occupier of the site;
 - (b) in the case of a site that is on Crown land, the person that has the management or control of the land for the time being.

- (4) The Authority must consult with the Minister administering the **Mineral Resources (Sustainable Development) Act 1990** before issuing a site management order to a person in respect of—
- (a) a mine (within the meaning of that Act); or
 - (b) a site where extractive industry (within the meaning of that Act) is occurring or has occurred.
- (5) A site management order must—
- (a) describe the site to which it applies; and
 - (b) set out the grounds on which it is issued; and
 - (c) set out the measures to be undertaken.
- (6) A site management order may—
- (a) specify a time within which to undertake a measure; or
 - (b) specify that a measure must be undertaken until a specified event or circumstance occurs or a specified outcome is achieved; or
 - (c) not specify any time frame.
- (7) The measures that may be set out in a site management order include, but are not limited to, any of the following—
- (a) developing or implementing a plan for managing environmental risks on the site;
 - (b) installing management infrastructure or monitoring equipment;
 - (c) undertaking monitoring activities;
 - (d) reporting to the Authority or another specified person on specified matters at specified periods;

- (e) notifying the Authority or another specified person if a specified event occurs;
- (f) undertaking a specified course of action if a specified event occurs;
- (g) maintaining or increasing any management control measures that are already being undertaken on the site;
- (h) not carrying out, or allowing other persons to carry out, any specified activities on the site;
- (i) not using the site, or allowing other persons to use the site, for specified purposes;
- (j) long-term or passive remediation actions.

Note

The Authority can require the occupier of a site that is the subject of a site management order to make a financial assurance—see Part 8.4.

- (8) A site management order operates for the period specified in the order (if any) and may operate indefinitely.
- (9) The Authority may vary or revoke a site management order as it considers appropriate, either on its own motion or on application under section 277.
- (10) The Authority must revoke a site management order if it considers that long term management of the site is no longer necessary.
- (11) A person in management or control of land may recover in a court of competent jurisdiction, as a debt due to the person, any reasonable costs incurred in complying with a site management order, including any reasonable costs incurred by the person in taking action under this section, against any person responsible for causing or contributing to contamination of the land.

S. 276
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

276 Status of site management orders

- (1) A site management order is binding on—
 - (a) the owner, occupier or person that has the management or control of the land who is served with it; and
 - (b) each subsequent owner, occupier or person with the management or control of the land for the time being, as if each such person had been served with the site management order on becoming the owner, occupier or person with the management or control of the land.
- (2) A site management order is a statutory charge within the meaning of the **Transfer of Land Act 1958**, as if the Authority is the person who benefits from the statutory charge.
- (3) A site management order applies notwithstanding anything to the contrary in—
 - (a) the **Planning and Environment Act 1987** or any regulations, planning scheme or permit made, approved or granted under that Act; and
 - (b) the **Building Act 1993** or any regulations or permit made or granted under that Act.

S. 277
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

277 Application to vary or revoke site management order

- (1) A person who is bound by a site management order may apply to the Authority for the variation or revocation of the order on the following grounds—
 - (a) the measures specified in the order are not reasonably practicable or proportionate to the grounds specified in the order;
 - (b) long-term management of the site is no longer necessary.

- (2) An application under subsection (1) must be accompanied by the prescribed fee.

Part 10.5—Non-disturbance notices

Pt 10.5
(Heading and
s. 278)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 278
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

278 Power to issue a non-disturbance notice

- (1) The Authority or an authorised officer may issue a non-disturbance notice to a person who is or appears to be the occupier for the time being of a place or premises if the Authority or the authorised officer reasonably believes it is necessary to do so to facilitate the performance of functions or exercise of powers under this Act in relation to the place or premises.
- (2) A non-disturbance notice may require a person to—
 - (a) stop the use or movement of, or interference with, any specified plant, equipment, substance or other thing at the place or premises; and
 - (b) prevent the disturbance of the specified plant, equipment, substance or other thing or a specified area of the place or premises where the plant, equipment, substance or other thing is located.
- (3) A non-disturbance notice must specify the period (of no more than 7 days) for which it applies and set out—
 - (a) the obligations of the person to whom the notice is issued; and
 - (b) the penalty for contravening the notice; and

- (c) how the person may seek review of the issue of the notice.
- (4) The Authority or an authorised officer may issue one or more subsequent non disturbance notices to a person, whether before or after the expiry of the previous notice, each of which must comply with this section.

Part 10.6—General matters relating to notices

Pt 10.6
(Heading and
ss 279–282)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 279
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 280
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

279 Amendment of notices

The Authority or an authorised officer may, by notice in writing given to the person to whom a notice under Part 10.2 or 10.3 has been issued—

- (a) extend the period during which the person must comply with the notice if the Authority or authorised officer is satisfied that the circumstances of the case justify an extension of that period; and
- (b) revoke or amend any requirement specified in the notice.

280 Notification of notices

- (1) The occupier of any place or premises to whom a notice or an order has been issued under this Chapter and that is still in force must provide to any person who proposes to become the occupier of that place or premises as to—
 - (a) a copy of the notice or order; and
 - (b) details of the steps which have been taken (if any) to comply with the notice or order.
- (2) If a person becomes the occupier of any place or premises and the previous occupier did not comply with subsection (1), the current occupier may, within 12 months of becoming the occupier, recover from the previous occupier in a court of

competent jurisdiction any reasonable costs incurred in complying with any requirements contained in a notice or an order issued to the previous occupier that were not complied with.

281 Proceedings for offences not affected by notices

The issue, variation or cancellation of a notice or an order under this Chapter does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice or order was issued.

282 Continuing effect of notices and conditions

- (1) A notice or an order issued under this Act that specifies a time by which, or period within which, the notice or order, or a condition of the notice or order, must be complied with continues to have effect until the notice, order or condition is complied with even though the time has passed or the period has expired.
- (2) A notice or an order that does not specify a time by which, or period within which, the notice or order must be complied with continues to have effect until the notice or order is complied with.
- (3) This section does not apply to the extent that any requirement under a notice or an order is revoked.
- (4) Nothing in this section affects the powers of the Authority with respect to the enforcement of a notice or an order.

S. 281
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 282
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Pt 10.7
(Heading and
ss 283–285)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 10.7—Redirection of corporate obligations

S. 283
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

283 Redirection of obligations of related or associated entities

- (1) The Authority may by notice in writing direct a body corporate to comply, subject to any modification specified by the Authority, with a specified environmental action notice or site management order issued to a related entity or associated entity over which the body corporate had control (within the meaning of the Corporations Act) at the time the notice or order was issued if—
 - (a) the entity—
 - (i) is being or has been wound up within the 2-year period before the direction is made; or
 - (ii) has failed to comply with the environmental action notice or site management order; and
 - (b) the Authority is satisfied that the body corporate or an officer of the body corporate—
 - (i) knew or ought reasonably to have known of the circumstances that resulted in the issuing of the environmental action notice or site management order; and

- (ii) was in a position to influence the entity in relation to its compliance with the environmental action notice or site management order; and
 - (iii) in the case of a failure to comply with an environmental notice or site management order, failed to exercise due diligence to ensure that the entity complied with the environmental action notice or site management order.
- (2) If the Authority gives a direction under subsection (1) to a body corporate that is a corporation within the meaning of section 57A of the Corporations Act, the body corporate must comply with the environmental action notice or site management order, subject to any modification by the Authority.

284 Redirection of obligations to officers

- (1) The Authority may by notice in writing direct a person to comply, subject to any modification specified by the Authority, with a specified environmental action notice or site management order issued to a body corporate if—
- (a) the body corporate—
 - (i) is being or has been wound up within the 2-year period before the direction is made; or
 - (ii) has failed to comply with the environmental action notice or site management order; and
 - (b) the Authority is satisfied that—
 - (i) the person was an officer of the body corporate at the time the direction was issued; and

S. 284
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (ii) the person knew or ought reasonably to have known of the circumstances that resulted in the issuing of the environmental action notice or site management order; and
 - (iii) the person was in a position to influence the body corporate in relation to its compliance with the environmental action notice or site management order; and
 - (iv) in the case of a failure to comply with an environmental notice or site management order, the person failed to exercise due diligence to ensure that the body corporate complied with the environmental action notice or site management order; and
 - (v) it would not be oppressive, unjust or unreasonable for the Authority to give the direction.
- (2) If the Authority gives a direction under subsection (1) to a person, the person must comply with the environmental action notice or site management order, subject to any specified modification.

S. 285
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

285 Redirection of obligations in case of transfer of land

- (1) The Authority may by notice in writing direct a body corporate to comply, subject to any modification specified by the Authority, with a specified site management order issued to a related entity or associated entity if—
- (a) the body corporate transfers to the entity any land in relation to which the site management order requires an action to be taken within the 2-year period before the direction is made; and

- (b) the entity—
 - (i) is being or has been wound up within the 2-year period before the direction is made; or
 - (ii) has failed to comply with the site management order; and
 - (c) the Authority is satisfied that the body corporate or an officer of the body corporate knew or ought reasonably to have known—
 - (i) of the circumstances that resulted in the issuing of the site management order; and
 - (ii) that the entity was likely to be wound up, or was likely to fail to comply with the site management order.
- (2) If the Authority gives a direction under subsection (1) to a body corporate, the body corporate must comply with the site management order, subject to any specified modification.

Pt 10.8
(Heading and
ss 286–293)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 10.8—Offences relating to notices and orders

S. 286
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

286 Non-compliance with improvement notice

- (1) Subject to section 288, a person to whom an improvement notice is issued must not, without reasonable excuse, fail to comply with that notice.

Penalty: In the case of a natural person,
500 penalty units;

In the case of a body corporate,
2500 penalty units.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

S. 287
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

287 Non-compliance with prohibition notice

- (1) Subject to section 288, a person to whom a prohibition notice is issued must not, without reasonable excuse, fail to comply with that notice.

Penalty: In the case of a natural person,
500 penalty units;

In the case of a body corporate,
2500 penalty units.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

288 Failure to report

If an improvement notice or a prohibition notice requires the person to whom it is issued to report to the Authority on a specified matter, the person must not fail to comply with that requirement.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 288
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

289 Non-compliance with notice to investigate

- (1) Subject to subsection (2), a person to whom a notice to investigate is issued must not, without reasonable excuse, fail to comply with that notice.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

S. 289
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) A person to whom a notice to investigate is issued must not fail to comply with any reporting requirement specified in that notice.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 290
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

290 Non-compliance with environmental action notice

- (1) Subject to subsection (3), a person to whom an environmental action notice is issued must not, without reasonable excuse, fail to comply with that notice.

Penalty: In the case of a natural person,
500 penalty units;

In the case of a body corporate,
2500 penalty units.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

- (3) A person to whom an environmental action notice is issued must not fail to comply with any reporting requirement specified in that notice.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

291 Reasonable excuse where entry refused

It is a reasonable excuse to an offence under section 289 or 290 if entry to land was necessary for the person to comply with the notice and the occupier of the land refused the person entry.

S. 291
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

292 Non-compliance with site management order

- (1) Subject to subsection (2), a person who is bound by a site management order must not, without reasonable excuse, fail to comply with that order.

Penalty: In the case of a natural person,
500 penalty units;

In the case of a body corporate,
2500 penalty units.

S. 292
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) A person who is bound by a site management order must not fail to comply with any reporting requirement specified in that order.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (3) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

S. 293
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

293 Non-compliance with non-disturbance notice

- (1) A person to whom a non-disturbance notice has been issued must not, without reasonable excuse, fail to comply with the notice.

Penalty: In the case of a natural person,
500 penalty units;

In the case of a body corporate,
2500 penalty units.

Note

Section 314 provides that subsection (1) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

- (2) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Part 10.9—Clean up and cost recovery powers

Division 1—Clean up powers

294 Circumstances in which Authority may exercise clean up powers

- (1) Notwithstanding anything to the contrary in this Act, but subject to this Division, if the Authority considers that there is an immediate or serious risk of harm to human health or the environment arising from pollution, waste or contaminated land, the Authority may take any action that the Authority considers necessary to eliminate or reduce that risk, including, but not limited to, conducting a clean up or causing a clean up to be conducted.
- (2) Notwithstanding anything to the contrary in this Act, but subject to this Division, if—
 - (a) the Authority determines it has grounds to make a claim on a financial assurance under section 227(1)(a); and
 - (b) the Authority gives notice to the person who provided the assurance in accordance with section 295; and
 - (c) the person fails to complete the required activities within the time set out in section 295—

the Authority may take any action the Authority considers necessary to conduct the clean up activities required by this Act or the regulations,

Pt 10.9
(Headings
and ss 294–
298)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 294
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

including, but not limited to, conducting a clean up or causing a clean up to be conducted.

S. 295
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

295 Authority to give notice of intention to exercise clean up powers in case of financial assurance

Before the Authority takes action under section 294(2), the Authority must give the person who provided the financial assurance a written notice stating that—

- (a) the person has 20 business days (or such greater period as specified in the notice) to undertake certain clean up activities required by this Act or the regulations; and
- (b) if the person does not complete the required activities within the time stated in the notice, that the Authority will take action under this Division and may make a claim on the financial assurance for the reasonable costs of so doing.

S. 296
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

296 Matters relating to Authority entering land

- (1) This section applies if the Authority takes action under this Division.
- (2) The Authority may authorise a person and any person assisting that person to enter any land and do anything that in the Authority's opinion is necessary for the purpose of taking an action under this Division.
- (3) If it is necessary for an authorised person or a person assisting an authorised person to enter land under subsection (2), the Authority must, except in a case of emergency—
 - (a) if the land is private land, give reasonable notice of the entry to the owner and the occupier of the land; and

- (b) if the land is Crown land, give reasonable notice of the entry to the Crown land Minister; and
- (c) ensure that the person enters the land at a reasonable time; and
- (d) if the land is used only for residential purposes, obtain, or take all reasonable steps to obtain, the consent of the occupier of the land.

Division 2—Cost recovery powers

297 Cost recovery powers

- (1) The Authority may recover in any court of competent jurisdiction as a debt due to the Authority any reasonable costs incurred by the Authority in, or incidental to, taking any of the following actions—
 - (a) any action under Division 1;
 - (b) issuing—
 - (i) an improvement notice under Part 10.2; or
 - (ii) a prohibition notice under Part 10.2; or
 - (iii) an environmental action notice under Part 10.3; or
 - (iv) a site management order under Part 10.4;
 - (c) any action taken in connection with monitoring or enforcing compliance with a notice or order referred to in paragraph (b);
 - (d) any prescribed action.

S. 297
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (2) The Authority may recover reasonable costs under this section from any of the following persons—
- (a) the person who the Authority reasonably believes caused the circumstances that required the action to be taken (the *relevant circumstances*);
 - (b) the owner or occupier of the place or premises at which the relevant circumstances exist;
 - (c) a previous owner or occupier of the place or premises at which the relevant circumstances exist, at the time the relevant circumstances first came into being;
 - (d) a person issued with a notice or order referred to in subsection (1)(b).
- (3) For the purposes of this Division, reasonable costs includes but is not limited to the following costs, determined on such basis as the Authority considers appropriate and incurred as a result of or apportionable to any action taken by the Authority referred to in subsection (1)—
- (a) labour, administrative and overhead costs;
 - (b) legal costs, equipment costs and fees paid.
- (4) Any costs recovered under this Division are to be paid into the Consolidated Fund.

S. 298
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

298 Unrecovered costs can become charge on property

- (1) If the Authority cannot recover costs under this Division from an owner or occupier of a place or premises, the costs become a charge on the property of the occupier or the land of which the place or premises forms part (as the case may be) after an advertisement under subsection (2) has been published.

- (2) The advertisement must specify—
- (a) the purpose of the advertisement and the section of this Act under which it is made; and
 - (b) the amount in respect of which the charge is to be imposed; and
 - (c) if the property charged is land, the land on which the charge is to be imposed.
- (3) The Authority must publish the advertisement by—
- (a) if the property charged is land, displaying a copy of the advertisement on the land (if this is possible); and
 - (b) publishing the advertisement on the Internet site of the Authority; and
 - (c) publishing the advertisement in at least one other manner that the Authority considers appropriate.
- (4) If the property charged is land, the Authority may lodge with the Registrar of Titles a notice in accordance with section 106B of the **Transfer of Land Act 1958**.

Note

Section 106B of the **Transfer of Land Act 1958** provides for the manner of lodging a notice of a statutory charge.

- (5) The Registrar of Titles must make in the Register a recording of a notice lodged under this section.
- (6) Despite subsection (1), if the property charged is land, the charge does not take effect until the Registrar of Titles makes a recording of the charge in the Register.

- (7) If—
- (a) a charge on land under this section has existed for at least 12 months; and
 - (b) an amount is still owing under the charge—
- the Authority may serve a notice of intention to sell the land.
- (8) A notice under subsection (7) must—
- (a) be in writing; and
 - (b) be—
 - (i) displayed on the land (if this is possible); and
 - (ii) published on the Internet site of the Authority; and
 - (iii) published in at least one other manner that the Authority considers appropriate—not less than one month before the intended sale.
- (9) If the land to be sold is not under the **Transfer of Land Act 1958**, it must be brought under that Act before it is sold.
- (10) Section 77 of the **Transfer of Land Act 1958** applies to the sale as if—
- (a) the charge were a registered first mortgage registered in priority to other registered encumbrances; and
 - (b) the Authority were a mortgagee under that mortgage; and
 - (c) the owner of the land were a mortgagor under that mortgage; and
 - (d) the requirement relating to the giving of notice were deleted; and

- (e) subsection (3)(d) of that section of that Act were deleted.
- (11) If there is any amount left over from a sale of property after the Authority has deducted its charge and any costs associated with realising the charge, and the owner of the property cannot be found, the Authority must pay the amount to the Registrar of Unclaimed Money appointed under section 4 of the **Unclaimed Money Act 2008**.
- (12) Any money recovered by the Authority under a charge under this Division is to be paid into the Consolidated Fund.

Ch. 11
(Headings
and ss 299–
354)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Chapter 11—Enforcement and proceedings

Pt 11.1
(Heading and
s. 299)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 11.1—Simplified outline

S. 299
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

299 Simplified outline—Chapter 11

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 11.2 provides for the acceptance by the Authority of enforceable undertakings.
- (3) Part 11.3 provides for the issue of infringement notices under this Act.
- (4) Part 11.4 details civil remedies that are available to the Authority and eligible persons.
- (5) Part 11.5 provides for the Authority to apply to the Court for a civil penalty order in relation to contravention of a civil penalty provision.
- (6) Part 11.6 details the powers of Courts under this Act including the power to make various sentencing orders.

- (7) Part 11.7 sets out evidentiary and related enforcement provisions.
- (8) Part 11.8 provides for the liability of officers of corporations and the liability of corporations in relation to the conduct of its employees, agents or officers.
- (9) Part 11.9 sets out a general defence that applies to offences against, and contraventions of, provisions throughout this Act.

Part 11.2—Enforceable undertakings

Pt 11.2
(Heading and
ss 300–306)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

300 Authority may accept enforceable undertaking

S. 300
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) The Authority may accept an enforceable undertaking from a person in connection with—
 - (a) any matter the Authority has a function in relation to by operation of this Act or the regulations, or any other Act or the regulations made under any other Act; or
 - (b) any matter the Authority has a power over by operation of this Act or the regulations, or any other Act or the regulations made under any other Act.
- (2) An enforceable undertaking accepted by the Authority under subsection (1) must be in writing and signed by the Authority and the person offering the undertaking.
- (3) A person may withdraw or vary an enforceable undertaking accepted by the Authority under subsection (1) with the consent of the Authority.

301 Enforcement

S. 301
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) The Authority may apply to the Court for an enforcement order under subsection (2) if the Authority considers that a person has breached an enforceable undertaking.

- (2) If the Court is satisfied a person has breached an enforceable undertaking, the Court may make any of the following orders—
- (a) an order directing the person to comply with the enforceable undertaking;
 - (b) an order that the person take any specified action for the purpose of complying with the enforceable undertaking;
 - (c) an order that the person take any specified action to minimise risks of harm to human health or the environment resulting from the breach of the enforceable undertaking;
 - (d) an order that the person pay an amount in compensation to the Authority for any costs reasonably incurred by the Authority in taking any action to minimise risks of harm to human health or the environment resulting from the breach of the enforceable undertaking;
 - (e) an order that the person pay an amount in compensation to any other person who has suffered loss or damage as a result of the breach;
 - (f) an order that the person pay an amount pursuant to a monetary benefits order;
 - (g) an order revoking the enforceable undertaking;
 - (h) any other order that the Court considers appropriate in the circumstances.

S. 302
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

302 Authority may take specified actions

- (1) If a person fails to comply with an order to take specified actions made under section 301(2), the Authority may take the specified actions.
- (2) The Authority must not take any specified actions under subsection (1) unless—
 - (a) the Authority gives the person written notice advising that the Authority intends to take the specified actions; and
 - (b) the Authority invites the person to provide the following within a specified period, being 10 business days after the day the notice is given—
 - (i) proof that satisfies the Authority that the person has taken the specified actions;
 - (ii) such reasons that satisfy the Authority that the person will carry out the specified actions within a period specified by the Authority as acceptable for carrying out the specified actions; and
 - (c) the person given the notice fails to—
 - (i) carry out the specified actions within 10 business days after the day the notice is given or the final day of the period specified by the Authority as acceptable for carrying out the specified actions (whichever is the later); or
 - (ii) give the Authority a response satisfying the Authority that the person will carry out the specified actions within 10 business days after the day the notice is given or the final day of the

period specified by the Authority as acceptable for carrying out the specified actions (whichever is the later).

- (3) In taking any action under subsection (1), the Authority—
- (a) may do any thing that is necessary or expedient to carry out any action that remains to be done under the order and that is still practicable; and
 - (b) may publicise the failure of the person to comply with the order.
- (4) The Authority may recover any cost reasonably incurred in taking specified actions under this section as a debt due and payable by the person against whom the order was made under section 301(2).

303 No criminal proceedings while enforceable undertaking in force

If the Authority accepts an enforceable undertaking in relation to a contravention or alleged contravention of this Act or the regulations, or any other Act or the regulations made under any other Act, while the enforceable undertaking is in force, the Authority must not commence criminal proceedings for an offence that is constituted by the contravention or alleged contravention that the undertaking is given in relation to.

S. 303 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

304 Proceedings following withdrawal of enforceable undertaking

If the Authority accepts an enforceable undertaking in relation to a contravention or alleged contravention of this Act or the regulations, or any other Act or the regulations made under any other Act and the person

S. 304 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

withdraws the enforceable undertaking before the Authority is satisfied the enforceable undertaking has been complied with, the Authority may commence proceedings for any offence that is constituted by the contravention or alleged contravention that the undertaking is given in relation to.

S. 305
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

305 No further proceedings if enforceable undertaking is complied with

If the Authority accepts an enforceable undertaking in relation to a contravention or alleged contravention of this Act or the regulations, or any other Act or the regulations made under any other Act and the Authority is satisfied the enforceable undertaking has been complied with, the Authority must not commence criminal proceedings for an offence that is constituted by the contravention or alleged contravention that the undertaking is given in relation to.

S. 306
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

306 Contempt of court

- (1) Nothing in section 302 prevents the commencement or continuation of contempt of court proceedings against a person who fails to comply with an order under section 301(2).
- (2) If a person is found in contempt of court for failing to comply with an order under section 301(2), the Authority—
 - (a) may do any thing that is necessary or expedient to carry out any action that remains to be done under the order and that is still practicable; and
 - (b) may publicise the failure of the person to comply with the order.

- (3) The Authority may recover any costs reasonably incurred in taking a specified action under this section as a debt due and payable by the person against whom the order was made under section 301(2).

Part 11.3—Infringement notices

Pt 11.3
(Heading and
s. 307)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 307
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

307 Infringement notices

- (1) A prosecution officer may serve an infringement notice on a person who the prosecution officer reasonably believes has committed a prescribed offence or an offence against section 64.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The infringement penalty for an offence referred to in subsection (1) is the prescribed infringement penalty in respect of that offence.
- (4) In this section, *prosecution officer* means—
 - (a) in relation to an infringement offence other than an offence that relates to noise from residential premises, a person appointed under section 347 to take proceedings for offences against this Act or the regulations; or
 - (b) in relation to an infringement offence under section 167(1) or 175(4), a residential noise enforcement officer or a police officer; or
 - (c) in relation to an offence under section 172(6), a residential noise enforcement officer; or
 - (d) in relation to an infringement offence under section 169(3), a police officer; or

- (e) in relation to an infringement offence under Part 6.3, a litter enforcement officer; or
- (f) in relation to an offence against section 64, the Authority or an authorised officer.

Part 11.4—Civil remedies

Pt 11.4
(Heading and
ss 308–313)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 308
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

308 Eligible persons

(1) In this Part—

eligible person, in relation to an application under this Part, means a person—

- (a) whose interests are affected by the contravention or non-compliance in relation to which the application is made; or
 - (b) who has the leave of the Court to make the application.
- (2) The Court must not give a person leave to make an application for the purposes of subsection (1)(b) unless the Court is satisfied that—
- (a) the application would be in the public interest; and
 - (b) the person has requested in writing that the Authority take enforcement action or compliance action in relation to the contravention or non-compliance; and
 - (c) the Authority has not, within a reasonable time after receiving that request, taken enforcement action or compliance action.

- (3) An eligible person must not apply to the Court for an order under this Part before the day that is the anniversary of the day on which the **Environment Protection Act 1970** is repealed.
- (4) Nothing in this Part prevents or limits an eligible person from applying for any injunction or order under any other Act or law.

309 Court orders

- (1) On an application by the Authority or an eligible person, a Court may make an order restraining a person from engaging in specified conduct or requiring a person to take any specific action, in such terms as the Court considers appropriate, if the Court is satisfied that a person—
 - (a) is not complying or has not complied with a permission issued or granted under this Act; or
 - (b) is contravening or has contravened any other requirement or duty imposed on the person by or under this Act.
- (2) Without limiting subsection (1), an order under that subsection may—
 - (a) require a person to do a specified act or thing that the Court considers reasonably necessary to prevent, minimise or remedy the contravention or non-compliance; or
 - (b) require a person to provide a financial assurance as a condition for engaging in specified conduct.
- (3) The Authority or an eligible person may apply for an order under subsection (1) whether or not proceedings have been taken for—
 - (a) an offence against this Act or the regulations; or

S. 309
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (b) a contravention of a civil penalty provision under this Act.
- (4) The power of a Court to grant an order under subsection (1) may be exercised whether or not the contravention or non-compliance—
 - (a) is likely to result in harm to any person or the environment; or
 - (b) is likely to result in an infringement of the rights of any person.
- (5) An application for an order under subsection (1) may be made ex parte.

S. 310
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

310 Interim orders

- (1) On the application of the Authority or an eligible person, a Court may make an interim order, in such terms as the Court considers appropriate, pending the determination of an application under section 309.
- (2) An application for an interim order under subsection (1) may be made ex parte.
- (3) If the Court has determined to grant an interim order under subsection (1), the Court must not, as a condition of granting the interim order, require the Authority to give any undertaking as to damages or costs.

S. 311
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

311 Consent orders

The Court may make an order under section 309 restraining a person from engaging in specified conduct or requiring a person to take any specific action whether or not the Court is satisfied that the person has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention or non-compliance as required by section 309 if all parties to the proceeding consent to the making of the order.

312 Ancillary orders

On making an order under section 309, 310 or 311, the Court may make any ancillary order it considers appropriate to enable the order to be given effect.

S. 312
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

313 Compensation orders

- (1) In any proceedings for an offence against, or a contravention of, this Act or the regulations (including an application under section 309), a Court may make a compensation order if the Court finds that—
 - (a) the person against whom the proceedings were taken has contravened a provision of this Act or the regulations or a condition of a permission or notice issued or granted under this Act; and
 - (b) the Authority or another person (the *injured person*) has suffered or may suffer injury, loss or damage as a result of the contravention.
- (2) Without limiting subsection (1), an order under that subsection may require the person against whom the proceedings are brought to pay compensation to the Authority or the injured person for—
 - (a) any injury, loss or damage suffered by the Authority or the injured person as a result of the contravention; or
 - (b) any costs reasonably incurred by the Authority or the injured person in the course of taking action to prevent, minimise or remedy any injury, loss or damage suffered

S. 313
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- by the Authority or the injured person as a result of the contravention; or
- (c) any costs reasonably incurred by the Authority in the course of taking action to prevent, minimise or remedy any harm to human health or the environment caused by the contravention.

Part 11.5—Civil penalties

Pt 11.5
(Heading and
ss 314–326)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

314 Civil penalty provision

S. 314
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) A provision of this Act that is set out in the table to subsection (3) is a civil penalty provision.
- (2) Subject to this Part, the Authority may (in addition or as an alternative to, a criminal proceeding or an order under Division 2 of Part 11.6) apply to a Court for a civil penalty order in relation to a contravention of a civil penalty provision set out in column 2 of an item of the table to subsection (3).
- (3) The Court may only make a civil penalty order or an order under Division 2 of Part 11.6 in relation to a person's contravention of a civil penalty provision referred to in item 1 or 3 of the table if the person—
 - (a) contravenes that civil penalty provision in the course of conducting a business or an undertaking; or
 - (b) is an officer of a body corporate who contravenes that civil penalty provision in the course of conducting a business or an undertaking and the person contravenes the civil penalty provision as a result of Part 11.8.

Environment Protection Act 2017
No. 51 of 2017
Part 11.5—Civil penalties

Table

| <i>Item</i> | <i>Civil penalty provision</i> | <i>Maximum penalty for contravention by a natural person</i> | <i>Maximum penalty for contravention by a body corporate</i> |
|-------------|--|--|--|
| 1. | Section 25(1) (Breach of general environmental duty) | 2000 penalty units | 10 000 penalty units |
| 2. | Section 28(1) (Breach of duty not to engage in conduct that results in material harm) | 2000 penalty units | 10 000 penalty units |
| 3. | Section 32(2) (Failure to notify Authority of notifiable incident) | 240 penalty units | 1200 penalty units |
| 4. | Section 40(1) (Failure of person in management or control to notify the Authority of notifiable contamination) | 120 penalty units | 600 penalty units |
| 5. | Section 44(1) (Engaging in a specified activity without a development licence) | 2000 penalty units | 10 000 penalty units |
| 6. | Section 45(1) (Engaging in a prescribed operating activity without an operating licence) | 2000 penalty units | 10 000 penalty units |
| 7. | Section 46(1) (Engaging in a prescribed permit activity without a permit) | 1000 penalty units | 5000 penalty units |
| 8. | Section 47(1) (Engaging in a prescribed registration activity without a registration) | 500 penalty units | 2500 penalty units |
| 9. | Section 63(1) (Breach of condition of licence) | 2000 penalty units | 10 000 penalty units |

Environment Protection Act 2017
No. 51 of 2017
Part 11.5—Civil penalties

| <i>Item</i> | <i>Civil penalty provision</i> | <i>Maximum penalty for contravention by a natural person</i> | <i>Maximum penalty for contravention by a body corporate</i> |
|-------------|---|--|--|
| 10. | Section 63(2) (Breach of condition of permit) | 1000 penalty units | 5000 penalty units |
| 11. | Section 63(3) (Breach of condition of a registration) | 500 penalty units | 2500 penalty units |
| 12. | Section 88(2) (Prohibited person engaging in an activity prescribed for the purposes of section 88) | 240 penalty units | 1200 penalty units. |
| 13. | Section 133(1) (Unlawful deposit of industrial waste) | 2000 penalty units | 10 000 penalty units |
| 14. | Section 133(2) (Deposit of industrial waste without consent of holder of permission or occupier) | 2000 penalty units | 10 000 penalty units |
| 15. | Section 134(1) (Unlawful receipt of industrial waste) | 2 000 penalty units | 10 000 penalty units |
| 16. | Section 135(2) (Failure by person in management or control of industrial waste to take reasonable steps in relation to transporting industrial waste) | 2 000 penalty units | 10 000 penalty units |
| 17. | Section 137(1) (Provision of false or misleading information in connection with industrial waste) | 500 penalty units | 2500 penalty units |
| 18. | Section 139(1) (Failure to classify priority waste by person in management or control) | 120 penalty units | 600 penalty units |

Environment Protection Act 2017
No. 51 of 2017
Part 11.5—Civil penalties

| <i>Item</i> | <i>Civil penalty provision</i> | <i>Maximum penalty for contravention by a natural person</i> | <i>Maximum penalty for contravention by a body corporate</i> |
|-------------|---|--|--|
| 19. | Section 139(2) (Failure by person in management or control to take reasonable steps in relation to priority waste) | 120 penalty units | 600 penalty units |
| 20. | Section 142(1) (Failure to record or provide the prescribed transaction details in connection with reportable priority waste) | 240 penalty units | 1200 penalty units |
| 21. | Section 143(1) (Improper transport of reportable priority waste) | 240 penalty units | 1200 penalty units |
| 22. | Section 155(1) (Failure to comply with order relating to environmentally hazardous substances) | 500 penalty units | 2500 penalty units |
| 23. | Section 168 (Emit or permit noise that is prescribed to be aggravated noise) | 500 penalty units | 2500 penalty units |
| 24. | Section 215(1) (Environmental auditor issuing false or misleading preliminary risk screen assessment statement or environmental audit statement) | 500 penalty units | |
| 25. | Section 216(1) (Failure of environmental auditor to notify the Authority of imminent state of danger) | 500 penalty units | |

Environment Protection Act 2017
No. 51 of 2017
Part 11.5—Civil penalties

| <i>Item</i> | <i>Civil penalty provision</i> | <i>Maximum penalty for contravention by a natural person</i> | <i>Maximum penalty for contravention by a body corporate</i> |
|-------------|--|--|--|
| 26. | Section 286(1) (Failure to comply with improvement notice) | 500 penalty units | 2500 penalty units |
| 27. | Section 287(1) (Failure to comply with prohibition notice) | 500 penalty units | 2500 penalty units |
| 28. | Section 289(1) (Failure to comply with notice to investigate) | 120 penalty units | 600 penalty units |
| 29. | Section 290(1) (Failure to comply with environmental action notice) | 500 penalty units | 2500 penalty units |
| 30. | Section 292(1) (Failure to comply with site management order) | 500 penalty units | 2500 penalty units |
| 31. | Section 293(1) (Failure to comply with non-disturbance notice) | 500 penalty units | 2500 penalty units |
| 32. | Section 463(2) (Providing false or misleading information or a document or conceal information or a document) | 500 penalty units | 2500 penalty units |

315 Civil penalty orders

- (1) The Court may make one or more of the following orders in relation to a person who has contravened a civil penalty provision—
- (a) an order that the person pay a pecuniary penalty of not more than the maximum penalty referred to in column 3 or 4 of the

S. 315
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No. 39/2018
s. 7 (as
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Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- item of the table in section 314 in respect of the civil penalty provision;
- (b) any other order that the Court considers appropriate.
- (2) For the purposes of determining the amount of a civil penalty order under this Part, the Court may have regard to any relevant matter including, but not limited to the following—
- (a) the nature and extent of the conduct constituting the contravention;
- (b) the nature and extent of any loss or damage suffered as a result of the conduct including the cost of remedying any harm;
- (c) the circumstances in which the contravention took place;
- (d) whether the person who contravenes a civil penalty provision had previously contravened a civil penalty provision;
- (e) any enforceable undertaking that is accepted by the Authority in relation to the conduct.
- (3) Nothing in this section is to be construed as limiting any other power of the Court.
- (4) Proceedings under this provision are civil proceedings for all purposes.

S. 316
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

316 Persons involved in contravening civil penalty provision

- (1) A person must not—
- (a) attempt to contravene a civil penalty provision; or
- (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
- (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or

(d) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or

(e) conspire to contravene a civil penalty provision.

(2) This Act applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

317 Further orders for contravening civil penalty provision

The Court may make an order under Division 2 of Part 11.6 against a person for conduct that is the same, or substantially the same, as conduct that may constitute the contravention of a civil penalty provision regardless of whether the Court has previously made a civil penalty order against the person in relation to the contravention.

S. 317 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

318 Civil proceedings after criminal proceedings

The Court must not make a civil penalty order against a person if the person who contravened a civil penalty provision has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.

S. 318 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

319 Criminal proceeding during proceeding for a civil penalty order

(1) Proceedings for a civil penalty order against a person for the contravention of a civil penalty provision are stayed if—

(a) criminal proceedings are instituted or have already been instituted against the person for an offence; and

S. 319 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) If a person referred to in subsection (1)—

(a) is not convicted of the offence—the proceedings for the civil penalty order may be resumed; or

(b) is convicted of the offence—the proceedings for the civil penalty order are dismissed.

S. 320
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

320 Criminal proceeding commenced after proceeding for civil penalty order

Criminal proceedings may be instituted against a person for conduct that is substantially the same as conduct constituting the contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

S. 321
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

321 Evidence given or produced during proceeding for civil penalty order

(1) Evidence of information given or evidence of documents produced by an individual is not admissible in criminal proceedings against the person if—

(a) the person previously gave the evidence or produced the documents in proceedings for a civil penalty order against the person for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

(2) Subsection (1) does not apply to criminal proceedings in respect of the falsity of the evidence given by the person in the proceedings for the civil penalty order.

322 Conduct contravening more than one civil penalty provision

- (1) If a person contravenes 2 or more civil penalty provisions, a proceeding for a civil penalty order may be commenced against the person in relation to the contravention of any one or more of those civil penalty provisions.
- (2) Despite subsection (1), a person is not liable to pay more than one civil penalty in relation to the same conduct.

S. 322
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

323 Multiple contraventions of civil penalty provisions

- (1) Subject to subsection (2), the Court may order that a person pay a single civil penalty for multiple contraventions of a civil penalty provision if—
 - (a) the multiple contraventions are based on the same facts; or
 - (b) the multiple contraventions form, or are part of, a series of contraventions of the same or a similar nature.
- (2) A single civil penalty ordered under subsection (1) must not exceed the sum of the maximum penalties that the Court may have ordered if separate civil penalties were ordered for each of the contraventions.

S. 323
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

324 Multiple proceedings for civil penalty order to be heard together

The Court may direct that 2 or more proceedings for a civil penalty order are to be heard together.

S. 324
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 325
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

325 Jurisdictional limit of Magistrates' Court does not apply to civil penalty order

The jurisdictional limit for a civil proceeding specified under section 100(1) of the **Magistrates' Court Act 1989** does not apply to a proceeding for a civil penalty order under this Part.

S. 326
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

326 Recovery of a pecuniary penalty

If the Court orders a person to pay a civil penalty for the contravention of a civil penalty provision, the order is enforceable as a judgment debt.

Part 11.6—Powers of Courts

Division 1—Application of Part 11.6

327 Application of Part 11.6

This Part applies if, in civil or criminal proceedings—

- (a) a person is convicted or found guilty of an offence against this Act or the regulations; or
- (b) a person is found to have contravened a civil penalty provision.

Division 2—Orders

328 General

- (1) The Court may make an order under this Division in addition to, or instead of, any other penalty that the Court may impose on the person under this Act.

Note

See section 313 for the Court's power to make a compensation order.

- (2) The amount of money that the Court may order a person to pay under this Division is not limited by—
 - (a) any penalty that may be imposed under this Act; or
 - (b) the jurisdictional limit for a civil proceeding specified under section 100(1) of the **Magistrates' Court Act 1989**.

Pt 11.6
(Headings
and ss 327–
336)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 327
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 328
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (3) The Court may make an order under this Division on the application of the Authority or on its own motion.
- (4) In making an order, the Court may specify the period within which specified actions must be taken and may impose any other requirement that the Court considers necessary or expedient to make the order effective.

S. 329
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

329 Monetary benefit orders

- (1) The Court may order the person to pay an amount not exceeding the amount that the Court is satisfied on the balance of probabilities represents the amount of any monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence or contravention in relation to which the order is made.
- (2) When determining an amount that the person must pay under an order under subsection (1), the Court may take into account—
 - (a) the person's financial circumstances; and
 - (b) any amount submitted to the Court by the Authority under subsection (3).
- (3) The Authority may submit to the Court the amount the Authority considers to be a reasonable estimate of the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence or contravention in relation to which the order under subsection (1) is sought, as determined in accordance with—
 - (a) a prescribed guideline, method or protocol;
or
 - (b) any other method the Authority considers appropriate.

- (4) For the purposes of subsection (1), the Court may assume that an amount represents the amount of any monetary benefits acquired by a person, or accrued or accruing to the person, as a result of the commission of an offence or contravention if—
- (a) the Authority submits that amount to the Court under subsection (3); and
 - (b) the Authority determined that amount in accordance with a prescribed guideline, method or protocol.
- (5) Nothing in this section or an order made under subsection (1) limits or otherwise affects the operation of Part 8 of the **Confiscation Act 1997**.
- (6) Any amount received as the payment of an order made under subsection (1) must be paid into the Consolidated Fund.
- (7) In this section—
- monetary benefits* means monetary, financial or economic benefits and includes any monetary, financial or economic benefit the person acquires or accrues by avoiding or delaying the person's compliance with the provision, condition or duty to which the person's offence or contravention relates.

330 Adverse publicity orders

The Court may order the person to do one or more of the following—

- (a) take any specified action that the Court considers reasonably necessary to publicise—
 - (i) the person's offence or contravention;
 - or

S. 330
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (ii) any impacts on human health or the environment or other consequences arising or resulting from the offence or contravention; and
 - (iii) any penalties imposed, or other orders made, as a result of the commission of the offence or contravention; and
 - (iv) any additional information the Court considers appropriate;
- (b) take any specified action that the Court considers reasonably necessary to notify a specified person or class of person of the matters listed in paragraph (a).

S. 331
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

331 General restoration and prevention orders

- (1) The Court may order the person to take any specified action that the Court considers reasonably necessary—
- (a) to prevent, minimise or remedy any harm caused by the offence or contravention; or
 - (b) to eliminate or reduce the risk of harm caused by the offence or contravention; or
 - (c) to prevent any continuation or recurrence of the offence or contravention.
- (2) Without limiting subsection (1), an order under that subsection may require the person to do one or more of the following—
- (a) establish an education and training program, or compliance program, for the person's employees or other persons involved in the person's business or undertaking in relation to the offence or contravention;
 - (b) revise the internal operations of the person's business or undertaking that led to the offence or contravention;

- (c) provide a financial assurance as a condition for engaging in specified conduct.

332 Restorative project orders

- (1) The Court may order the person to carry out a project for the restoration or enhancement of the environment in a public place or for the public benefit, whether or not the project is related to the offence or contravention.
- (2) Without limiting subsection (1), an order under that subsection may require the person to pay an amount of money, for the carrying out of a project for the restoration or enhancement of the environment in a public place or for the public benefit, to—
- (a) a specified person or organisation; or
- (b) the Restorative Project Account.

S. 332 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

333 Environmental audit orders

The Court may order the person to engage an environmental auditor to conduct a preliminary risk screen assessment or an environmental audit.

S. 333 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

Division 3—Enforcement of orders

334 Enforcement of orders

- (1) If a person is found in contempt of court for failing to comply with an order made under Division 2, the Authority—
- (a) may do anything that is necessary or expedient to carry out any action that remains to be done under the order and that it is still practicable to do; and
- (b) may publicise the failure of the person to comply with the order.

S. 334 inserted by No. 39/2018 s. 7 (as amended by Nos 27/2019 ss 12–30, 3/2020 ss 42–44, 47/2020 s. 26).

- (2) If a person fails to comply with an order made under section 330 or 333, the Authority may give the person a written notice advising the person that it intends to carry out specified actions that remain to be done under the order unless the person can, within 10 business days after being given the notice, satisfy it that the person will carry out those actions within a period of time acceptable to the Authority.
- (3) If a person who has been given notice under subsection (2) fails to give the Authority a satisfactory response within the 10 business days, or fails to comply with any undertaking given to the Authority in response to such a notice, the Authority—
 - (a) may do anything that is necessary or expedient to carry out any action that remains to be done under the order and that it is still practicable to do; and
 - (b) may publicise the failure of the person to comply with the order.
- (4) Nothing in subsection (2) or (3) prevents contempt of court proceedings from being started or continued against a person who has failed to comply with an order made under Division 2.
- (5) The Authority may recover any cost it incurs in taking action under subsection (1) or (3) as a debt due and payable by the person against whom the order was made.

Division 4—Impact statements

335 Court may consider impact statements

- (1) If the Court considers it appropriate for the person or organisation to do so, a person or an organisation may make a statement to the Court for the purpose of assisting the Court in determining—
 - (a) the sentence for an offence against this Act or the regulations; or
 - (b) the penalty for the contravention of a civil penalty provision; or
 - (c) whether the Court should make an order under this Act and, if so, the conditions that should be imposed on the order.
- (2) A statement made under subsection (1) may include any information relevant to—
 - (a) the impact of the offence or contravention on the environment; or
 - (b) the risk of harm to human health or the environment caused by the offence or contravention; or
 - (c) any injury, loss or damage caused by the offence or contravention; or
 - (d) the impact of the offence or contravention on any person, organisation or community including, but not limited to, the impact on any environmental value.
- (3) Nothing in this section limits or otherwise affects the ability of a person or body to make a victim impact statement under the **Sentencing Act 1991**.

S. 335
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Division 5—Restorative justice processes

336 Adjournment of proceedings for restorative justice process

S. 336
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) A Court may at any time adjourn civil or criminal proceedings under this Act so that a restorative justice process may be conducted.
- (2) The Court may adjourn proceedings under subsection (1) of its own motion or on the application of a party to the proceedings.
- (3) A Court may consider the outcome of a restorative justice process when making any determination for the purposes of the proceedings including, but not limited to—
 - (a) determining a sentence or penalty; or
 - (b) determining whether to make an order under this Act or the conditions to be imposed on such an order.
- (4) In this section—

relevant parties means—

 - (a) the parties to the proceedings; and
 - (b) any person or body that all parties to the proceedings agree may participate in a restorative justice process, including but not limited to the following—
 - (i) any person or body affected by the alleged offence or contravention;
 - (ii) any person or body that the parties agree represents the interests of the environment or any part of the environment;

restorative justice process means any process by which the relevant parties seek an agreed resolution of a matter arising from the alleged offence or contravention.

Pt 11.7
(Heading and
ss 337–348)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 11.7—Evidentiary and related enforcement provisions

S. 337
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

337 Reports and certificates

- (1) An analyst who carries out an analysis may prepare and sign a certificate in writing of the analysis.
- (2) An authorised officer who, for the purposes of this Act or the regulations, does any of the following things—
 - (a) takes a measurement, recording or sample;
 - (b) conducts an inspection, calculation or test;
 - (c) analyses recordings of noise emissions;
 - (d) inspects and evaluates the records of monitoring equipment, or of other equipment or installations—may prepare and sign a report in writing about the thing done.
- (3) If an authorised officer inspects monitoring equipment, or other equipment or installations, the authorised officer may give a report in writing to the Authority stating—
 - (a) the possible offences against this Act or the regulations detected and recorded by the equipment or installations; and

- (b) the information supplied by the equipment or installations, and the officer's evaluation of that information.
- (4) An authorised officer or a police officer who observes or inspects a motor vehicle may sign a report to the effect that—
 - (a) the motor vehicle did not comply with a provision of this Act or the regulations; or
 - (b) the motor vehicle was used on a highway; or
 - (c) a specified person was the driver of the motor vehicle.
- (5) A police officer, or an officer authorised under section 13 of the **Road Safety Act 1986**, who stopped a motor vehicle being used on a highway may sign a report to the effect that—
 - (a) the police officer or the officer lawfully stopped the motor vehicle; and
 - (b) the motor vehicle was being used on a highway.

338 Certificate concerning ownership of vehicle or vessel

In proceedings against a registered owner of a vehicle or vessel, a certificate from—

- (a) the Roads Corporation or the Director, Transport Safety; or
- (b) a corresponding person or body in the Commonwealth or another State or a Territory—

stating that a person was the registered owner of a vehicle or vessel on a specified date is evidence that that person was the registered owner of the vehicle or vessel on that date.

S. 338
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 339
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

339 Certificate concerning litter offences

- (1) In proceedings under Part 6.3, a certificate given by a litter authority stating—
 - (a) that a specified person is, or was on a specified date, a litter enforcement officer; or
 - (b) that land is, or was on a specified date, or that waters are, or were on a specified date, under the control or management of the litter authority—

is evidence of that fact.

- (2) All Courts and persons acting judicially—
 - (a) must take judicial notice of the signature or seal of a litter authority affixed to the certificate; and
 - (b) must, until the contrary is proved, presume that the signature or seal was properly affixed.

S. 340
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

340 Reports and certificates to be served with summons

- (1) This section applies if a person (the *accused*) is served with a summons to answer to a charge of an offence against this Act or the regulations.
- (2) A copy of a report or certificate under this Act that the prosecutor intends to use in the proceedings for the offence must be served with the summons.
- (3) Service of a copy of a report or certificate with the summons may be proved in any manner in which service of the summons may be proved.
- (4) If the accused does not give at least 7 days' notice in writing before the hearing that the accused requires the person giving the report or certificate to be called as a witness, the report or certificate is sufficient evidence of the facts stated in it.

341 Statement to be evidence of authority

A statement in writing purporting to be signed by the Authority is prima facie evidence of the matters stated in it, if it is to the effect—

- (a) that a specified person has been appointed by the Authority—
 - (i) as an authorised officer; or
 - (ii) as an analyst; or
 - (iii) to take proceedings for offences against this Act or the regulations; or
- (b) that a specified person was served with a notice under this Act and failed to comply with that notice; or
- (c) that a specified person has not been appointed by the Authority as an authorised officer; or
- (d) that an exemption has been granted, or one or more conditions have been imposed, or that a variation or revocation of a condition or exemption has been made under this Act; or
- (e) that a permission of a specified kind was, or was not, granted under this Act to a specified person; or
- (f) that no exemption of a specified kind has been granted under this Act in favour of a specified person; or
- (g) that a document, a copy of which is attached to the statement, is a document referred to in a regulation or other instrument under this Act; or
- (h) that a public statement or a public warning made by the Authority was published under section 454; or

S. 341
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (i) that a document was or was not lodged with, received by or served on the Authority.

S. 342
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

342 Judicial notice of signatures

All Courts and persons acting judicially—

- (a) must take judicial notice of—
 - (i) the signature or facsimile signature of the Chairperson affixed to any document; and
 - (ii) the signature or facsimile signature of any officer of the Authority to whom for the time being the Authority has delegated power to sign a document; and
 - (iii) the signature or facsimile signature of any authorised officer; and
- (b) must, until the contrary is proved, presume that the signature was properly affixed.

S. 343
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

343 Evidence

- (1) Monitoring equipment, or other equipment or installations, used by an authorised officer or an analyst is presumed to be accurate and precise, unless evidence to the contrary is presented in proceedings under this Act.
- (2) Despite the rule against hearsay, the results of any analysis based on analytical techniques that by their nature infringe the rule against hearsay are admissible in evidence in proceedings under this Act.
- (3) Each attribute of a sample taken for any purpose under this Act is presumed not to be materially affected by its method of storage or preservation unless evidence to the contrary is presented.

- (4) A finding by a Court that an attribute of a sample was materially affected by its method of storage or preservation does not displace the presumption in relation to the other attributes of the sample.
- (5) Despite the rule against hearsay, a transport certificate relating to the transport of reportable priority waste is admissible in evidence in proceedings under this Act and is prima facie evidence of the matters stated in the transport certificate.

344 Service of documents

- (1) A document required to be given to or served on a person by or under this Act may be given or served personally on the person or by—
 - (a) sending it by post to the person at the person's usual or last known residential or business address; or
 - (b) leaving it at the person's usual or last known residential address with a person on the premises who is apparently at least 16 years old; or
 - (c) leaving it at the person's usual or last known business address with a person who is apparently employed at the premises and is apparently at least 16 years old; or
 - (d) sending it by electronic communication to the person at the person's usual or last known electronic address.
- (2) A document under this Act required to be given to or served on a body corporate may be given or served by giving it to, or sending it by post or electronic communication to, the body corporate at the head office, registered office or principal place of business of the body corporate.

S. 344
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (3) If a document relates to a contravention of this Act by a person, the following is taken to be the person's usual or last known residential or business address unless there are circumstances to suggest that the person resides or carries on business elsewhere—
- (a) in the case of a contravention arising out of the driving or use of a motor vehicle—the address appearing as the person's address in the licence to drive (if any) produced by the person at the time of the contravention or when it is investigated;
 - (b) in the case of a contravention by the registered owner of a motor vehicle—the address appearing as the address of the owner in the certificate of registration of the motor vehicle for the time being in force under the **Road Safety Act 1986** or under a corresponding law of the Commonwealth, a State or a Territory;
 - (c) in the case of a contravention by the registered owner of a vessel—the address appearing as the address of the owner—
 - (i) for a recreational vessel within the meaning of section 3(1) of the **Marine Safety Act 2010**, in the certificate of registration of the vessel for the time being in force under the **Marine Safety Act 2010** or under a corresponding law of the Commonwealth, a State or a Territory; or
 - (ii) for a domestic commercial vessel within the meaning of section 3(1) of the **Marine Safety Act 2010**, in the certificate of survey of the domestic commercial vessel for the time being in force under the **Marine Safety**
-

(Domestic Commercial Vessel)
National Law.

- (4) If this Act requires or authorises a document to be given to or served on the master or owner of a vessel, and the notice is given to or served on an agent of the vessel in accordance with this section, the notice is taken to have been given to or served on the owner or master of the vessel.
- (5) If—
- (a) person is charged with an offence alleged to have been committed on board a vessel; and
 - (b) the vessel is for the time being out of the jurisdiction—
- documents relating to the offence are taken to be served on the person by being served on the agent of the vessel in respect of which the offence is alleged to have occurred.
- (6) Subject to subsection (7), the provisions of this section are in addition to, and not in derogation from, the **Interpretation of Legislation Act 1984**, the **Electronic Transactions (Victoria) Act 2000** and sections 109X and 601CX of the Corporations Act.
- (7) Section 8(2) of the **Electronic Transactions (Victoria) Act 2000** does not apply to service of a notice or order under this section.
- (8) In this section, a reference to a contravention includes a reference to an alleged contravention.

345 Service of documents—alternative to attendance

- (1) A person who gives or serves a document under this Act may, instead of attending proceedings under this Act—

S. 345
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (a) make an affidavit endorsed on, or attached to and identifying, the original document stating the time and manner in which the true copy of the document was given or served; and
 - (b) transmit the original document for production at the proceedings.
- (2) A document purporting to be an affidavit under subsection (1) is to be received in proceedings as prima facie evidence of the statements contained therein.

S. 346
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

346 Authority to be able to recover costs of analysis

- (1) In proceedings under this Act in which legal costs are awarded to the Authority or to a person appointed by the Authority to take proceedings, the Court may include in those costs the reasonable cost of work conducted by the Authority.
- (2) A document that—
- (a) sets out charges for work similar to work conducted by the Authority; or
 - (b) purports to estimate the reasonable cost of work conducted by the Authority; and
 - (c) is signed by, or on behalf of, a person who purports to be a person who charges for doing work similar to that conducted by the Authority—
- is evidence of the reasonable cost of work conducted by the Authority.
- (3) For the purposes of this section, ***work conducted by the Authority*** includes, but is not limited to, analysis, measurement, recording, evaluation, testing or inspection conducted by the Authority.

347 Persons who may take proceedings

- (1) The Authority may appoint a person who is an employee or an officer of the Authority to take proceedings for offences against this Act or the regulations.
- (2) Subject to subsections (3), (4), (5) and (6), proceedings for an offence against this Act or the regulations may only be taken by a person appointed under subsection (1).
- (3) A person may take proceedings for an offence against a provision relating to permits that the regulations specify are to be enforced by a municipal council if appointed to do so by the municipal council.
- (4) A litter authority or litter enforcement officer may take proceedings for an offence against a provision of Part 6.3.
- (5) A prescribed person may take proceedings for an offence against the regulations.
- (6) A person who may serve an infringement notice under section 307(1) may, if a person who is served with an infringement notice elects to have the matter of the infringement offence heard and determined by the Magistrates' Court, take proceedings for that offence.

S. 347
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

348 Contraventions on shared premises

If—

- (a) premises are shared by a body corporate and one or more bodies corporate that is a subsidiary (within the meaning of the Corporations Act) of that body corporate;
and
- (b) one of those bodies corporate is the holder of a permission in respect of those premises;
and

S. 348
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

(c) a contravention of a condition of the permission occurs—

the holder of the permission is, in the absence of evidence to the contrary, to be taken to have caused that contravention.

Part 11.8—Officers' liabilities and conduct of employees and agents

Division 1—Officers' liabilities

349 Liability of officers of bodies corporate—failure to exercise due diligence

- (1) If a body corporate that is a corporation within the meaning of section 57A of the Corporations Act commits an offence against, or by contravening, a provision specified in subsection (2), an officer of the body corporate also commits an offence against, or by contravening, the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following provisions are specified—
 - (a) section 40(1);
 - (b) section 64;
 - (c) section 115(3) and (4);
 - (d) section 121(5) and (7);
 - (e) section 139(1);
 - (f) section 142(1);
 - (g) section 143(1);
 - (h) section 155(1);
 - (i) section 168;
 - (j) section 255(2);
 - (k) section 288;

Pt 11.8
(Headings
and ss 349–
353)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 349
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (l) section 289(1) and (2);
 - (m) section 290(1);
 - (n) section 292(2);
 - (o) section 293(1);
 - (p) section 462(1).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a Court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (5) An officer of a body corporate may commit an offence against, or by contravening, a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, that offence.

350 Liability of officers of bodies corporate—failure to exercise due diligence (legal burden of proof)

S. 350
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

- (1) If a body corporate that is a corporation within the meaning of section 57A of the Corporations Act commits an offence against, or by contravening, a provision specified in subsection (2), an officer of the body corporate also commits an offence against, or by contravening, the provision.
- (2) For the purposes of subsection (1), the following provisions are specified—
 - (a) section 25(1);
 - (b) section 27(1);
 - (c) section 28(1);
 - (d) section 32(2);
 - (e) section 44(1);
 - (f) section 45(1);
 - (g) section 46(1);
 - (h) section 47(1);
 - (i) section 63(1), (2) and (3);
 - (j) section 88(2);
 - (k) section 133(1) and (2);
 - (l) section 134(1);
 - (m) section 135(2);
 - (n) section 137(1);
 - (o) section 286(1);
 - (p) section 287(1);
 - (q) section 290(1);
 - (r) section 292(1);
 - (s) section 463(2).

- (3) It is a defence to a charge for an offence against, or committed by contravening, a provision specified in subsection (2) for an officer of a body corporate to prove that the officer exercised due diligence to prevent the commission of the offence by the body corporate.
- (4) In determining whether an officer of a body corporate exercised due diligence, a Court may have regard to—
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (5) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (6) An officer of a body corporate may commit an offence against, or by contravening, a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, that offence.

351 Liability of officers of bodies corporate—accessorial liability

- (1) If a body corporate that is a corporation within the meaning of section 57A of the Corporations Act commits an offence against a provision of this Act, other than an offence against, or committed by contravening, a provision specified in section 349(2) or 350(2), an officer of the body corporate also commits the offence if the officer—
 - (a) authorised or permitted the commission of the offence by the body corporate; or
 - (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.
- (2) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (3) An officer of a body corporate may commit an offence against a provision of this Act, other than an offence against, or committed by the contravention of, a provision specified in section 349(2) or 350(2), whether or not the body corporate has been prosecuted for, or found guilty of, that offence.

S. 351
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

352 Application of civil penalties to officers of bodies corporate

If a body corporate that is a corporation within the meaning of section 57A of the Corporations Act contravenes a civil penalty provision that is specified in section 349(2) or 350(2), sections 349

S. 352
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

and 350 apply to an officer of the body corporate—

- (a) as if a reference to the commission of an offence were a reference to a contravention of the civil penalty provision; and
- (b) as if a reference to a defence to a charge for an offence were a reference to a defence to the alleged contravention of the civil penalty provision; and
- (c) as if a reference to a prosecution or finding of guilt for an offence were a reference to the bringing of proceedings for, or a finding of a contravention in relation to, a contravention of the civil penalty provision; and
- (d) with any other necessary modifications.

Division 2—Conduct of employees and agents

353 Conduct of employee, agent or officer taken to be conduct of body corporate

For the purposes of this Act, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate is also taken to be conduct engaged in by the body corporate if the employee, agent or officer is acting within the actual or apparent scope of the employee's, agent's or officer's employment or authority.

S. 353
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

Part 11.9—Defence of emergency

Pt 11.9
(Heading and
s. 354)
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

354 Emergency

It is a defence to any offence against, or contravention of, a provision of this Act or the regulations if the act or omission alleged to constitute the offence or contravention occurred in an emergency to prevent danger to life or limb other than an emergency arising from the negligent act or omission of the person who is alleged to have committed the offence or contravention.

S. 354
inserted by
No. 39/2018
s. 7 (as
amended by
Nos 27/2019
ss 12–30,
3/2020 ss 42–
44, 47/2020
s. 26).

S. 4
substituted as
Ch. 12
(Headings
and s. 355) by
No. 39/2018
s. 8.

Chapter 12—Environment Protection Authority

Pt 12.1
(Heading)
inserted by
No. 39/2018
s. 8.

Part 12.1—Simplified outline

S. 4
substituted as
s. 355 by
No. 39/2018
s. 8.

355 Simplified outline—Chapter 12

- (1) This section sets out a simplified outline of this Chapter.
- (2) The Environment Protection Authority continues in existence under Part 12.2 and has the objective, functions, powers, officers and staff provided for in that Part.
- (3) Part 12.3 contains provisions relating to the following matters—
 - (a) the application of the **Public Administration Act 2004** to the Authority;
 - (b) the remuneration and expenses of the Governing Board of the Authority;
 - (c) notifications by the Authority to IBAC.

Part 12.2—Environment Protection Authority

Pt 2 (Heading) substituted as Pt 12.2 (Heading) by No. 39/2018 s. 9.

356 Environment Protection Authority

S. 5 renumbered as s. 356 by No. 39/2018 s. 22.

- (1) The Environment Protection Authority established under section 5(1) of the **Environment Protection Act 1970** as in force immediately before the commencement day continues in existence in accordance with this Act.
- (2) The Authority—
 - (a) is a body corporate with perpetual succession; and
 - (b) has an official seal; and
 - (c) may sue and be sued; and
 - (d) may acquire, hold and dispose of real and personal property; and
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the official seal of the Authority affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The official seal of the Authority must—
 - (a) be kept in such custody as the Authority determines; and
 - (b) not be used except as authorised by the Authority.
- (5) The Authority continues to be the same body despite the re-constitution of the body by this Act.

S. 5(6)
inserted by
No. 39/2018
s. 10,
renumbered
as s. 356(6) by
No. 39/2018
s. 22.

- (6) In this section—
commencement day means 1 July 2018.

S. 6
renumbered
as s. 357 by
No. 39/2018
s. 22.

357 Objective of the Authority

- (1) The objective of the Authority is to protect human health and the environment by reducing the harmful effects of pollution and waste.
- (2) The Authority must exercise its powers and perform its duties and functions under this Act or any other Act for the purposes of achieving the objective set out in subsection (1) to the extent that it is practicable to do so having regard to the nature of the power being exercised or the duty or function being performed.

S. 6(2)
amended by
No. 39/2018
s. 11,
renumbered
as s. 357(2) by
No. 39/2018
s. 22.

S. 7
substituted as
s. 358 by
No. 39/2018
s. 12 (as
amended by
No. 27/2019
s. 31).

358 Functions of the Authority

The functions of the Authority are—

- (a) to monitor and assess environmental quality;
and
- (b) to identify, assess and monitor risks of harm to human health and the environment; and
- (c) to respond to harm and risks of harm to human health and the environment; and
- (d) to identify and respond to opportunities to—
 - (i) eliminate or reduce risks of harm to human health and the environment; and
 - (ii) improve environmental quality; and
- (e) to provide advice and recommendations to the Minister in relation to human health and the environment including, but not limited

- to, the making of subordinate legislation and environment reference standards; and
- (f) to liaise and collaborate with Commonwealth, State, Territory and local governments for the purposes of achieving the objective of the Authority specified in section 357 and administering this Act; and
 - (g) to provide information and education to the Victorian community in relation to—
 - (i) environmental quality; and
 - (ii) risks of harm to human health and the environment; and
 - (iii) environmental best practice and improvements; and
 - (h) to promote the prevention of harm, and the elimination and reduction of risks of harm, to human health and the environment from pollution and waste; and
 - (i) to administer the provisions of this Act and the regulations relating to permissions; and
 - (j) to administer the provisions of this Act relating to waste and to pursue the objects set out in section 111; and
 - (k) to monitor and review the performance of the Authority's functions and duties; and
 - (l) to promote, monitor and enforce compliance with this Act; and
 - (m) to perform other functions conferred on the Authority under this Act or under any other Act.

S. 359
inserted by
No. 39/2018
s. 12 (as
amended by
No. 27/2019
s. 31).

359 Powers of the Authority

- (1) The Authority has—
 - (a) any power conferred on the Authority under this or any other Act; and
 - (b) the power to do all things that are necessary or convenient to be done for or in connection with the performance of the Authority's functions and duties and to enable the Authority to achieve its objective.
- (2) The Authority may give advice to a person who has a duty or obligation under this Act about complying with that duty or obligation.
- (3) The Authority's power under subsection (2) to give advice may also be exercised by an authorised officer.
- (4) The giving of advice under subsection (2) by the Authority or an authorised officer does not give rise to—
 - (a) any liability of, or other claim against, the Authority; or
 - (b) any right, expectation, duty or obligation that would not otherwise be conferred or imposed on the person given the advice; or
 - (c) any defence that would not otherwise be available to that person.
- (5) The Authority has power—
 - (a) to apply for, obtain and hold intellectual property rights (including patents, copyrights, trade marks and registered designs); and
 - (b) to enter into agreements or arrangements for the commercial exploitation within or outside Victoria of those intellectual property rights and ancillary services on any terms or

conditions as to royalties, lump sum payments or otherwise as the Authority may see fit.

360 Staff

- (1) There may be employed under Part 3 of the **Public Administration Act 2004** any persons that are necessary for the purposes of performing the duties and functions of the Authority.
- (2) The Authority may enter into agreements or arrangements for the use of the services of any staff of a Department, statutory authority or other public body.

S. 8
renumbered
as s. 360 by
No. 39/2018
s. 22.

361 Environment Protection Authority Governing Board

- (1) The Authority has a governing body known as the Environment Protection Authority Governing Board.
- (2) The Governor in Council must appoint, on the recommendation of the Minister, not less than 5 and not more than 9 persons to be members of the Governing Board.
- (3) In recommending a person for appointment as a member of the Governing Board, the Minister must—
 - (a) ensure that at least one of the persons recommended has qualifications or experience in science or engineering; and
 - (b) ensure that at least one of the persons recommended is a person nominated by the Minister responsible for the administration of the **Public Health and Wellbeing Act 2008** who has qualifications or experience in health; and

S. 9
renumbered
as s. 361 by
No. 39/2018
s. 22.

- (c) ensure that collectively the persons recommended have skills, knowledge or experience in relation to the following—
 - (i) environment protection or regulation;
 - (ii) regulation of industry;
 - (iii) local government;
 - (iv) public administration or governance;
 - (v) finance or accounting;
 - (vi) legal practice.

S. 10
renumbered
as s. 362 by
No. 39/2018
s. 22.

362 Functions of the Governing Board

- (1) The Governing Board—
 - (a) is responsible for the governance, strategic planning and risk management of the Authority; and
 - (b) is responsible for pursuing the objective of the Authority; and
 - (c) may perform the duties and functions and exercise the powers of the Authority.
- (2) All acts and things done in the name of, or on behalf of, the Authority by or with the authority of the Governing Board are taken to have been done by the Authority.

S. 11
renumbered
as s. 363 by
No. 39/2018
s. 22.

363 Chairperson and deputy Chairperson

- (1) The Governor in Council, on the recommendation of the Minister, must appoint—
 - (a) one member of the Governing Board to be the Chairperson; and
 - (b) one member of the Governing Board to be the deputy Chairperson.

- (2) A person appointed as Chairperson or deputy Chairperson of the Governing Board ceases to hold that office on ceasing to be a member of the Governing Board.

364 Conditions of office for Governing Board members

S. 12
renumbered
as s. 364 by
No. 39/2018
s. 22.

- (1) A member of the Governing Board—
- (a) holds office for the period, not exceeding 5 years, specified in the instrument of appointment; and
 - (b) holds office on the terms and conditions (including remuneration and allowances) specified in the instrument of appointment; and
 - (c) is eligible for reappointment for one further term of office; and
 - (d) in respect of the office of member of the Governing Board, is subject to the **Public Administration Act 2004** (other than Part 3 of that Act).
- (2) An instrument of appointment may specify other terms and conditions of appointment not inconsistent with this Act.

365 Vacancies, resignations and removal from office

S. 13
renumbered
as s. 365 by
No. 39/2018
s. 22.

- (1) The office of a member of the Governing Board becomes vacant if that member—
- (a) becomes an insolvent under administration; or
 - (b) is convicted or found guilty of—
 - (i) an indictable offence; or
 - (ii) an offence that, if committed in Victoria, would be an indictable offence; or

S. 13(2)
amended by
No. 39/2018
s. 13(1),
renumbered
as s. 365(2) by
No. 39/2018
s. 22.

- (c) is absent from 2 consecutive meetings of the Governing Board without the approval of the Governing Board; or
 - (d) is removed from office; or
 - (e) retires or resigns; or
 - (f) dies.
- (2) If the office of a member of the Governing Board becomes vacant before the end of the term of office, the Governor in Council may appoint a person in accordance with section 366 to fill the vacancy and to hold office, subject to this Act, for the remainder of the term.
- (3) If the office of a member of the Governing Board becomes vacant within 6 months before the end of the term of the office, the office may be left vacant for the remainder of the term.
- (4) A member of the Governing Board may resign from office by delivering a signed letter of resignation to the Minister.
- (5) The Governor in Council, on the recommendation of the Minister, may remove a member of the Governing Board from office—
- (a) if that member becomes incapable of performing the member's duties; or
 - (b) if the member is negligent in the performance of those duties; or
 - (c) if the member engages in improper conduct;
or
 - (d) if the member fails to disclose a pecuniary interest as required by section 370; or

S. 13(5)(d)
amended by
No. 39/2018
s. 13(2)(a),
renumbered
as s. 365(5)(d)
by
No. 39/2018
s. 22.

- (e) if the member is convicted or found guilty of an offence against this Act; or
- (f) if the member is no longer suitable to hold office as a member of the Governing Board.

S. 13(5)(e)
amended by
No. 39/2018
s. 13(2)(b),
renumbered
as s. 365(5)(e)
by
No. 39/2018
s. 22.

366 Acting appointments

- (1) The deputy Chairperson must act as Chairperson—
 - (a) if the office of Chairperson is vacant; or
 - (b) during any period when the Chairperson is absent; or
 - (c) if the Chairperson is, for any other reason, unable to attend meetings of the Governing Board or otherwise unable to perform the duties of the office.
- (2) While the deputy Chairperson is acting as Chairperson, the deputy Chairperson—
 - (a) has and may exercise all the powers, and must perform all the duties and functions, of the Chairperson; and
 - (b) is entitled to be paid the remuneration and allowances to which the Chairperson would have been entitled.
- (3) The Governor in Council, on the recommendation of the Minister, may appoint a member of the Governing Board to act as deputy Chairperson—
 - (a) during a vacancy in the office of deputy Chairperson; or
 - (b) during any period when the deputy Chairperson is absent; or

S. 14
renumbered
as s. 366 by
No. 39/2018
s. 22.

- (c) during any period when the deputy Chairperson is acting as Chairperson; or
 - (d) if the deputy Chairperson is, for any other reason, unable to attend meetings of the Governing Board or otherwise unable to perform the duties of the office.
- (4) While a member of the Governing Board is acting as deputy Chairperson, the member has and may exercise all the powers, and must perform all the duties and functions, of the deputy Chairperson.
- (5) The Governor in Council, on the recommendation of the Minister, may appoint a person to act as a member of the Governing Board (other than the Chairperson or deputy Chairperson)—
- (a) during a vacancy in the office of a member; or
 - (b) during any period when a member is absent; or
 - (c) during any period when a member is acting as deputy Chairperson; or
 - (d) if a member is, for any other reason, unable to attend meetings of the Governing Board or otherwise unable to perform the duties of the office.
- (6) While a person is acting as a member of the Governing Board, the person—
- (a) has and may exercise all the powers, and must perform all the duties and functions, of a member; and
 - (b) is entitled to be paid the remuneration and allowances to which the member would have been entitled.

- (7) In recommending a person for an appointment under subsection (5), the Minister must ensure that the recommended person, together with the members of the Governing Board, collectively have skills, knowledge or experience in relation to the following—
- (a) environment protection or regulation;
 - (b) regulation of industry;
 - (c) local government;
 - (d) public administration or governance;
 - (e) finance or accounting;
 - (f) legal practice.
- (8) In recommending a person for an appointment under subsection (5), the Minister must ensure that, of the members of the Governing Board and the recommended person—
- (a) at least one has qualifications or experience in science or engineering; and
 - (b) at least one is a person nominated by the Minister responsible for the administration of the **Public Health and Wellbeing Act 2008** who has qualifications or experience in health.

367 Validity of acts or decisions

An act or a decision of the Governing Board is not invalid by reason only of—

- (a) any vacancy in the office of a member; or
- (b) any defect or irregularity in or in connection with the appointment of a member.

S. 15
renumbered
as s. 367 by
No. 39/2018
s. 22.

S. 16
renumbered
as s. 368 by
No. 39/2018
s. 22.

368 Proceedings of the Governing Board

- (1) Meetings of the Governing Board must be held at the times and places determined by the Governing Board.
- (2) A majority of the members of the Governing Board for the time being, of whom one member must be the Chairperson or deputy Chairperson, constitutes a quorum of the Governing Board.
- (3) A question arising at a meeting of the Governing Board must be determined by a majority of votes of members present and voting on the question.
- (4) If the voting is equal, the person presiding has a casting, as well as a deliberative vote.
- (5) A meeting of the Governing Board may be conducted by telephone, closed-circuit television or other means of communication that does not require the physical presence of each member of the Governing Board in the same room.
- (6) The person presiding at a meeting must ensure that minutes of the meeting are kept.
- (7) Subject to this Act, the Governing Board may regulate its own proceedings.

S. 17
renumbered
as s. 369 by
No. 39/2018
s. 22.

369 Resolutions without meetings

- (1) The Governing Board may—
 - (a) determine that it may make a proposed resolution without a meeting; and
 - (b) determine a method by which members of the Governing Board are to indicate agreement with any proposed resolution.

- (2) The Governing Board is taken to have made a resolution at a meeting if—
 - (a) without meeting, a majority of the members of the Governing Board entitled to vote on the proposed resolution indicate agreement with the resolution; and
 - (b) that agreement is indicated in accordance with the method determined by the Governing Board under subsection (1)(b); and
 - (c) all the members were informed of the proposed resolution, or reasonable efforts were made to inform the members of the proposed resolution.
- (3) For the purposes of subsection (2)(a), a member of the Governing Board is not entitled to vote on a proposed resolution if the member would not have been entitled to vote on that resolution if the matter had been considered at a meeting of the Governing Board.
- (4) The Governing Board must keep a record of the resolutions made in accordance with this section.

370 Pecuniary interests of members of the Governing Board

- (1) A member of the Governing Board who has a pecuniary interest in a matter being considered or to be considered by the Governing Board, as soon as practicable after the relevant facts have come to the member's knowledge, must disclose the nature of that interest at a meeting of the Governing Board.

Penalty: 60 penalty units.

- (2) If the Chairperson has a pecuniary interest in a matter being considered or to be considered by the Governing Board, the Chairperson, as soon as

S. 18
renumbered
as s. 370 by
No. 39/2018
s. 22.

practicable after the relevant facts come to the Chairperson's knowledge, must disclose the nature of that interest to the Minister.

Penalty: 60 penalty units.

- (3) The person presiding at a meeting at which a disclosure is made under this section must cause a record of the disclosure to be made in the minutes of the meeting.
- (4) Subject to subsection (5), a member of the Governing Board who has made a disclosure under subsection (1) or (2) must not be present during any deliberation with respect to, or vote on, the matter in respect of which the disclosure is made.

Penalty: 60 penalty units.

- (5) Subsection (4) does not apply if a member has made a disclosure to the Governing Board and the Governing Board resolves that the member may be present during any deliberation with respect to, or vote on, the matter in respect of which the disclosure is made.

S. 19
renumbered
as s. 371 by
No. 39/2018
s. 22.

371 Improper use of information

A person who is, or has been, a member of the Governing Board, the chief executive officer, an authorised officer or an employee of the Authority must not make improper use of any information acquired in the course of the person's duties to obtain, directly or indirectly, any pecuniary or other advantage for that person or for any other person.

Penalty: 60 penalty units.

372 Governing Board may establish advisory committees

- (1) The Governing Board may establish committees for the purpose of providing advice and information to assist the Governing Board in the performance of its functions.
- (2) The Governing Board may determine—
 - (a) the process for establishing an advisory committee; and
 - (b) the terms of reference for an advisory committee; and
 - (c) matters relating to the procedure of an advisory committee; and
 - (d) the terms and conditions of the appointment of members of an advisory committee.
- (3) The Governing Board may appoint any person to be a member of an advisory committee.
- (4) A member of an advisory committee must be paid any allowances and expenses that are determined by the Governing Board.

S. 20
renumbered
as s. 372 by
No. 39/2018
s. 22.

373 Chief executive officer

- (1) The Governing Board must appoint a person to be the chief executive officer of the Authority.
- (2) The chief executive officer—
 - (a) must not be a member of the Governing Board; and
 - (b) may attend meetings of the Governing Board.
- (3) The chief executive officer is employed subject to terms and conditions (including remuneration and allowances) that are specified in the instrument of appointment.

S. 21
renumbered
as s. 373 by
No. 39/2018
s. 22.

S. 21(4)
amended by
No. 39/2018
s. 14,
renumbered
as s. 373(4) by
No. 39/2018
s. 22.

- (4) Subject to and in accordance with directions given to the chief executive officer by the Governing Board for the purposes of section 362, the chief executive officer is responsible to the Governing Board for the administration of the day to day management of the affairs of the Authority.
- (5) The chief executive officer may delegate any power or function of the chief executive officer under this Act or the regulations, other than this power of delegation, to—
 - (a) an officer or employee of the Authority; or
 - (b) the holder of an office or position with the Authority.

S. 22
renumbered
as s. 374 by
No. 39/2018
s. 22.

374 Chief environmental scientist

- (1) The Governing Board must appoint a person to be the chief environmental scientist of the Authority.
- (2) The person appointed as the chief environmental scientist is employed under Part 3 of the **Public Administration Act 2004**.
- (3) Subject to and in accordance with the directions given to the chief environmental scientist by the chief executive officer, the chief environmental scientist is responsible for the provision of advice to the Authority relating to—
 - (a) the objective of the Authority set out in section 357; or

S. 22(3)(a)
amended by
No. 39/2018
s. 15,
renumbered
as s. 374(3)(a)
by
No. 39/2018
s. 22.

- (b) the duties and functions of the Authority.

Part 12.3—General provisions

Pt 3 (Heading)
substituted as
Pt 12.3
(Heading) by
No. 39/2018
s. 16.

375 Application of the Public Administration Act 2004

S. 23
renumbered
as s. 375 by
No. 39/2018
s. 22.

The Public Administration Act 2004

applies to the Authority as if the Authority was a public entity, but not a small entity, within the meaning of that Act, established on or after the commencement of Part 5 of that Act.

376 Remuneration and expenses

S. 24
amended by
No. 39/2018
s. 17,
renumbered
as s. 376 by
No. 39/2018
s. 22.

The remuneration and expenses of the members of the Governing Board, members of advisory committees, the chief executive officer and the chief environmental scientist and all other expenses lawfully incurred by the Authority and the Governing Board under this Act are to be paid out of the Environment Protection Fund established under section 441 and moneys provided by Parliament for the purpose.

377 Mandatory notification of corrupt conduct to IBAC

S. 377
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (1) Subject to any exemption notice issued under section 57B of the **Independent Broad based Anti-corruption Commission Act 2011**, the Chairperson must notify the IBAC of any matter that the Chairperson suspects on reasonable grounds involves corrupt conduct occurring or having occurred, of which the Chairperson becomes aware in the performance of functions or duties or the exercise of powers under this Act or any other Act.
- (2) This section does not apply to corrupt conduct of the IBAC or IBAC personnel.

- (3) This section does not apply to a matter referred to the Authority by the IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011**.
- (4) If the Chairperson considers at any time that any matter described in subsection (3) appears to involve conduct that is corrupt conduct, the Chairperson must inform the IBAC.

S. 378
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

378 Consultation prior to notification

For the purposes of deciding whether to make a notification under this Part to the IBAC, the Chairperson may consult the IBAC.

S. 379
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

379 Communication of information to the IBAC

- (1) At any time, the Chairperson may provide or disclose any information received or obtained in the course of the performance of functions or duties or the exercise of powers of the Authority under this Act or any other Act to the IBAC if the Chairperson considers that—
- (a) the information is relevant to the performance of the functions or duties or the exercise of powers of the IBAC; and
 - (b) it is appropriate for the information to be brought to the attention of the IBAC, having regard to the nature of the information.
- (2) This section applies subject to any restriction on the provision or disclosure of information under this Act or any other Act (including any Commonwealth Act).

380 Authority not to prejudice investigations of the IBAC

- (1) If the Authority is, or becomes, aware of an IBAC investigation, the Authority must take all reasonable steps to ensure that the performance of its functions or duties or the exercise of its powers does not prejudice the IBAC investigation.
- (2) For the purposes of ensuring compliance with subsection (1), the Authority may consult the IBAC.

S. 380
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Chapter 13—Waste and resource recovery infrastructure and planning

Ch. 13
(Headings
and ss 381–
427)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Part 13.1—Simplified outline

Pt 13.1
(Heading and
s. 381)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 381
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

381 Simplified outline—Chapter 13

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 13.2 continues the operation of Waste and Resource Recovery Groups and provides for the governance of Waste and Resource Recovery Groups.
- (3) Part 13.3 provides for the Victorian Waste and Resource Recovery Infrastructure Planning Framework by—
 - (a) defining, and setting out the objectives of, the Victorian Waste and Resource Recovery Infrastructure Planning Framework; and
 - (b) providing for the process for the making, publication, approval, review and amendment of the State-Wide Waste and Resource Recovery Infrastructure Plan and

Environment Protection Act 2017
No. 51 of 2017
Part 13.1—Simplified outline

**Regional Waste and Resource Recovery
Implementation Plans.**

Pt 13.2
(Heading and
ss 382–404)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Part 13.2—Waste and Resource Recovery Groups

Division 1—Waste and Resource Recovery Groups

S. 382
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

382 Waste and Resource Recovery Groups

The following Waste and Resource Recovery Groups established under section 49C of the **Environment Protection Act 1970** (as in force immediately before its repeal) are continued under this Act—

- (a) the Barwon South West Waste and Resource Recovery Group;
- (b) the Gippsland Waste and Resource Recovery Group;
- (c) the Goulburn Valley Waste and Resource Recovery Group;
- (d) the Grampians Central West Waste and Resource Recovery Group;
- (e) the Loddon Mallee Waste and Resource Recovery Group;
- (f) the Metropolitan Waste and Resource Recovery Group;
- (g) the North East Waste and Resource Recovery Group.

383 Capacity of Waste and Resource Recovery Groups

- (1) A Waste and Resource Recovery Group—
- (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) may acquire, hold and dispose of real or personal property; and
 - (e) may take land on lease and grant sub leases of leased land; and
 - (f) may do and suffer any act or thing that a body corporate may by law do and suffer.
- (2) The common seal of a Waste and Resource Recovery Group may only be used in a way approved by the Waste and Resource Recovery Group.
- (3) All courts and people acting judicially must take judicial notice of the common seal of a Waste and Resource Recovery Group.

S. 383
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

384 Waste and Resource Recovery Groups do not represent the Crown

A Waste and Resource Recovery Group is not, and is not to be taken to represent, the Crown.

S. 384
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

385 A Waste and Resource Recovery Group is a public body and a public entity

A Waste and Resource Recovery Group is—

- (a) a public body to which Part 7 of the **Financial Management Act 1994** applies; and

S. 385
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

(b) a public entity for the purposes of the **Public Administration Act 2004**.

S. 386
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

386 Objectives of Waste and Resource Recovery Groups

- (1) The objectives of a Waste and Resource Recovery Group are to achieve the following in relation to its waste and resource recovery region—
- (a) to undertake waste and resource recovery infrastructure planning to meet future needs while minimising risks of harm to human health or the environment from waste and resource recovery infrastructure;
 - (b) to facilitate efficient procurement of waste and resource recovery infrastructure and services through the collective procurement of waste management facilities and waste and resource recovery services;
 - (c) to integrate regional and local knowledge into State-wide waste and resource recovery market development strategies;
 - (d) to educate businesses and communities to reduce waste going to landfill by using waste and resource recovery infrastructure and services efficiently;
 - (e) to ensure Regional Waste and Resource Recovery Implementation Plans and related activities are informed by local government, business and the community and inform the State-Wide Waste and Resource Recovery Infrastructure Plan and related activities.
- (2) In achieving the objectives under subsection (1), a Waste and Resource Recovery Group must engage with councils, Sustainability Victoria, the Authority, industry, business and the community.

387 Functions of Waste and Resource Recovery Groups

The functions of a Waste and Resource Recovery Group are to do the following in relation to its waste and resource recovery region—

- (a) plan for the future needs of waste and resource recovery infrastructure in a manner consistent with the State-Wide Waste and Resource Recovery Infrastructure Plan;
- (b) facilitate the provision of waste and resource recovery infrastructure and services by councils;
- (c) facilitate the development of contracts for the joint procurement of waste management facilities and waste and resource recovery services;
- (d) manage contracts in the performance of the objectives and functions of the Waste and Resource Recovery Group;
- (e) work with Sustainability Victoria, councils, businesses and communities to ensure State-wide waste and resource recovery education programs are adapted to the needs of the region and to facilitate the delivery of those education programs;
- (f) with Sustainability Victoria, advise councils and businesses on best practices for waste and resource recovery systems, facilities and services;
- (g) support the region's Local Government Waste Forum to enable the Local Government Waste Forum to perform its functions;
- (h) undertake waste and resource recovery activities as funded by government, councils and other organisations.

S. 387
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 388
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

388 Powers of Waste and Resource Recovery Groups

- (1) Subject to subsection (2), a Waste and Resource Recovery Group may do all things that are necessary or convenient to enable it to carry out its functions and achieve its objectives.
- (2) A Waste and Resource Recovery Group must not—
 - (a) own or operate a waste management facility;
or
 - (b) apply for or hold a planning permit; or
 - (c) enter into contracts for the procurement of waste management facilities or waste and resource recovery services, unless the contract is jointly entered into with a procurer under that contract.

Division 2—Governance of Waste and Resource Recovery Groups

S. 389
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

389 Board of directors

- (1) A Waste and Resource Recovery Group must have a board of directors.
- (2) The board of directors of a Waste and Resource Recovery Group consists of 8 directors appointed in accordance with section 390.
- (3) The board of directors of a Waste and Resource Recovery Group—
 - (a) is responsible for the management of the affairs of the Waste and Resource Recovery Group; and
 - (b) may exercise all the powers of the Waste and Resource Recovery Group.

390 Appointment of directors

- (1) The Minister must appoint as directors of a Waste and Resource Recovery Group 4 persons nominated in accordance with section 391 by a Local Government Waste Forum.
- (2) The Minister must appoint 4 other persons as directors of a Waste and Resource Recovery Group.
- (3) The Minister must not appoint a person as a director of a Waste and Resource Recovery Group under subsection (2) unless the Minister is satisfied the person has skills, experience or knowledge that will assist the Waste and Resource Recovery Group to carry out its functions and achieve its objectives.
- (4) In appointing directors under subsection (2), the Minister must attempt to ensure that collectively the directors of the Waste and Resource Recovery Group have skills, experience or knowledge relating to local government, financial management, contract management, risk management, environmental policy, waste management and resource recovery.
- (5) The Minister must not appoint a person as a director under subsection (1), (2) or (6) if the person—
 - (a) is an insolvent under administration; or
 - (b) has been convicted of an indictable offence or has been imprisoned for any offence within the period of 7 years preceding the appointment.
- (6) If a Local Government Waste Forum does not make any nominations under section 391 within 2 months of being requested in writing by the Minister to do so, the Minister may appoint 4 persons as directors of the Waste and Resource

S. 390
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Recovery Group from the representatives nominated by each council in accordance with section 391(2).

S. 391
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

391 Local Government Waste Forums

- (1) There is to be a Local Government Waste Forum for each waste and resource recovery region consisting of representatives of the councils in the region.
- (2) Each council in a waste and resource recovery region may nominate a representative to a Local Government Waste Forum for that region.
- (3) The functions of a Local Government Waste Forum are—
 - (a) to nominate the 4 persons who are to be the representatives of the councils for the purposes of section 390(1); and
 - (b) if there is a vacancy in the office of a director appointed under section 390(1), to nominate a person to fill that vacancy; and
 - (c) to advise the board of directors of the Waste and Resource Recovery Group on matters and issues affecting the role of councils in waste and resource recovery infrastructure; and
 - (d) to act as a conduit for consultation between the Waste and Resource Recovery Group and the councils in its waste and resource recovery region.
- (4) A Local Government Waste Forum must develop procedures for the purposes of subsections (3)(a) and (3)(b) with the councils.

392 Minister to appoint Chairperson

- (1) The Minister must appoint one of the directors of a Waste and Resource Recovery Group to be the Chairperson of the board of directors.
- (2) The Minister must not appoint a director of a Waste and Resource Recovery Group as Chairperson unless the Minister is satisfied the director has skills, experience or knowledge relating to local government.
- (3) The board of directors of a Waste and Resource Recovery Group may appoint one of the directors to be the Deputy Chairperson of the board of directors.

S. 392
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

393 Conditions of appointment of directors

A director of a Waste and Resource Recovery Group—

- (a) holds office for the period specified in the instrument of appointment, which must be a period of not more than 4 years; and
- (b) holds office on the terms and conditions specified in the instrument of appointment; and
- (c) is eligible for reappointment; and
- (d) may resign from office by delivering a signed letter of resignation to the Minister, effective on the Minister's accepting of the resignation; and
- (e) may be removed from office at any time by the Minister.

S. 393
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 394
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

394 Automatic removal of directors from office

A director of a Waste and Resource Recovery Group ceases to hold office if the director—

- (a) becomes an insolvent under administration;
or
- (b) is convicted of an indictable offence or is imprisoned for any offence; or
- (c) fails to comply with section 396.

S. 395
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

395 Meetings of Waste and Resource Recovery Groups

- (1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson, must preside at a meeting of a Waste and Resource Recovery Group.
- (2) If neither the Chairperson nor the Deputy Chairperson is present at a meeting, the directors present at the meeting must elect a director to preside at the meeting.
- (3) A matter cannot be decided at a meeting unless a majority of the directors appointed for the time being are present.
- (4) The decision on a question of the majority of the directors present and voting on the question is the decision of the Waste and Resource Recovery Group.
- (5) The person presiding at a meeting has—
 - (a) a deliberative vote; and
 - (b) in the event of an equality of votes on any question, a second or casting vote.
- (6) A Waste and Resource Recovery Group may conduct all or any part of a meeting by using telephone, video link or any other system of communication.

- (7) Subject to this Act, a Waste and Resource Recovery Group may regulate its own procedure.

396 Disclosure of interests of directors of Waste and Resource Recovery Groups

- (1) A director of a Waste and Resource Recovery Group who has a direct or an indirect pecuniary interest in any matter being considered, or about to be considered, by the Waste and Resource Recovery Group must disclose the nature of that interest at a meeting of the Waste and Resource Recovery Group as soon as possible after becoming aware of the relevant facts.
- (2) A director of a Waste and Resource Recovery Group who holds an office or possesses property as a result of which, directly or indirectly, duties or interests may be created in conflict with the director's duties as a director, must disclose that fact at a meeting of the Waste and Resource Recovery Group as soon as possible after becoming aware of the potential conflict.
- (3) The person presiding at a meeting at which a disclosure under this section is made must ensure that—
- (a) the disclosure is recorded in the minutes of the meeting; and
 - (b) the minutes record which directors voted on any matter in respect of which the disclosure was made and how the directors voted.
- (4) A director who has made a disclosure under this section must not take any further part in the discussion of, or vote on, the matter that the director has made the disclosure in relation to.
- (5) If a director votes on a matter in contravention of subsection (4), the person presiding at the meeting must disallow the vote of the director.

S. 396
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (6) A director is not to be regarded as having a pecuniary interest—
- (a) in a matter relating to the supply of goods or services to or by the director if the goods or services are, or are to be, available to members of the public on the same terms and conditions; or
 - (b) in a contract or arrangement only because that contract or arrangement may benefit a body corporate or other body in which the director has a beneficial interest that does not exceed one percent of the total nominal value of beneficial interests in that body corporate or body.

S. 397
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

397 Validity of acts or decisions of Waste and Resource Recovery Groups

- (1) An act or a decision of a Waste and Resource Recovery Group is not invalid merely because of—
- (a) a vacancy on the board of directors of the Waste and Resource Recovery Group; or
 - (b) a defect or irregularity in, or in connection with, the appointment of a director.
- (2) Anything done by or in relation to a person purporting to act as a director is not invalid merely because—
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

398 Power of delegation of Waste and Resource Recovery Groups

A Waste and Resource Recovery Group may, by instrument, delegate to the Chairperson, a director, the executive officer, the Chief Executive Officer or any employee of the Waste and Resource Recovery Group any function, duty or power conferred on the Waste and Resource Recovery Group by or under this Act or any other Act, other than this power of delegation.

S. 398
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

399 Executive officers and Chief Executive Officer of Waste and Resource Recovery Groups

- (1) Subject to subsection (2), a Waste and Resource Recovery Group must appoint an executive officer of the Waste and Resource Recovery Group.
- (2) The Metropolitan Waste and Resource Recovery Group must appoint a Chief Executive Officer with the approval of the Minister.
- (3) The executive officer or Chief Executive Officer is responsible to the Waste and Resource Recovery Group for the carrying out of the Waste and Resource Recovery Group's functions.
- (4) The executive officer or Chief Executive Officer must comply with the directions of the Waste and Resource Recovery Group.
- (5) The executive officer or Chief Executive Officer may, by instrument, delegate to any employee of the Waste and Resource Recovery Group any responsibility, power, authority, duty or function conferred on the executive officer or Chief Executive Officer by or under this Act, except this power of delegation.

S. 399
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 400
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

400 Staff of Waste and Resource Recovery Groups

A Waste and Resource Recovery Group may employ any employees that are necessary to enable the Waste and Resource Recovery Group to perform its functions.

S. 401
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

401 Minister may give directions to a Waste and Resource Recovery Group

- (1) The Minister may give written directions to a Waste and Resource Recovery Group.
- (2) A Waste and Resource Recovery Group must comply with a written direction of the Minister.

S. 402
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

402 Procurement directions and guidelines for Waste and Resource Recovery Groups

- (1) The Treasurer, in consultation with the Minister, may give procurement directions or issue procurement guidelines.
- (2) A Waste and Resource Recovery Group must comply with a procurement direction given, or procurement guidelines issued, under subsection (1) in carrying out its functions.

S. 403
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

403 Annual business plans of Waste and Resource Recovery Groups

- (1) Each year a Waste and Resource Recovery Group must submit to the Minister for approval, on or before the day required by the Minister, a draft business plan that sets out the following—
 - (a) the objectives and priorities for the next 3 financial years;
 - (b) financial projections for that period;
 - (c) the budget for the next financial year;

- (d) intended activities of the Waste and Resource Recovery Group over the next financial year;
 - (e) any other matters that the Minister makes a request in writing to be included.
- (2) A draft business plan prepared under subsection (1) must be consistent with the Regional Waste and Resource Recovery Implementation Plan of the Waste and Resource Recovery Group.
 - (3) After amending its draft business plan in any way required by the Minister, a Waste and Resource Recovery Group must submit a final business plan to the Minister for approval on or before the day required by the Minister.
 - (4) A Waste and Resource Recovery Group must obtain written approval of the Minister if it intends to depart significantly from the budget for the next financial year that is included in the business plan approved under subsection (3).
 - (5) A Waste and Resource Recovery Group must have regard to the current business plan in carrying out its functions.
 - (6) A Waste and Resource Recovery Group must ensure that a copy of its current business plan is—
 - (a) available for inspection by members of the public at its principal place of business whenever that place is open to the public; and
 - (b) published on the Internet site of the Waste and Resource Recovery Group.

S. 404
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

404 Application of Local Government Act 1989

- (1) If a council enters into a contract, arrangement or agreement with a Waste and Resource Recovery Group, the council is exempt from the requirements of section 186 of the **Local Government Act 1989** in respect of that contract, arrangement or agreement.
- (2) Section 193 of the **Local Government Act 1989** does not apply in respect of the participation of a council in a Local Government Waste Forum.
- (3) If a council engages in procurement activities of a Waste and Resource Recovery Group that comply with any procurement directions given, or procurement guidelines issued, under section 402(1), the council is exempt from the requirements of section 193 of the **Local Government Act 1989** in respect of those procurement activities.

Part 13.3—Victorian Waste and Resource Recovery Infrastructure Planning Framework

Division 1—Victorian Waste and Resource Recovery Infrastructure Planning Framework

405 Definition of the Victorian Waste and Resource Recovery Infrastructure Planning Framework

For the purposes of this Act, the *Victorian Waste and Resource Recovery Infrastructure Planning Framework* means—

- (a) the State-Wide Waste and Resource Recovery Infrastructure Plan; and
- (b) the Regional Waste and Resource Recovery Implementation Plans; and
- (c) any guidelines made under section 427 in relation to the State-Wide Waste and Resource Recovery Infrastructure Plan; and
- (d) any guidelines made under section 427 in relation to the Regional Waste and Resource Recovery Implementation Plans; and
- (e) the process under section 419 facilitating the integration of the State Wide Waste and Resource Recovery Infrastructure Plan and Regional Waste and Resource Recovery Implementation Plans.

Pt 13.3
(Headings
and ss 405–
427)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 405
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 406
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

406 Objectives of the Victorian Waste and Resource Recovery Infrastructure Planning Framework

The objectives of the Victorian Waste and
Resource Recovery Infrastructure Planning
Framework are—

- (a) to ensure long-term strategic planning for
waste and resource recovery infrastructure at
State and regional levels; and
- (b) to facilitate the integration of State wide
priorities for the management of waste and
resource recovery infrastructure and regional
infrastructure needs; and
- (c) to enable waste and resource recovery
infrastructure planning to be—
 - (i) effectively integrated with land use and
development planning and policy; and
 - (ii) effectively integrated with transport
planning and policy; and
- (d) to ensure Sustainability Victoria and Waste
and Resource Recovery Groups work
together to integrate the State-Wide Waste
and Resource Recovery Infrastructure Plan
and Regional Waste and Resource Recovery
Implementation Plans; and
- (e) to enable waste and resource recovery
infrastructure planning decisions to be made
at the appropriate level of the framework.

Division 2—State-Wide Waste and Resource Recovery Infrastructure Plan

407 Preparation of State-Wide Waste and Resource Recovery Infrastructure Plan

- (1) Sustainability Victoria must prepare a draft State-Wide Waste and Resource Recovery Infrastructure Plan in accordance with this Division.
- (2) The objective of a State-Wide Waste and Resource Recovery Infrastructure Plan is to provide strategic direction for the management of waste and resource recovery infrastructure in Victoria for a period of 30 years.

S. 407
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

408 Content of State-Wide Waste and Resource Recovery Infrastructure Plan

A State-Wide Waste and Resource Recovery Infrastructure Plan must include any matters required by guidelines made under section 427.

S. 408
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

409 Consultation on State-Wide Waste and Resource Recovery Infrastructure Plan

In preparing a draft State-Wide Waste and Resource Recovery Infrastructure Plan, Sustainability Victoria must comply with the consultation process required by guidelines made under section 427.

S. 409
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

410 Minister’s approval of State-Wide Waste and Resource Recovery Infrastructure Plan

- (1) On receiving a draft State-Wide Waste and Resource Recovery Infrastructure Plan, the Minister must—
 - (a) approve the draft Plan; or
 - (b) approve the draft Plan with amendments; or

S. 410
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (c) return the draft Plan to Sustainability Victoria for amendment.
- (2) If the Minister returns a draft State-Wide Waste and Resource Recovery Infrastructure Plan to Sustainability Victoria under subsection (1)(c), the Minister must—
 - (a) give directions as to the amendments required to be made to the draft Plan; and
 - (b) direct Sustainability Victoria to submit the draft Plan for approval under subsection (1) within a specified period.

S. 411
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

411 Gazettal of State-Wide Waste and Resource Recovery Infrastructure Plan

- (1) If the Minister approves a State-Wide Waste and Resource Recovery Infrastructure Plan, the Minister must cause a notice of the approval to be published—
 - (a) in the next general edition of the Government Gazette; or
 - (b) in a special edition of the Government Gazette within 10 business days after the day of the approval of the Plan.
- (2) A State-Wide Waste and Resource Recovery Infrastructure Plan takes effect on—
 - (a) the day on which the notice of approval is published in the Government Gazette; or
 - (b) a later day specified in the notice.
- (3) A State-Wide Waste and Resource Recovery Infrastructure Plan remains in force until it is replaced by another State-Wide Waste and Resource Recovery Infrastructure Plan.

412 Publication of State-Wide Waste and Resource Recovery Infrastructure Plan

- (1) Sustainability Victoria must publish a State Wide Waste and Resource Recovery Infrastructure Plan on its Internet site within 5 business days of a notice of approval being published in the Government Gazette.
- (2) Sustainability Victoria must publish a revised copy of a State-Wide Waste and Resource Recovery Infrastructure Plan on its Internet site within 5 business days of a notice of approval of an amendment or variation to the Plan being published in the Government Gazette.

S. 412
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

413 Amendment and variation of State-Wide Waste and Resource Recovery Infrastructure Plan

- (1) Sustainability Victoria may at any time prepare draft amendments to a State-Wide Waste and Resource Recovery Infrastructure Plan.
- (2) The Minister may at any time direct Sustainability Victoria to prepare draft amendments to a State-Wide Waste and Resource Recovery Infrastructure Plan within a specified period of time.
- (3) The Minister may at any time make a variation to a State-Wide Waste and Resource Recovery Infrastructure Plan that is declaratory, machinery or administrative in nature.
- (4) Sections 409, 410 and 411 apply to a draft amendment to a State-Wide Waste and Resource Recovery Infrastructure Plan under subsections (1) and (2) as if the draft amendment were a draft State-Wide Waste and Resource Recovery Infrastructure Plan.
- (5) Sections 410 and 411 apply to a variation of a State-Wide Waste and Resource Recovery Infrastructure Plan under subsection (3) as if the

S. 413
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

variation were a draft State-Wide Waste and Resource Recovery Infrastructure Plan.

S. 414
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

414 Review of State-Wide Waste and Resource Recovery Infrastructure Plan

- (1) Every 5 years, from the day a State-Wide Waste and Resource Recovery Infrastructure Plan takes effect, Sustainability Victoria must conduct a review of the existing Plan and prepare a draft revised Plan.
- (2) At any time the Minister may require Sustainability Victoria to prepare a draft revised State-Wide Waste and Resource Recovery Infrastructure Plan within 12 months after the day of the request.
- (3) Sections 409, 410 and 411 apply to a draft revised State-Wide Waste and Resource Recovery Infrastructure Plan under subsections (1) and (2) as if the draft revised Plan were a draft State-Wide Waste and Resource Recovery Infrastructure Plan.

Division 3—Regional Waste and Resource Recovery Implementation Plans

S. 415
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

415 Preparation of draft Regional Waste and Resource Recovery Implementation Plans

- (1) A Waste and Resource Recovery Group must prepare a draft Regional Waste and Resource Recovery Implementation Plan for its waste and resource recovery region.
- (2) A Waste and Resource Recovery Group must submit a draft Regional Waste and Resource Recovery Implementation Plan to Sustainability Victoria and to the Authority within 12 months after the day on which the existing State-Wide Waste and Resource Recovery Infrastructure Plan takes effect.

- (3) The Authority must make any comments within 60 days after receiving a draft Regional Waste and Resource Recovery Implementation Plan.

416 Objective of Regional Waste and Resource Recovery Implementation Plans

The objective of a Regional Waste and Resource Recovery Implementation Plan is to specify the manner in which the waste and resource recovery infrastructure needs of a waste and resource recovery region will be met over a specified period of at least 10 years.

S. 416 inserted by No. 39/2018 s. 18 (as amended by Nos 27/2019 ss 32–40, 3/2020 ss 45, 46, 47/2020 s. 27).

417 Content of Regional Waste and Resource Recovery Implementation Plans

A Regional Waste and Resource Recovery Implementation Plan must include the following—

- (a) a schedule of existing landfill infrastructure of the waste and resource recovery region;
- (b) a schedule of required landfill infrastructure of the waste and resource recovery region over a specified period of at least 10 years, including the proposed sequence for filling available landfill sites of the waste and resource recovery region;
- (c) a schedule of resource recovery infrastructure of the waste and resource recovery region required for the purposes of managing waste in a manner that minimises the risks of harm to human health or the environment over a specified period of at least 10 years;
- (d) any other matters required by guidelines made under section 427.

S. 417 inserted by No. 39/2018 s. 18 (as amended by Nos 27/2019 ss 32–40, 3/2020 ss 45, 46, 47/2020 s. 27).

S. 418
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

418 Consultation on Regional Waste and Resource Recovery Implementation Plans

Before submitting a draft Regional Waste and Resource Recovery Implementation Plan to Sustainability Victoria and to the Authority under section 415(2), a Waste and Resource Recovery Group must comply with the consultation process required by guidelines made under section 427.

S. 419
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

419 Integration in preparation of Regional Waste and Resource Recovery Implementation Plans

- (1) After submitting a draft Regional Waste and Resource Recovery Implementation Plan to Sustainability Victoria and the Authority under section 415(2), the relevant Waste and Resource Recovery Group and Sustainability Victoria must jointly review the draft Plan for the purposes of—
 - (a) integrating the objectives and priority infrastructure requirements of the Regional Waste and Resource Recovery Implementation Plan and the State-Wide Waste and Resource Recovery Infrastructure Plan; and
 - (b) ensuring there are no inconsistencies between the Plans.
- (2) In jointly reviewing a draft Regional Waste and Resource Recovery Implementation Plan, Sustainability Victoria and the relevant Waste and Resource Recovery Group must—
 - (a) take into account any comments made by the Authority under section 415(3); and
 - (b) comply with any guidelines made under section 427 that apply to review and amendment of a draft Plan under this section.

- (3) After reviewing a draft Regional Waste and Resource Recovery Implementation Plan in accordance with this section Sustainability Victoria and the relevant Waste and Resource Recovery Group—
- (a) may amend the draft Plan; and
 - (b) must amend the schedule of existing and required landfill infrastructure of the waste and resource recovery region in the draft Plan if the Authority objects to the inclusion of a proposed landfill site on the grounds that it is unlikely to meet any requirement under this Act.
- (4) A Waste and Resource Recovery Group must submit a draft Regional Waste and Resource Recovery Implementation Plan to the Minister for approval no later than 6 months after submitting the draft Plan to Sustainability Victoria and the Authority under section 415(2).

420 Minister’s approval of Regional Waste and Resource Recovery Implementation Plans

- (1) On receiving a draft Regional Waste and Resource Recovery Implementation Plan submitted for approval the Minister must—
- (a) approve the draft Plan; or
 - (b) approve the Plan with amendments; or
 - (c) return the draft Plan to the relevant Waste and Resource Recovery Group for amendment.
- (2) If the Minister returns a draft Regional Waste and Resource Recovery Implementation Plan to a Waste and Resource Recovery Group under subsection (1)(c), the Minister must—

S. 420
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (a) give directions as to the amendments required to be made to the draft Plan; and
- (b) direct the Waste and Resource Recovery Group to submit the draft Plan for approval within a specified period determined by the Minister.

S. 421
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

421 Gazettal of Regional Waste and Resource Recovery Implementation Plans

- (1) If the Minister approves a Regional Waste and Resource Recovery Implementation Plan, the Minister must cause a notice of the approval to be published—
 - (a) in the next general edition of the Government Gazette; or
 - (b) in a special edition of the Government Gazette within 10 business days after the approval of the Plan.
- (2) A Regional Waste and Resource Recovery Implementation Plan takes effect on—
 - (a) the day on which the notice of the approval is published in the Government Gazette; or
 - (b) a later day specified in the notice.
- (3) A Regional Waste and Resource Recovery Implementation Plan remains in force until it is replaced by another Regional Waste and Resource Recovery Implementation Plan.

S. 422
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

422 Publication of Regional Waste and Resource Recovery Implementation Plans

Within 5 business days of a notice of approval of a Regional Waste and Resource Recovery Implementation Plan or a revised copy of a Regional Waste and Resource Recovery Implementation Plan being published in the Government Gazette—

- (a) the relevant Waste and Resource Recovery Group must publish the Plan or the revised copy of the Plan (as the case requires) on its Internet site; and
- (b) Sustainability Victoria must publish the Plan or the revised copy of the Plan (as the case requires) on its Internet site.

423 Amendment of Regional Waste and Resource Recovery Implementation Plans

- (1) A Waste and Resource Recovery Group may at any time prepare draft amendments to the relevant Regional Waste and Resource Recovery Implementation Plan.
- (2) The Minister may at any time direct a Waste and Resource Recovery Group to prepare draft amendments to a Regional Waste and Resource Recovery Implementation Plan within a specified period of time.
- (3) The Minister may at any time make a variation to a Regional Waste and Resource Recovery Implementation Plan that is declaratory, machinery or administrative in nature.
- (4) Sections 418, 419, 420 and 421 apply to a draft amendment to a Regional Waste and Resource Recovery Implementation Plan under subsections (1) and (2) as if the amendment were a draft Regional Waste and Resource Recovery Implementation Plan.
- (5) Sections 420 and 421 apply to a variation of a Regional Waste and Resource Recovery Implementation Plan under subsection (3) as if the variation were a draft Regional Waste and Resource Recovery Implementation Plan.

S. 423
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 424
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

424 Consistency with Regional Waste and Resource Recovery Implementation Plans

- (1) A council must perform its waste management functions consistently with the Regional Waste and Resource Recovery Implementation Plan applying to the council's municipal district.
- (2) If a council disposes of waste in a waste and resource recovery region other than the waste and resource recovery region in which the council's municipal district is located, the disposal of the waste must be consistent with the Regional Waste and Resource Recovery Implementation Plan applying to the other waste and resource recovery region.
- (3) Any person involved in the generation, management or transport of waste within a waste and resource recovery region must not do anything in relation to the waste that is inconsistent with the relevant Regional Waste and Resource Recovery Implementation Plan while the waste is in that region.

S. 425
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

425 Review of Regional Waste and Resource Recovery Implementation Plans

- (1) Within 12 months after the day on which the State-Wide Waste and Resource Recovery Infrastructure Plan is reviewed under section 414, a Regional Waste and Resource Recovery Group must conduct a review of the existing Regional Waste and Resource Recovery Implementation Plan and prepare a draft revised Plan.
- (2) Sections 418, 419, 420 and 421 apply to a draft revised Regional Waste and Resource Recovery Implementation Plan under subsection (1) as if the draft revised Plan were a draft Regional Waste and Resource Recovery Implementation Plan.

Division 4—General

426 Authority may refuse applications for certain facilities if Plans not observed

- (1) This section applies to the following—
 - (a) any application for a permission in relation to a waste management facility;
 - (b) any application to amend a permission in relation to a waste management facility.
- (2) The Authority may refuse to consider an application or refuse an application if—
 - (a) the operations of the waste management facility could be inconsistent with the State-Wide Waste and Resource Recovery Infrastructure Plan or a relevant Regional Waste and Resource Recovery Implementation Plan; or
 - (b) the applicant is in breach of any relevant requirements of a schedule of existing and required waste and resource recovery infrastructure in a Regional Waste and Resource Recovery Implementation Plan.
- (3) Subject to subsection (4), the Authority must refuse to consider an application in relation to a new landfill site if the landfill site is not included in the proposed sequence for filling available landfill sites in a relevant schedule of existing and required waste and resource recovery infrastructure within a Regional Waste and Resource Recovery Implementation Plan.
- (4) The Authority must not refuse to consider an application under subsection (3) if—
 - (a) the landfill site is privately owned; and

S. 426
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (b) the Authority is satisfied the landfill site will only receive waste that consists of substances that were owned by the owner of the site before the substances became waste.
- (5) The Authority must, in writing, give reasons to any person whose application is not considered or is refused under this section.

S. 427
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

427 Minister may make guidelines

The Minister may make guidelines in relation to any of the following—

- (a) requirements for the preparation of, and consultation on, a draft State-Wide Waste and Resource Recovery Infrastructure Plan and draft Regional Waste and Resource Recovery Implementation Plans;
- (b) integration of draft Regional Waste and Resource Recovery Implementation Plans with the State-Wide Waste and Resource Recovery Infrastructure Plan.

Chapter 14—General

Ch. 14
(Headings
and ss 428–
463)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Part 14.1—Simplified outline

Pt 14.1
(Heading and
s. 428)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

428 Simplified outline—Chapter 14

- (1) This section sets out a simplified outline of this Chapter.
- (2) Certain persons may apply—
 - (a) to the Authority for the review of a decision of an authorised officer; or
 - (b) to VCAT for decisions specified in Division 2 of Part 14.2.
- (3) The Authority may delegate its powers and functions under Part 14.3.
- (4) Part 14.4 sets out the fees and penalties under this Act that must be paid into the Consolidated Fund and provides for the establishment of the following accounts—
 - (a) in the Trust Fund, the Environment Protection Fund;

S. 428
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (b) in the Environment Protection Fund—
 - (i) the General Waste Levy Account; and
 - (ii) the Restorative Project Account;
 - (c) the Municipal and Industrial Waste Levy Trust Account of the Department of Environment, Land, Water and Planning;
 - (d) the Sustainability Fund Trust Account of the Department of Environment, Land, Water and Planning.
- (5) Part 14.5 regulates the collection, use, disclosure and publication of information under this Act.
- (6) Part 14.5 requires the Authority to establish and maintain a Public Register in which is recorded the details of decisions, authorisations or documents made, issued, granted or prepared under this Act including, but not limited to, enforceable undertakings, permissions, exemptions, site management orders and better environment plans.
- (7) Part 14.6 provides for the Authority to designate specified responsibilities to any Victorian Government agency in areas that pose risk of harm to human health or the environment.
- (8) Part 14.7 provides for when the Authority may grant exemptions to this Act.
- (9) Part 14.8 prohibits impersonation of certain persons, false representation, interference with monitoring equipment and providing false information.

Part 14.2—Review of decisions

Division 1—Review by the Authority

Pt 14.2
(Heading and
ss 429–436)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

429 Review by the Authority

- (1) A person may apply to the Authority for review of a decision by an authorised officer to issue a notice to the person or to amend a notice issued by an authorised officer to the person.
- (2) A person may apply for review under subsection (1) within—
 - (a) 10 business days after the day on which notice of the decision is served on the person; or
 - (b) any longer period allowed by the Authority.
- (3) The application must be in the form and manner approved by the Authority.
- (4) If an application is made to the Authority in accordance with this section, the Authority may make a decision—
 - (a) to affirm or vary the decision; or
 - (b) to set aside the decision and substitute another decision that the Authority considers appropriate.
- (5) The Authority must ensure that a review under this section of a decision is not conducted by a person who was involved in the making of the decision under review.

S. 429
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (6) The Authority must, within 10 business days after the application is made under subsection (1), give a written notice to the applicant for review setting out the Authority's decision under subsection (4) and the reasons for the decision.
- (7) If the Authority does not notify an applicant of a decision in accordance with subsection (6), the Authority is taken to have made a decision to affirm the reviewable decision.
- (8) An application under this section does not affect the operation of the reviewable decision or prevent the taking of any action to implement it unless the Authority, on its own initiative or on the application of the applicant for review, stays the operation of the decision pending the determination of the review.
- (9) The Authority must make a decision on an application for a stay under subsection (8) by—
 - (a) if the Authority receives the application during business hours on a business day, the same time as the time the application is received on the second business day after the application is received; or
 - (b) if the Authority receives the application on a day that is not a business day or after 5 p.m. on a business day, 5 p.m. on the second business day after the application is received.
- (10) If the Authority does not make a decision in accordance with subsection (9), the Authority is taken to have made a decision to grant the stay.
- (11) The Authority may attach any conditions to a stay of the operation of a reviewable decision that it considers appropriate.

(12) In this section—

notice means one of the following notices—

- (a) an improvement notice;
- (b) a prohibition notice;
- (c) a notice to investigate;
- (d) an environmental action notice.

Division 2—Review by VCAT

430 Decisions reviewable by VCAT

(1) The table to subsection (4) sets out—

- (a) decisions made under this Act that are reviewable by VCAT in accordance with this Division (*reviewable decisions*); and
- (b) persons who are eligible to apply for review of that reviewable decision (the *eligible person* in relation to the reviewable decision).

(2) A person who is liable to pay a fee under this Act—

- (a) may apply to VCAT for review of the fee on the ground that the fee has been incorrectly calculated; and
- (b) for the purposes of this Part is an eligible person in relation to that reviewable decision.

(3) To avoid doubt, sections 4 and 5 of the **Victorian Civil and Administrative Tribunal Act 1998** apply for the purposes of this Part.

Note

Section 4 of the **Victorian Civil and Administrative Tribunal Act 1998** sets out when a person makes a decision. Section 5 of that Act sets out when a person's interests are affected by a decision.

S. 430
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

(4) An eligible person in relation to a reviewable decision is taken to be a person whose interests are affected by that decision for the purposes of the **Victorian Civil and Administrative Tribunal Act 1998**.

Table

| <i>Item</i> | <i>Provision under which reviewable decision is made</i> | <i>Eligible person in relation to reviewable decision</i> |
|-------------|--|---|
| 1. | 56(4) | Applicant for transfer |
| 2. | 57(4) | Holder of permission |
| 3. | 58(1)(c) | Holder of permission |
| 4. | 59(4) | Holder of permission |
| 5. | 60(1), (7) | Holder of permission |
| 6. | 61(1) | Holder of permission |
| 7. | 69(1) | Applicant for development licence |
| 8. | 74(1) | Applicant for operating licence |
| 9. | 76(3) | Holder of operating licence |
| 10. | 78(1) | Applicant for pilot project licence |
| 11. | 80(4) | Applicant for exemption |
| 12. | 81(1)(a) or (b) | Applicant for permit |
| 13. | 82(3) | Applicant for exemption |
| 14. | 83(3) | Applicant for exemption |
| 15. | 84(4) | Applicant for renewal |
| 16. | 90(3) | Applicant for authorisation |
| 17. | 90(4)(b) | Applicant for authorisation |
| 18. | 121(1), (8) | Person to whom waste abatement notice issued |
| 18A. | 121(6) | Person to whom notice under section 121(6) issued |

Environment Protection Act 2017
No. 51 of 2017
Part 14.2—Review of decisions

| <i>Item</i> | <i>Provision under which reviewable decision is made</i> | <i>Eligible person in relation to reviewable decision</i> |
|-------------|--|--|
| 19. | 151(2)(b) | Liabe person to whom notice of assessment issued |
| 20. | 172(1) | Person to whom residential noise improvement notice issued |
| 21. | 184(2) | Participant in better environment plan |
| 22. | 184(4) | Participant in better environment plan |
| 23. | 200(1), (2) | Environmental auditor whose appointment is suspended or revoked |
| 24. | 206(2)(b) | A person whose interests are directly affected by the endorsement or determination of scope of environmental audit |
| 25. | 208(5)(b) | A person whose interests are directly affected by the endorsement or determination of scope of environmental audit |
| 26. | 219(1) | Person required to provide financial assurance |
| 27. | 220(1) | Person required to provide financial assurance |
| 28. | 221(1) | Person required to provide financial assurance |
| 29. | 226(1) | Person required to provide financial assurance |
| 30. | 227(2) | Person required to provide financial assurance |
| 31. | 232(1) | Person required to provide financial assurance |
| 32. | 265(1)(c) | Owner of forfeited thing |

Environment Protection Act 2017
No. 51 of 2017
Part 14.2—Review of decisions

| <i>Item</i> | <i>Provision under which reviewable decision is made</i> | <i>Eligible person in relation to reviewable decision</i> |
|-------------|--|---|
| 33. | 271(1) | Person to whom improvement notice issued |
| 34. | 272(1) | Person to whom prohibition notice issued |
| 35. | 273(1) | Person to whom notice to investigate issued |
| 36. | 274(1) | Person to whom environmental action notice issued |
| 37. | 275(1) | Person on whom site management order is binding |
| 38. | 277(1) | Applicant for variation or revocation |
| 39. | 279(b) | Person to whom notice issued |
| 40. | 283(1) | Body corporate to which direction is given |
| 41. | 284(1) | Person to whom direction is given |
| 42. | 285(1) | Body corporate to which direction is given |
| 43. | 429(8), (11) | Applicant for stay of operation of reviewable decision |
| 44. | 458(1)(b), (c) | Agency designated to be responsible |

S. 431
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

431 Applications for review by VCAT

- (1) An eligible person may apply to VCAT for review of a reviewable decision within 15 business days after—
- (a) the day on which the decision first came to the eligible person's notice; or

- (b) if the decision is reviewed by the Authority under section 429, the day on which the Authority makes a decision under section 429(4).
- (2) If an eligible person may apply under section 429 to the Authority for review of a reviewable decision—
- (a) the eligible person may not apply to VCAT under subsection (1) for a review of that decision unless the decision is first reviewed under section 429; and
 - (b) the decision on review under section 429(4) is taken to be the reviewable decision.
- (3) An eligible person may not apply to VCAT under subsection (1) for the review of the decision to issue a development licence—
- (a) if the application for the licence specifies an activity that is works to which the **Environment Effects Act 1978** applies—
 - (i) the notice of the application for the licence under section 52 is combined with any notice under the **Environment Effects Act 1978** in accordance with section 70; and
 - (ii) the licence is substantially in accordance with the assessment, by the Minister administering that Act, of the Environment Effects Statement prepared under that Act for those works; or
 - (b) if the application for the licence specifies an activity that requires a planning permit or the preparation of an amendment to a planning scheme under the **Planning and Environment Act 1987**—

- (i) the notice of the application for the licence under section 52 is combined with any notice under the **Planning and Environment Act 1987** in accordance with section 70; and
- (ii) a panel has been appointed under that Act to hear the application or amendment; and
- (iii) the licence is substantially in accordance with the application or amendment as heard by the panel.

S. 432
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

432 Specific grounds of review

An eligible person in relation to the following reviewable decisions may apply to VCAT for review on the following grounds only—

- (a) in the case of a decision that a person is liable to pay a fee or levy under this Act, that the fee has been incorrectly calculated;
- (b) in the case of a decision to issue a waste abatement notice under section 121, that the notice is oppressive, unjust or unreasonable;
- (c) in the case of the decision to issue a residential noise improvement notice under section 172, that the notice is oppressive, unjust or unreasonable;
- (d) in the case of the decision to issue a notice of assessment under section 151, that the amount owed by the liable person or owing to the liable person has been incorrectly calculated.

433 Joinder of parties

Without limiting section 60 of the **Victorian Civil and Administrative Tribunal Act 1998**, VCAT may order that a person be joined as a party to a review of a failure by the Authority to determine under section 69 whether to issue a development licence if VCAT is satisfied that—

- (a) the person's interests are affected by the decision whether to issue that licence; and
- (b) there is evidence to establish one or more of the grounds for review set out in section 434(3).

S. 433 inserted by No. 39/2018 s. 18 (as amended by Nos 27/2019 ss 32–40, 3/2020 ss 45, 46, 47/2020 s. 27).

434 Application for review by third parties

- (1) A person who is not an eligible person in relation to a reviewable decision specified in subsection (2) may, if the person's interests are affected by the decision, apply to VCAT for review of the decision within 15 business days after the day on which the decision was made.
- (2) The following reviewable decisions are specified for the purposes of subsection (1)—
 - (a) the issue of a development licence;
 - (b) the removal of the suspension of an operating licence.
- (3) An application under subsection (1) for the review of a decision may only be made on one or more of the following grounds—
 - (a) the decision unreasonably and adversely affects the financial, physical or personal interests of the applicant;
 - (b) the licence to which the decision relates authorises a licence activity that, if conducted in accordance with the licence,

S. 434 inserted by No. 39/2018 s. 18 (as amended by Nos 27/2019 ss 32–40, 3/2020 ss 45, 46, 47/2020 s. 27).

- would lead to a contravention of the general environmental duty;
- (c) the licence authorises a licence activity that, if conducted in accordance with the licence, would pose an unacceptable risk of harm to human health or the environment;
 - (d) any condition of the licence that specifies how a person is to comply with the general environmental duty when engaging in a licence activity is not sufficient to minimise the risks of harm to human health or the environment from pollution or waste to which the condition relates, so far as reasonably practicable.
- (4) Without limiting section 5 of the **Victorian Civil and Administrative Tribunal Act 1998**, VCAT may take into account the following matters when determining whether a person's interests are affected by a decision—
- (a) the principles of environment protection specified in Chapter 2 and the purposes of this Act;
 - (b) the objective of the Authority specified in section 357;
 - (c) the nature of the licence activity specified in the licence that is the subject of the decision;
 - (d) the impact of the licence activity on human health and the environment;
 - (e) whether the person has a genuine connection with the subject of the decision, including but not limited to whether the person made comments or submissions to the Authority in relation to the application for, or the review of, the licence that is the subject of the decision.

- (5) A person may not apply to VCAT under subsection (1) for the review of the decision to issue a development licence—
- (a) if the application for the licence specifies an activity that is works to which the **Environment Effects Act 1978** applies—
 - (i) the notice of the application for the licence under section 52 is combined with any notice under the **Environment Effects Act 1978** in accordance with section 70; and
 - (ii) the licence is substantially in accordance with the assessment, by the Minister administering that Act, of the Environment Effects Statement prepared under that Act for those works; or
 - (b) if the application for the licence specifies an activity that requires a planning permit or the preparation of an amendment to a planning scheme under the **Planning and Environment Act 1987**—
 - (i) the notice of the application for the licence under section 52 is combined with any notice under the **Planning and Environment Act 1987** in accordance with section 70; and
 - (ii) a panel has been appointed under that Act to hear the application or amendment; and
 - (iii) the licence is substantially in accordance with the application or amendment as heard by the panel.

S. 435
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

435 Matters VCAT must take into account

In determining an application for review under this Division, VCAT must take into account—

- (a) any relevant planning scheme approved under the **Planning and Environment Act 1987**; and
- (b) if VCAT considers it appropriate, any planning scheme that, at the time VCAT considers the application, is not approved under the **Planning and Environment Act 1987**; and
- (c) any relevant environment reference standard or order under section 156(1); and
- (d) if VCAT considers it appropriate, any agreement entered into under section 173 of the **Planning and Environment Act 1987**.

S. 436
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

436 Application for declaration

- (1) A person may apply to VCAT for a declaration concerning any matter in relation to which the person may apply to VCAT under this Act or anything done by the Authority under this Act.
- (2) On an application under subsection (1) VCAT may make any declaration it thinks appropriate in the circumstances.
- (3) VCAT's power to make a declaration under this section is exercisable only by a presidential member of the Tribunal.
- (4) Without limiting subsection (1), a person proposing to engage in an activity may apply to VCAT for a declaration as to whether or not a permission is required to engage in that activity.

Part 14.3—Delegations

Pt 14.3
(Heading and
s. 437)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

437 Delegation

S. 437
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020 s.
27).

- (1) The Governing Board may by instrument delegate all or any of the Authority's powers and functions under this Act to—
 - (a) a public sector body; or
 - (b) a council; or
 - (c) an officer or employee, or class of officer or employee, of the Authority; or
 - (d) an officer or employee, or class of officer or employee, of any other public sector body or a council.
- (2) If the Governing Board delegates a power or function to a public sector body or council under subsection (1), the body or council may, either generally or as otherwise provided by the instrument of delegation, in writing, delegate the delegated power or function—
 - (a) to an officer or employee of the body or council; or
 - (b) to a class of officer or employee of the body or council.
- (3) If the Governing Board delegates a power or function to the chief executive officer under subsection (1), the chief executive officer may, either generally or as otherwise provided by the

instrument of delegation, in writing, delegate the delegated power or function to—

- (a) an officer or employee of the Authority; or
 - (b) the holder of an office or position with the Authority.
- (4) The Governing Board may give directions in respect of the exercise of a power or the carrying out of a function delegated under subsection (1), (2) or (3).
- (5) Without limiting subsection (4), a direction given under that subsection may—
- (a) impose conditions or limitations on the exercise of the power or the carrying out of the function specified in the instrument of delegation; and
 - (b) be of general or limited application.

Part 14.4—Financial matters

Pt 14.4
(Heading and
ss 438–451)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

438 Fees and penalties to be paid into the Consolidated Fund

S. 438
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (1) Subject to sections 439 and 440, the following fees and penalties must be paid into the Consolidated Fund—
 - (a) any fee paid under this Act;
 - (b) any penalty for an offence against this Act or the regulations;
 - (c) a civil penalty for a contravention of a civil penalty provision under this Act.
- (2) Any fee paid under this Act to a body that has delegated powers or functions of the Authority must be paid by the body to the Authority for payment into the Consolidated Fund.

439 Exceptions to requirement to pay fees and penalties into the Consolidated Fund

S. 439
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (1) The following fees are not required to be paid into the Consolidated Fund and may be retained by a council—
 - (a) any fee paid under this Act for a permit of a type prescribed to be a permit activity that is administered by the council under Part 4.5;

(b) any fee paid under this Act for an exemption from the application of section 46 in respect of a prescribed permit activity administered by the council under section 83.

(2) Any penalty for an offence or an infringement offence under section 167(1), 172(6) or 175(4) or Chapter 4 where a prosecution was undertaken, or an infringement notice was issued by a person authorised for that purpose by a council, is not required to be paid into the Consolidated Fund and must be paid to the council once the penalty has been recovered.

S. 440
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

440 Further exceptions to requirement to pay fees and penalties into the Consolidated Fund in relation to Part 6.3

- (1) This section applies if—
- (a) a prosecution has been undertaken for an offence under Part 6.3 by a person authorised for that purpose, a litter authority or a litter enforcement officer; or
 - (b) an infringement notice has been issued for an infringement offence under Part 6.3 by a litter enforcement officer.
- (2) The following penalties must be paid by the Authority into the Environment Protection Fund once the penalty has been recovered—
- (a) the penalty for the offence;
 - (b) the penalty for the infringement offence.
- (3) The penalties specified in subsection (2) must be paid by any litter authority (other than the Authority) once the penalty has been recovered—
- (a) into the litter authority's fund; or

- (b) if the litter authority does not have a fund but administers or uses money paid to or collected by the litter authority, to the litter authority.

441 Environment Protection Fund

There must be established in the Public Account as part of the Trust Fund an account to be known as the Environment Protection Fund.

S. 441
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

442 Investment of money from Environment Protection Fund

Any money standing to the credit of the Environment Protection Fund may be invested in any securities approved by the Treasurer.

S. 442
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

443 Treasurer may make grants or advances out of the Environment Protection Fund

- (1) The Treasurer may make a grant or an advance out of the Environment Protection Fund to a body corporate under any Act if—
- (a) the grant or the advance is for or towards the cost of carrying out any necessary works for the treatment or disposal of waste in accordance with this Act and the regulations; and
 - (b) the existing facilities for the treatment or disposal of waste are or are likely to become inadequate to comply with this Act or the regulations.
- (2) An advance made by the Treasurer under subsection (1) must be subject to conditions as agreed to between the Treasurer and the body

S. 443
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

corporate in relation to the repayment of the advance and any interest on the advance.

S. 444
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

444 Payments into the Environment Protection Fund

There must be paid into the Environment Protection Fund—

- (a) all money provided by Parliament for the purposes of the Fund; and
- (b) all money collected as an environment protection levy under Part 4.8; and
- (c) all money collected as a waste levy under section 145(2); and
- (d) any other money collected as a waste levy under Part 6.6; and
- (e) all money collected as a fee for conducting a preliminary risk screen assessment or an environmental audit under Part 8.3; and
- (f) all money collected under an order made under section 332; and
- (g) all interest earned from the investment of money standing to the credit of the Environment Protection Fund; and
- (h) all money repaid to the Treasurer in relation to an advance made by the Treasurer under section 443 and all interest earned on the advance.

S. 445
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

445 Payments out of the Environment Protection Fund

- (1) Money paid out of the Environment Protection Fund must—
 - (a) in the case of money paid into the Environment Protection Fund under section 444(b) or (c) or any penalty paid into the Environment Protection Fund under section 440(2)—be applied by the Authority for the

- purposes of protecting human health or the environment from pollution or waste; or
- (b) in the case of money paid into the Environment Protection Fund under section 444(d)—be applied by the Authority in accordance with section 448; or
 - (c) in the case of money paid into the Environment Protection Fund under section 444(e)—be applied by the Authority for the purposes of Part 8.3.
- (2) In addition to subsection (1), money may be paid out of the Environment Protection Fund if the Authority is required—
- (a) to pay an amount to a liable person under Part 6.6; and
 - (b) to refund money paid into the Environment Protection Fund under section 444(c) or (d) as a result of a miscalculation or an error.

446 General Waste Levy Account

- (1) Within the Environment Protection Fund, the Authority must establish and maintain an account to be known as the General Waste Levy Account.
- (2) The Authority must credit to the General Waste Levy Account all amounts paid into the Environment Protection Fund under section 444(d).
- (3) This section does not affect the operation of section 445(2).

S. 446
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

447 Restorative Project Account

- (1) Within the Environment Protection Fund, the Authority must establish and maintain an account to be known as the Restorative Project Account.

S. 447
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (2) The Authority must credit to the Restorative Project Account any money paid into the Environment Protection Fund under section 444(f) that specifies that the money is to be paid into the Restorative Project Account.
- (3) Money standing to the credit of the Restorative Project Account must be applied by the Authority to enable a person or organisation to carry out—
 - (a) if the order under section 332 specifies the project for the restoration or enhancement of the environment for which the money is to be applied, that project; or
 - (b) in any other case, any project for the restoration or enhancement of the environment.

S. 448
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

448 Municipal and Industrial Waste Levy Trust Account

- (1) The Department of Environment, Land, Water and Planning must establish and maintain an account to be known as the Municipal and Industrial Waste Levy Trust Account.
- (2) The Authority must credit to the Municipal and Industrial Waste Levy Trust Account any amount standing to the credit of the General Waste Levy Account at the end of each quarter by the 15th day of the following quarter.
- (3) There may be paid out of the Municipal and Industrial Waste Levy Trust Account an amount to one or more of the following bodies—
 - (a) the Authority;
 - (b) Sustainability Victoria;
 - (c) a Waste and Resource Recovery Group;

- (d) a public entity or other body if—
 - (i) that body is established for a public purpose; and
 - (ii) the amount is paid out for the purposes of environmental assessment, environmental protection, environmental restoration or environmental improvement.
- (4) Any amount paid out under subsection (3) must be paid out in accordance with a determination made under subsection (5).
- (5) The Minister must make a determination specifying—
 - (a) an amount to be paid to one or more of the bodies referred to in subsection (3) or the methods by which the amount to be paid is to be calculated; and
 - (b) the times at which the amount must be paid; and
 - (c) the period for which the determination applies.
- (6) This section does not affect the operation of section 445(2).

449 Sustainability Fund Account

- (1) The Department of Environment, Land, Water and Planning must establish and maintain an account to be known as the Sustainability Fund Account.
- (2) The Department of Environment, Land, Water and Planning must credit to the Sustainability Fund Account any amount standing to the credit of the Municipal and Industrial Waste Levy Trust Account at the end of each quarter.

S. 449
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (3) Subject to subsection (4), money paid out of the Sustainability Fund Account must be applied, with the consent of the Premier and the Minister, for the following purposes—
- (a) to foster environmentally sustainable uses of resources and best practices in waste management to advance the social and economic development of Victoria;
 - (b) either—
 - (i) to foster community action or innovation in relation to the reduction of greenhouse gas substance emissions; or
 - (ii) to adapt or adjust to climate change in Victoria.
- (4) The Premier and the Minister must not consent to the application of money paid out of the Sustainability Fund Account for the purposes referred to in subsection (3) unless—
- (a) a priority statement has been produced and published in accordance with section 450 that sets out, in order of priority, the matters in respect of which the Premier and Minister intend to pay out money from the Sustainability Fund Account in the relevant period; and
 - (b) guidelines are in force that detail how the Premier and the Minister will exercise their powers under subsection (3) and those guidelines have been published in accordance with section 451(2).

450 Priority statement

- (1) The Minister must prepare a statement setting out, in order of priority, the matters in respect of which the Premier and the Minister intend money to be paid out of the Sustainability Fund Account under section 449(3).
- (2) A statement under subsection (1) must be produced and published in accordance with the following steps—
 - (a) the Minister must produce a draft statement;
 - (b) notice of the draft statement must be advertised in a newspaper circulating generally throughout Victoria;
 - (c) the advertisement must include—
 - (i) an outline of the draft statement; and
 - (ii) advice as to where a copy of the draft statement can be obtained or examined; and
 - (iii) a statement inviting any person with an interest in the draft statement to make comments to the Premier or the Minister within 15 business days after the date of publication of the advertisement;
 - (d) a copy of the draft statement and a copy of the statement required under paragraph (c)(iii) must be published on the Internet site of the Department of Environment, Land, Water and Planning;
 - (e) the Premier and the Minister must consider any comments that are made in response to the invitation referred to in paragraph (c)(iii) before approving and publishing the statement;

S. 450
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (f) a copy of the approved statement must be published in the Government Gazette.
- (3) Subsection (2) does not apply if the statement—
 - (a) only revokes an existing statement; or
 - (b) only amends an existing statement and the amendment is of a machinery or administrative nature.

S. 451
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

451 Sustainability Fund Account guidelines

- (1) The Minister must cause to be published any guidelines made for the purposes of section 449(4)(b)—
 - (a) in the Government Gazette; and
 - (b) on the Internet site of the Department of Environment, Land, Water and Planning.
- (2) A guideline made for the purposes of section 449(4)(b) has no effect until it is published in the Government Gazette.
- (3) On or before the 6th sitting day after a guideline has been published in the Government Gazette, the Minister must ensure that a copy of the guideline is laid before each House of the Parliament.
- (4) A failure to comply with subsection (3) does not affect the operation or effect of the guideline but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
- (5) A guideline may be disallowed in whole or in part by either House of Parliament.
- (6) Part 5 of the **Subordinate Legislation Act 1994** applies to a guideline as if—
 - (a) a reference in that Part to a "statutory rule" was a reference to the guideline; and

- (b) a reference in section 23(1)(c) of that Part to "section 15(1)" was a reference to subsection (3).

Part 14.5—Information sharing

Division 1—Collection, use, disclosure and publication of information

Pt 14.5
(Heading and
ss 452–457)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 452
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

452 Authority may collect, use, disclose or publish information

- (1) Subject to anything to the contrary in this or another Act, the Authority may collect, use, disclose or publish any information if the collection, use, disclosure or publication is necessary for the Authority—
 - (a) to perform its functions under this or another Act; or
 - (b) to exercise its powers under this Act or another Act.
- (2) Without limiting subsection (1), the Authority may, subject to anything to the contrary in this or another Act—
 - (a) use or disclose information if—
 - (i) the Authority has reason to suspect that unlawful activity has been, is being or may be engaged in; and
 - (ii) the use or disclosure is a necessary part of the Authority's investigation or reporting of the matter; or
 - (b) disclose information to any law enforcement agency to enable the Authority to perform any of its functions or powers in collaboration with that agency; or

- (c) obtain or receive from a law enforcement agency any information necessary for the exercise of any of the Authority's powers or functions, including but not limited to the exercise of a power or function in collaboration with the agency; or
 - (d) collect or use information from, or disclose information to, another government agency if the collection, use or disclosure is—
 - (i) necessary for research or the compiling or analysis of statistics; and
 - (ii) is in the public interest; or
 - (e) use or disclose information if the Authority reasonably believes that the use or disclosure is necessary to prevent or minimise a serious risk of harm to human health or the environment.
- (3) In this section—
- another government agency*** means—
- (a) a public sector body; or
 - (b) a council; or
 - (c) a public sector body of another State, a Territory or the Commonwealth.

453 Unauthorised disclosure of commercially sensitive information

- (1) A person must not disclose any commercially sensitive information obtained by the person during the exercise of a power or performance of a function or duty under this Act except in accordance with this Part.

Penalty: 120 penalty units.

S. 453
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (2) Subsection (1) does not apply to the following disclosures of commercially sensitive information—
- (a) a disclosure made in the exercise of a power or the performance of a function under, or in connection with, this Act or another Act or the regulations;
 - (b) a disclosure made with the consent of the person to whom the information relates;
 - (c) a disclosure made to a court or tribunal in the course of legal proceedings;
 - (d) a disclosure made pursuant to an order of a court or tribunal;
 - (e) a disclosure of information that is in the public domain at the time of the disclosure other than as the result of a disclosure prohibited under this or another Act;
 - (f) a disclosure made to an Australian legal practitioner for the purposes of obtaining legal advice or representation;
 - (g) a disclosure to the IBAC made as required or authorised by or under this Act or the **Independent Broad-based Anti-corruption Commission Act 2011**;
 - (h) a disclosure made under section 452(2)(a) or (e) to another government agency within the meaning of section 452;
 - (i) a disclosure made under section 452(2)(b).

S. 454
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

454 Public warning statements

The Authority may publish a public statement or issue a public warning, identifying and giving information about the following—

- (a) environmental conditions in Victoria or any area within Victoria;

- (b) any risk of harm to human health or the environment from pollution or waste;
- (c) any other matter that may result in a risk of harm to human health or the environment.

Division 2—Public Register

455 Public Register

- (1) The Authority must establish and maintain the Public Register.
- (2) The Authority may establish and maintain the Public Register in any form and manner that the Authority thinks appropriate.

S. 455
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

456 Information to be kept on the Public Register

- (1) Subject to subsection (2), details of the following must be kept on the Public Register—
 - (a) any enforceable undertaking that is in force including, but not limited to, the date on which the enforceable undertaking was accepted;
 - (b) any licence issued by the Authority that is in force, including, but not limited to—
 - (i) the holder of the licence; and
 - (ii) any conditions to which the licence is subject; and
 - (iii) the period during which the licence is in force; and
 - (iv) any extension of the period during which a licence activity must be completed; and
 - (v) any suspension, revocation or surrender of the licence; and

S. 456
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (vi) any exemption granted under section 80;
- (c) any permit or registration issued or granted by the Authority that is in force, including, but not limited to—
 - (i) the holder of the permit or registration; and
 - (ii) any conditions to which the permit or registration is subject; and
 - (iii) the period during which the permit or registration is in force; and
 - (iv) any suspension, revocation or surrender of the permit or registration; and
 - (v) in the case of a permit, any exemption granted under section 82;
- (d) any exemption granted under section 459, other than an exemption granted under that section to a class of persons;
- (e) any site management order that is in force;
- (f) the final determination of any proceedings taken under this Act to which the Authority is a party;
- (g) any preliminary risk screen assessment statement prepared under section 205;
- (h) any environmental audit statement prepared under section 210;
- (i) any advisory panel established under section 235 including, but not limited to—
 - (i) the panel's terms of reference; and
 - (ii) any report produced by the panel; and
 - (iii) any recommendation made by the panel;

- (j) any better environment plan that is in force, including, but not limited to the following—
 - (i) any suspension of the operation of the better environment plan under section 187;
 - (ii) any revocation under section 184 or 187 of the better environment plan;
 - (iii) any amendment under section 184 of the better environment plan;
 - (iv) any removal under section 184 or 187 of a participant in the better environment plan;
 - (v) any suspension under section 187 of the participation of a participant in the better environment plan;
 - (k) any compliance code approved under Part 5.3;
 - (l) any position statement made under section 105;
 - (m) any guidelines issued by the Authority under this Act;
 - (n) any prescribed information.
- (2) Information under subsection (1) that is prescribed for the purposes of this subsection is not required to be kept on the Public Register in relation to any prescribed permit or registration or a permit or registration included in any prescribed class of permit or registration.
- (3) The Public Register may contain any further information that the Authority considers appropriate.

S. 457
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

457 Public access to the Public Register

- (1) Subject to subsection (2), the Authority must ensure that the Public Register is available for inspection by the public—
 - (a) during the prescribed time and in the prescribed manner; and
 - (b) on payment of any prescribed fee.
- (2) The Authority must ensure that commercially sensitive information that is kept in the Public Register is not available for public inspection except with the consent of the person to whom the information relates.

Part 14.6—Designated agencies

Pt 14.6
(Heading and
s. 458)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

458 Power of Authority to designate agency to have specified responsibilities etc. in areas that pose risk of harm to human health or the environment

S. 458
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (1) If it appears to the Authority that circumstances exist or are likely to exist in an area that present a risk of harm to human health or the environment from pollution or waste, the Authority may—
 - (a) designate any Victorian Government agency as having jurisdiction and control over the area and to be responsible for it, either wholly or to the extent limited by the Authority; and
 - (b) specify the actions or measures to be taken by a designated agency for the management or control of the area or for eliminating or reducing any risk of harm to human health or the environment; and
 - (c) direct a designated agency to construct, maintain, and operate such works, facilities and equipment for eliminating or reducing risks of harm to human health or the environment as are specified by the Authority.
- (2) In this section, *Victorian Government agency* means any of the following—
 - (a) a public sector body within the meaning of the **Public Administration Act 1994**;

(b) a Council within the meaning of the **Local Government Act 1989**.

Part 14.7—Exemptions

Pt 14.7
(Heading and
s. 459)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

459 Exemptions

S. 459
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (1) The Authority may exempt a person or class of persons from any provisions of the regulations or of a legislative instrument (within the meaning of the **Subordinate Legislation Act 1994**) made under this Act in accordance with this section.
- (2) The Authority may grant an exemption on its own motion or on the application of a person seeking the exemption.
- (3) An application for an exemption must be made in a form approved by the Authority (if any) and be accompanied by the prescribed fee.
- (4) The Authority must not grant an exemption unless it is satisfied that—
 - (a) the exemption will not pose a serious risk of harm to human health or the environment;
and
 - (b) it is not practicable for the person to comply with the provision for which the exemption is sought, or the exemption is necessary to enable the efficient administration of the relevant regulation or legislative instrument (as the case may be).

- (5) The Authority may refuse to grant an exemption if it considers that it would be more appropriate for an application for an exemption to be made under another provision of the Act or regulations.
- (6) The Authority must determine an application for an exemption within 15 business days of receiving the application and fee.
- (7) An exemption may be subject to any conditions that the Authority considers appropriate.
- (8) An exemption has effect for the period specified in the exemption and may be varied, revoked or renewed as the Authority considers appropriate.
- (9) If the Authority grants an exemption to a class of persons, it must publish the following details of the exemption in the Government Gazette as soon as practicable after it is granted—
 - (a) the class of persons to whom the exemption applies;
 - (b) the provision of the regulations or legislative instrument in respect of which the exemption is granted;
 - (c) any conditions to which the exemption is subject.
- (10) An exemption published in the Government Gazette takes effect from the date it is published in the Gazette, or on a later date specified in the exemption.
- (11) An exemption has no effect unless the conditions to which it is subject are complied with.

Part 14.8—Impersonation, interference, and information offences

Pt 14.8
(Heading and
ss 460–463)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

460 Impersonation

A person must not falsely hold themselves out to be all or any of the following—

- (a) an analyst;
- (b) an authorised officer;
- (c) a council officer who is performing a function or duty or exercising a power under this Act ;
- (d) an environmental auditor;
- (e) a litter enforcement officer;
- (f) a residential noise enforcement officer;
- (g) a person or a member of a class of person that is a prescribed role;
- (h) any other person performing a function or duty or exercising a power under this Act.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 460
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 461
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

461 False representations relating to Authority approval

- (1) A person must not—
- (a) falsely hold themselves out as having been issued or granted a permission; or
 - (b) falsely represent any goods for manufacture or for sale by the person as having Authority approval; or
 - (c) falsely represent any carrying out or offering of services by the person as having Authority approval; or
 - (d) falsely advertise goods or services as having Authority approval.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2) In this section—

Authority approval means—

- (a) approved by the Authority; or
- (b) used by the Authority in the performance of the Authority's functions or duties or the exercise of the Authority's powers.

S. 462
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

462 Interference with equipment

- (1) A person must not—
- (a) unlawfully interfere with monitoring equipment that is used by the Authority or an authorised officer; and
 - (b) unlawfully interfere with monitoring equipment that is used by any other person for the purpose of performance of a function or duty, exercise of a power, or satisfaction

of an obligation or requirement imposed by or under this Act.

Penalty: In the case of a natural person,
500 penalty units;
In the case of a body corporate,
2500 penalty units.

(2) An offence under subsection (1) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

463 Provision of false information

- (1) This section applies if—
- (a) a person provides information or documents to the Authority or an authorised officer under this Act; or
 - (b) an authorised officer is performing a function or duty or exercising a power under this Act and requires a person to provide information or documents.
- (2) A person must not do any of the following—
- (a) provide information or make a statement that is false or misleading in a material particular;
 - (b) conceal any materially relevant information or document;
 - (c) produce a document that is false or misleading in a material particular, without indicating in what respect it is false or misleading and, if practicable, providing the relevant correct information.

Note

Section 314 provides that subsection (2) is a civil penalty provision. The penalty for contravention of this civil penalty provision is set out in the table in section 314.

S. 463
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (3) A person who contravenes subsection (2) commits an offence.

Penalty: In the case of a natural person,
500 penalty units;

In the case of a body corporate,
2500 penalty units.

- (4) An offence under subsection (3) is an indictable offence.

Note

This offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

- (5) This section does not apply to the provision of information or documents by a person under Part 6.3.

Chapter 15—Regulations

Ch. 15
(Headings
and ss 464–
466)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Part 15.1—Simplified outline

Pt 15.1
(Heading and
s. 464)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

464 Simplified outline—Chapter 15

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 15.2 sets out the powers of the Governor in Council to make regulations.

S. 464
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Part 15.2—Regulations

Pt 15.2
(Heading and
ss 465, 466)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 465
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

465 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without limiting any power of the Governor in Council to make regulations under this Act, the Governor in Council may make regulations—
 - (a) for or with respect to any of the matters set out in Schedule 1; or
 - (b) prescribing forms; or
 - (c) prescribing fees including, but not limited to—
 - (i) fees for doing an act or providing a service under this Act; and
 - (ii) in the case of fees prescribed for operating licences, fees that are higher than the cost of administration of, or provision of, services in connection with operating licences; or
 - (d) regulating or prohibiting the waiver or refund of fees; or
 - (e) prescribing offences; or

- (f) prescribing a penalty for any contravention of the regulations not exceeding—
 - (i) 100 penalty units for a natural person; or
 - (ii) 500 penalty units for a body corporate, or 5 times the penalty prescribed for such a contravention by a natural person, whichever is the lesser; or
 - (g) prescribing offences under this Act or the regulations to be infringement offences; or
 - (h) in relation to each infringement offence, prescribing the penalty in respect of the offence.
- (3) Regulations made under this Act—
- (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) may leave any matter or thing to be from time to time approved, determined, applied, dispensed with or regulated by a specified person or class of persons;
 - (d) may provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to the extent specified;
 - (e) may confer powers or impose duties in connection with the regulations on any specified person or specified class of persons;
 - (f) subject to subsection (4), may apply, adopt or incorporate, with or without modification, any matter contained in any document, code,

standard, rule, specification or method formulated, issued, prescribed or published by any person or body—

- (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed (whether under this or any other Act) or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed (whether under this or any other Act) or published from time to time.
- (4) For the purposes of subsection (3)(f), the Minister must ensure that the National Environment Protection Council is consulted before the Minister recommends that a regulation be made if it is proposed that the regulation is to incorporate a measure that is more stringent than a national environment protection measure.
- (5) Before the Governor in Council makes regulations under subsection (1), the Minister must have regard to the principles of environment protection.

S. 466
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

466 Effect of compliance with regulations

If—

- (a) the regulations make provision for or with respect to a duty or obligation imposed by this Act or the regulations; and
- (b) a person complies with the regulations to the extent that it makes that provision—

the person is, for the purposes of this Act and the regulations, taken to have complied with this Act or the regulations in relation to that duty or obligation.

Chapter 16—Transitional provisions

Ch. 16
(Headings
and ss 467–
499)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Part 16.1—Simplified outline

Pt 16.1
(Heading and
s. 467)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

467 Simplified outline—Chapter 16

- (1) This section sets out a simplified outline of this Chapter.
- (2) Part 16.2 provides for general transitional matters, including defined expressions.
- (3) Part 16.3 preserves certain instruments such as permissions, notices and directions under the new Act.
- (4) Part 16.4 provides for environmental audits underway at the commencement day.
- (5) Part 16.5 relates to the continuation of Waste and Resources Recovery Groups.
- (6) Part 16.6 provides for certain financial matters.
- (7) Part 16.7 preserves certain existing appointments.
- (8) Part 16.8 provides for transitional matters relating to VCAT.

S. 467
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (9) Part 16.9 provides for transitional provisions relating to regulations, including—
- (a) preserving certain regulations; and
 - (b) providing for regulations to be made in relation to transitional matters.

Part 16.2—General

Pt 16.2
(Heading and
ss 468, 469)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

468 Definitions

S. 468
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (1) In this Chapter—

commencement day means the day on which section 7 of the **Environment Protection Amendment Act 2018** comes into operation;

equivalent, in relation to an old permission, has the meaning given by section 470;

new Act means this Act;

new permission means a permission within the meaning of the new Act;

old Act means the **Environment Protection Act 1970** as in force from time to time before its repeal by this Act;

old permission means an approval, permission, authorisation or licence (however described) within the meaning of the old Act.

- (2) For the purposes of this Chapter an application is *finally determined* when—
- (a) a decision made in respect of the application is not subject to any form of reconsideration or review; or
 - (b) a decision made in respect of the application was subject to some form of reconsideration or review, but the period within which such a

reconsideration or review could be instituted
has ended without a reconsideration or
review having been instituted.

S. 469
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

469 General transitional provisions

- (1) Except where the contrary intention appears, this Chapter, and regulations under this Chapter, do not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If a provision of the old Act continues to have effect because of this Chapter, or regulations under this Chapter, the following provisions also continue to have effect—
 - (a) any other provisions of the old Act that are related to the continued provision and that need to continue to be in force in order for the continued provision to have full force and effect, including any relevant definition;
 - (b) any regulations made under the old Act for the purposes of the continued provision.
- (3) This Chapter, and regulations under this Chapter, apply despite anything to the contrary in the old Act.

Part 16.3—Transitional provisions: permissions, notices, directions and orders

Division 1—Permissions

Pt 16.3
(Headings
and ss 470–
477)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

470 When a new permission is the *equivalent* of an old permission

For the purposes of this Part, a new permission specified in, or prescribed as mentioned in, column 3 of an item of the Table is the *equivalent* of an old permission specified in column 2 of that item of the Table.

S. 470
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Table

| <i>Column 1 Item</i> | <i>Column 2 Old permission</i> | <i>Column 3 New permission</i> |
|--------------------------|---|------------------------------------|
| 1 | A works approval under section 19B | A development licence |
| 2 | A research, development or demonstration approval under section 19D | A pilot project licence |
| 3 | A licence under section 20 | A prescribed new permission |
| 4 | An emergency waste authorisation under section 30A | An authorisation under section 157 |
| 5 | A permit to transport prescribed waste or prescribed industrial waste under section 53F | A prescribed new permission |
| 6 | A prescribed old permission | A prescribed new permission |

S. 471
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

471 Continuation of permissions

- (1) This section applies if—
 - (a) immediately before the commencement day, a person holds an old permission; and
 - (b) under the new Act, there is a new permission that is the equivalent of the old permission (see section 470).
- (2) The person is taken to hold the new permission on and from the commencement day.
- (3) Subject to section 472, the new permission is taken to be subject to the same conditions as those to which the old permission was subject immediately before the commencement day.

S. 472
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

472 Amendment of new permissions by Authority

- (1) If a person is taken to hold a new permission because of section 471, the Authority may, during the period of 12 months beginning on the commencement day, do any of the following for the purposes of ensuring that the new permission is consistent with the kinds of conditions that may be imposed under the new Act—
 - (a) amend one or more conditions of the new permission;
 - (b) revoke one or more conditions of the new permission;
 - (c) impose one or more additional conditions on the new permission;
 - (d) make any consequential amendments necessary to the permission.
- (2) Before exercising a power under subsection (1), the Authority must, at least 10 business days before the Authority exercises the power, give the person a written notice stating—

- (a) that the Authority intends to exercise the power; and
 - (b) if the Authority proposes to amend one or more conditions or impose one or more additional conditions, that the person may make a request under subsection (3) (which deals with additional time to comply).
- (3) A person who has been given a notice under subsection (2) may make a written request to the Authority that the person not be required to comply with the proposed amended or additional conditions until 6 months after the conditions are amended or imposed.
- (4) After exercising a power under subsection (1), the Authority must give the person a written notice stating—
- (a) the amended or additional condition or conditions, as the case requires; and
 - (b) if the person made a request under subsection (3)—that the person is not required to comply with the amended or additional conditions until 6 months after the conditions are amended or imposed.

473 Continuation of exemptions

- (1) This section applies if—
- (a) immediately before the commencement day, a person is exempt from a requirement to hold an old permission; and
 - (b) under the new Act, there is a new permission that is the equivalent of the old permission, and it is possible under the new Act to obtain an exemption from the requirement to hold the new permission.

S. 473
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (2) The person is taken, for the purposes of the new Act, to be exempt from the requirement to hold the new permission.
- (3) Despite subsection (2), an exemption continued in force under that subsection ceases to be in force at the end of the period of 5 years beginning on the commencement day.

S. 474
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

474 Pending application for old permission to be treated as application for new permission

- (1) This section applies if—
 - (a) before the commencement day, a person had made an application (the *old application*) for an old permission; and
 - (b) under the new Act, there is a new permission that is the equivalent of the old permission; and
 - (c) as at the commencement day, the old application had not been finally determined.
- (2) The person is taken to have made an application (the *new application*) for the new permission.
- (3) The new application is to be determined under the new Act.
- (4) Before deciding the new application, the Authority must give the person a reasonable opportunity to provide the Authority with any further information that the Authority requires in order to decide the new application.
- (5) The Authority may treat anything done for the purposes of, or in relation to, the old application as having been done for the purposes of, or in relation to, the new application.

475 Certain other pending applications

- (1) This section applies if—
 - (a) a person is taken to hold a new permission because of the operation of section 471; and
 - (b) before the commencement day, the person had made an application in relation to the old permission under a prescribed provision; and
 - (c) as at the commencement day, the application had not been finally determined.
- (2) The person is taken to have made an application (the *new application*) under a prescribed provision in respect of the new permission.
- (3) The new application is to be determined under the new Act.
- (4) Before deciding the new application, the Authority must give the person a reasonable opportunity to provide the Authority with any further information that the Authority requires in order to decide the new application.

S. 475
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Division 2—Notices, directions and orders

476 Continuation of notices and directions

- (1) A notice or direction (however described) that was given under the old Act and is in force immediately before the commencement day continues in force on and after the commencement day as if the old Act had not been repealed.
- (2) Despite subsection (1), a notice or direction continued in force under that subsection ceases to be in force at the end of the period of 2 years beginning on the commencement day.

S. 476
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 477
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

477 Notifiable chemical orders

On the commencement day, a notifiable chemical order under section 30D of the old Act is taken to be an order made under section 154 of the new Act.

Part 16.4—Transitional provisions: Environmental audits

Pt 16.4
(Heading and
ss 478, 479)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

478 Environmental audits

S. 478
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (1) This section applies if, before the commencement day, an environmental auditor has notified the Authority that the auditor has been engaged to conduct an environmental audit under section 53U of the old Act and the environmental audit has not been completed as at the commencement day.
- (2) The environmental auditor may conduct the environmental audit under the old Act or the new Act.
- (3) Subject to this section, if the environmental auditor conducts the environmental audit under the old Act, the following apply to the conduct of the audit—
 - (a) Part IXD of the old Act continues in effect as if it had not been repealed;
 - (b) the auditor must comply with section 216 of the new Act in relation to an imminent state of danger or any prescribed matter or thing of which the auditor becomes aware when conducting the audit;
 - (c) an environmental audit report, certificate of environmental audit or statement of environmental audit issued under the old Act is taken—

(i) to satisfy the requirements of Part 8.3 of the new Act; and

(ii) to have been issued under the new Act.

S. 479
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

479 Certificates of environmental audits and statements of environmental audit

- (1) This section applies to a certificate of environmental audit or statement of environmental audit—
 - (a) issued under the old Act before the commencement day; or
 - (b) taken to have been issued under the new Act because of section 478.
- (2) The certificate of environmental audit or statement of environmental audit may be withdrawn or amended under section 53ZA of the old Act.
- (3) Section 213(5) and (6) of the new Act apply, with any necessary modifications, to the certificate of environmental audit or a statement environmental audit.
- (4) Section 53ZE of the old Act continues to apply to the statement of environmental audit, as if that section had not been repealed, until the end of the period of 12 months beginning on the commencement day.

Part 16.5—Transitional provisions: Waste and Resource Recovery Groups

Pt 16.5
(Heading and
ss 480–487)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

480 Waste and Resource Recovery Groups

S. 480
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

On the commencement day—

- (a) a Waste and Resource Recovery Group continued under section 382 is taken to be the successor in law of the Waste and Resource Recovery Group of the same name existing under section 49C of the old Act; and
- (b) a reference to a Waste and Resource Recovery Group existing under section 49C of the old Act in any Act (other than this Act), regulation, instrument or other document is taken to be a reference to the Waste and Resource Recovery Group of the same name continued under section 382 unless the contrary intention appears.

481 Board of directors of Waste and Resource Recovery Groups

S. 481
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

On the commencement day—

- (a) all rights, property and assets that, immediately before the repeal of the old Act, were vested in or owned, leased or managed by a Board of directors of a Waste and Resource Recovery Group existing under section 49C of the old Act are vested in or owned, leased or managed (as the case requires) by the board of directors of the Waste and Resource Recovery Group of the

- same name established under section 389;
and
- (b) all debts, liabilities and obligations of the Board of directors existing immediately before that day become debts, liabilities and obligations of the board of directors established under section 389; and
 - (c) the board of directors established under section 389 is substituted as a party to any contract entered into by or on behalf of the Board of directors as a party and in force immediately before that day.

S. 482
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

482 Appointments

On the commencement day—

- (a) a person holding office as a director appointed under section 49K(1) and (2)(a) of the old Act is taken to continue to hold office for the balance of the term specified in the instrument of appointment and on the same terms and conditions and with the same accrued and accruing entitlements as applied to that person immediately before that day; and
- (b) a person holding office as a director appointed under section 49K(1) and (2)(b) of the old Act is taken to continue to hold office for the balance of the term specified in the instrument of appointment and on the same terms and conditions and with the same accrued and accruing entitlements as applied to that person immediately before that day; and
- (c) a person holding office as a Chairperson of the Board of directors appointed under section 49K(4) of the old Act is taken to continue to hold office for the balance of the

term specified in the instrument of appointment and on the same terms and conditions and with the same accrued and accruing entitlements as applied to that person immediately before that day; and

- (d) a person holding office as a Deputy Chairperson of the Board of directors appointed under section 49K(5) of the old Act is taken to continue to hold office for the balance of the term specified in the instrument of appointment and on the same terms and conditions and with the same accrued and accruing entitlements as applied to that person immediately before that day.

483 Staff and executive officers

- (1) On the commencement day—

- (a) a person holding office as an executive officer appointed under section 49Q(1) of the old Act is taken to continue to hold office for the balance of the term specified in the instrument of appointment and on the same terms and conditions and with the same accrued and accruing entitlements as applied to that person immediately before that day; and
- (b) the person holding office as the Chief Executive Officer of the Metropolitan Waste and Resource Recovery Group appointed under section 49Q(2) of the old Act is taken to continue to hold office for the balance of the term specified in the instrument of appointment and on the same terms and conditions and with the same accrued and accruing entitlements as applied to that person immediately before that day; and

S. 483
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (c) all persons who are employees of a Waste and Resource Recovery Group existing under section 49C of the old Act are taken to continue to be employed on the same terms and conditions and with the same accrued and accruing entitlements as applied to that person immediately before that day.
- (2) If subsection (1) applies to a person—
- (a) the service of the person as an employee of the Waste and Resource Recovery Group existing under section 49C of the old Act is to be regarded for all purposes as having been continuous with the service of the employee with the Waste and Resource Recovery Group of the same name continued under section 382; and
 - (b) the person is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the Waste and Resource Recovery Group existing under section 49C of the old Act.
- (3) Nothing in this section prevents a person from resigning or being dismissed as an employee of the Waste and Resource Recovery Group existing under section 49C of the old Act at any time after the commencement day in accordance with the terms and conditions of that person's employment.

S. 484
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

484 Delegations

On the commencement day—

- (a) a delegation by a Waste and Resource Recovery Group under section 49P of the old Act is taken to be a delegation under section 398; and
 - (b) a delegation by an executive officer or Chief Executive Officer of a Waste and Resource Recovery Group under section 49Q(5) of the
-

old Act is taken to be a delegation under section 399(5).

485 State-Wide Waste and Resource Recovery Infrastructure Plans

On the commencement day, a State-Wide Waste and Resource Recovery Infrastructure Plan approved by the Minister under section 50AD of the old Act is taken to be a State-Wide Waste and Resource Recovery Infrastructure Plan approved by the Minister under section 410(1).

S. 485 inserted by No. 39/2018 s. 18 (as amended by Nos 27/2019 ss 32–40, 3/2020 ss 45, 46, 47/2020 s. 27).

486 Regional Waste and Resource Recovery Implementation Plans

On the commencement day, a Regional Waste and Resource Recovery Implementation Plan approved by the Minister under section 50BD(6) of the old Act is taken to be a Regional Waste and Resource Recovery Implementation Plan approved by the Minister under section 420.

S. 486 inserted by No. 39/2018 s. 18 (as amended by Nos 27/2019 ss 32–40, 3/2020 ss 45, 46, 47/2020 s. 27).

487 Transition of plans already submitted

- (1) Despite the repeal of Division 2AC of the old Act, a draft State-Wide Waste and Resource Recovery Infrastructure Plan submitted to the Minister under section 50AA of the old Act may be approved by the Minister under section 50AD of that Act as if that section had not been repealed.
- (2) Despite the repeal of Division 2AD of the old Act, a draft Regional Waste and Resource Recovery Implementation Plan submitted to Sustainability Victoria and the Authority under section 50B of the old Act may be approved by the Minister under section 50BE of that Act as if that section had not been repealed.

S. 487 inserted by No. 39/2018 s. 18 (as amended by Nos 27/2019 ss 32–40, 3/2020 ss 45, 46, 47/2020 s. 27).

Part 16.6—Transitional provisions: financial matters

Division 1—Funds

Pt 16.6
(Headings
and ss 488–
494)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

488 Money standing to the credit of Environment Protection Fund

On the commencement day, any money standing to the credit of the Environment Protection Fund as in existence immediately before the commencement day is taken to be money standing to the credit of the Environment Protection Fund that is established under section 441 on and after the commencement day.

S. 488
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

489 Money standing to the credit of General Landfill Levy account

On the commencement day, any money standing to the credit of the General Landfill Levy Account as in existence immediately before the commencement day is taken to be money standing to the credit of the General Waste Levy Account that is established and maintained under section 446 on and after the commencement day.

S. 489
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

490 Money standing to the credit of Municipal and Industrial Landfill Levy Trust Account

On the commencement day, any money standing to the credit of the Municipal and Industrial Landfill Levy Trust Account as in existence immediately before the commencement day is taken to be money standing to the credit of the Municipal and Industrial Waste Levy Trust

S. 490
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Account that is established and maintained under section 448 on and after the commencement day.

491 Money standing to the credit of Sustainability Fund Account

On the commencement day, any money standing to the credit of the Sustainability Fund Account as in force immediately before the commencement day is taken to be money standing to the credit of the Sustainability Fund Account that is established and maintained under section 449 on and after the commencement day.

S. 491 inserted by No. 39/2018 s. 18 (as amended by Nos 27/2019 ss 32–40, 3/2020 ss 45, 46, 47/2020 s. 27).

492 Priority statement and guidelines

On the commencement day—

- (a) a priority statement prepared under section 70B(1AA) of the old Act as in force immediately before the commencement day is taken to be a priority statement that is prepared under section 450 of the new Act on and after the commencement day; and
- (b) any guidelines made for the purposes of section 70A(1)(b) of the old Act as in force immediately before the commencement day are taken to be guidelines made under section 451 of the new Act on and after the commencement day.

S. 492 inserted by No. 39/2018 s. 18 (as amended by Nos 27/2019 ss 32–40, 3/2020 ss 45, 46, 47/2020 s. 27).

Division 2—Landfill levy

493 Requirement to pay landfill levy

- (1) This section applies if, immediately before the commencement day, the holder of a licence in respect of a scheduled premises who is liable to pay a landfill levy under section 50S of the old Act is required—

S. 493 inserted by No. 39/2018 s. 18 (as amended by Nos 27/2019 ss 32–40, 3/2020 ss 45, 46, 47/2020 s. 27).

- (a) to calculate the amount of the landfill levy that is payable in respect of the waste deposited at the premises for the quarters specified in section 50SB(1) of the old Act and pay that amount to the Authority in accordance with section 50SB(3) for the relevant quarter; and
 - (b) to calculate the amount of the landfill levy that is payable in respect of the waste deposited at the premises for the last financial year and pay that amount to the Authority on or before 30 September in accordance with section 50SB(5); and
 - (c) to give the Authority a written statement on or before 1 September in accordance with section 50W of the old Act.
- (2) On the commencement day, sections 50SB and 50W of the old Act, as in force immediately before the commencement day, continue to apply to the holder of a licence who is liable to pay a landfill levy under section 50S for waste deposited at the premises until the first 30 June that occurs after the commencement day.

Division 3—Financial assurances

494 Transitional provision—financial assurances

On the commencement day, a financial assurance required by the Authority under section 67B of the old Act is taken to be a financial assurance required by the Authority for the purposes of Part 8.4 of the new Act.

S. 494
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

Part 16.7—Transitional provisions: Continuation of certain appointments and roles

Pt 16.7
(Heading and
ss 495–498)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

495 Litter enforcement officers

On the commencement day, a person holding office as a litter enforcement officer under the old Act is taken to have been appointed as a litter enforcement officer under whichever of section 114(1), (2) or (3) of the new Act is applicable on the same terms as applied to that person immediately before that day.

S. 495
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

496 Residential noise enforcement officers

On the commencement day, a person who is a council officer within the meaning of section 48A(1) of the old Act is taken to be a residential noise enforcement officer appointed under section 171 of the new Act on the same terms as applied to that person immediately before that day.

S. 496
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

497 Environmental auditors

On the commencement day, a person who is an environmental auditor appointed under section 53S of the old Act is taken to have been appointed as an environmental auditor under Division 1 of Part 8.3 of the new Act on the same terms as applied to that person immediately before that day.

S. 497
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

S. 498
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

498 Analysts

On the commencement day, a person who is an analyst appointed under section 57 of the old Act is taken to have been appointed as an analyst under section 245 of the new Act on the same terms as applied to that person immediately before that day.

Part 16.8—Transitional provisions: VCAT matters

Pt 16.8
(Heading and
s. 499)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

499 General provisions relating to VCAT

S. 499
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

- (1) Subject to section 475, an application to VCAT for review of a decision made under a provision of the old Act before the commencement day that had not been finally determined before that day is to continue to be determined on and after that day as if the old Act were still in force.
- (2) Subject to section 475, a person who, immediately before the commencement day—
 - (a) had a right to make an application to VCAT for review of a decision made under a provision of the old Act; and
 - (b) had not done so before that day—may make such an application on or after that day, within the period allowed under the old Act for making that application, as if the old Act were still in force and the application is to be determined as if the old Act were still in force.
- (3) Subsection (4) applies to a decision made under a provision of the old Act before the commencement day that, on or after that day, is under the **Victorian Civil and Administrative Tribunal Act 1998**—
 - (a) affirmed or varied by VCAT; or

- (b) set aside and another decision substituted for it by VCAT; or
 - (c) set aside by VCAT and another decision made by the decision-maker on the matter being remitted to the decision-maker by VCAT for re-consideration.
- (4) A permission arising by operation of the decision is taken to be a permission under the new Act of a kind that it would have been taken to be by operation of this Chapter had an application not been made to VCAT for review of the decision made under the old Act.

Note

See also section 51(3) of the **Victorian Civil and Administrative Tribunal Act 1998**.

Part 16.9—Transitional provisions: Regulations

Division 1—Saving of Environment Protection (Industrial Waste Resource) Regulations 2009

Pt 16.9
(Heading)
inserted by
No. 39/2018
s. 18 (as
amended by
Nos 27/2019
ss 32–40,
3/2020 ss 45,
46, 47/2020
s. 27).

500 Saving of the Environment Protection (Industrial Waste Resource) Regulations 2009

S. 25
substituted by
No. 39/2018
s. 19,
renumbered
as s. 500 by
No. 39/2018
s. 22.

Despite section 5 of the **Subordinate Legislation Act 1994**, the Environment Protection (Industrial Waste Resource) Regulations 2009, as in force immediately before 1 July 2019, are taken to remain in force until the day on which section 63 of the **Environment Protection Amendment Act 2018** comes into operation.

Division 2—Saving of Environment Protection (Vehicle Emissions) Regulations 2013

S. 26
substituted as
Pt 16.9 Div. 2
(Heading and
s. 501) by
No. 39/2018
s. 20.

501 Saving of the Environment Protection (Vehicle Emissions) Regulations 2013

S. 26
substituted as
s. 501 by
No. 39/2018
s. 20.

Despite the repeal of the old Act, the Environment Protection (Vehicle Emissions) Regulations 2013 as in force immediately before the commencement day, are taken to remain in force during the period—

- (a) beginning on the commencement day; and
- (b) ending on 10 December 2023 or, if the regulations are revoked before that date, on the day on which they are revoked.

Pt 16.9 Div. 3
(Heading and
s. 502)
inserted by
No. 39/2018
s. 20.

Division 3—Transitional regulations

S. 502
inserted by
No. 39/2018
s. 20.

502 Transitional regulations

- (1) The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A regulation mentioned in subsection (1) may be retrospective in operation to the commencement of this Act.
- (3) Regulations referred to in subsection (1) have effect despite anything to the contrary in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.
- (4) Without limiting this section, regulations made as mentioned in subsection (1) may continue in effect for a period of not more than 2 years beginning on the commencement day, any instrument or policy under the old Act.
- (5) This section expires 2 years after the commencement day.

Environment Protection Act 2017
No. 51 of 2017

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**Pt 4
(Headings
and ss 27–46)
repealed by
No. 51/2017
s. 46.¹**

Sch. 1
inserted by
No. 39/2018
s. 23 (as
amended by
Nos 27/2019
ss 41, 42,
47/2020 s. 28).

Schedule 1—Regulations

1 Duties

- 1.1 Regulating the way in which duties or obligations imposed by this Act or the regulations, including but not limited to the general environmental duty, are performed.
- 1.2 Prescribing standards for the performance of functions or duties imposed by this Act or the regulations.

2 Septic tanks

- 2.1 The construction, installation, alteration, maintenance, repair, notification and monitoring of septic tank systems.

3 Waste and Resource Recovery Infrastructure Planning Framework

- 3.1 Prescribing any thing necessary or convenient to give effect to the Waste and Resource Recovery Infrastructure Planning Framework.
- 3.2 Regulating the governance and operations of Waste and Resource Recovery Groups.

4 Contaminated land

- 4.1 Investigation and assessment of suspected contaminated land.
- 4.2 Assessment, management and remediation of contaminated land.
- 4.3 Exempting a person or class of person in management or control of land from a duty to manage contaminated land or a duty to notify of notifiable contamination, whether unconditionally or on specified conditions and to any extent as specified in the regulations.

5 Financial assurances

- 5.1 Circumstances in which the provision of a financial assurance by a person is a condition of a permission.
- 5.2 Exempting a person or class of person from the requirement to provide a financial assurance as a condition of a permission.
- 5.3 Prescribing the financial assurance risk assessment criteria.

6 Waste

- 6.1 Regulating or prohibiting things that may become litter or waste.
- 6.2 Further regulating waste in connection with Part 6.3, including in relation to the loading, or moving of, vehicles.
- 6.3 Regulating or prohibiting the deposit, affixing and commission of documents (including unsolicited documents) or advertising material.
- 6.4 Prohibiting the defacement of, or setting fire to, public litter receptacles.
- 6.5 Regulating or prohibiting the production, generation, collection, consignment, transfer, transport, receipt, handling, storage, use, management, containment, treatment and processing of waste.
- 6.6 Regulating or prohibiting waste disposal.
- 6.7 Regulating resource recovery.
- 6.8 Regulating or prohibiting reuse of waste and the use of recycled substances.
- 6.9 Allocating responsibility for operations in relation to waste management, waste disposal and resource recovery.

- 6.10 Regulating or prohibiting the supply or sale of plastic products, plastic packaging or plastic bags.
- 6.11 Requiring supply of alternatives to plastic products, plastic packaging or plastic bags.
- 6.11A Prohibiting the provision of false or misleading information relating to plastic products, plastic packaging or plastic bags.
- 6.12 Prescribing the period of time after which storage of a prescribed type, class or category of waste is taken to be waste disposal, including where stored at the same location as the operation that generated the waste.
- 6.13 Prescribing any waste or class of waste to be priority waste.
- 6.14 Prescribing types, classes or categories of waste to be industrial waste.
- 6.15 Prescribing priority waste to be any of the following types of priority waste—
 - (a) Category A priority waste;
 - (b) Category B priority waste;
 - (c) Category C priority waste;
 - (d) packaged waste asbestos;
 - (e) any other category of priority waste.
- 6.16 Regulating or prohibiting any matter relating to transport of industrial waste and the receipt of industrial waste at any place or premises.
- 6.17 Prescribing any conditions or controls that apply to any type, class or category of priority waste.
- 6.18 Exempting any type, class or category of priority waste from a requirement under this Act.

- 6.19 Prescribing requirements for making and keeping records relating to the production, generation, collection, consignment, transfer, transport, receipt, handling, storage, use, management, containment, treatment and processing of waste, waste disposal or resource recovery.
- 6.20 Prescribing requirements for notification and reporting relating to the production, generation, collection, consignment, transfer, transport, receipt, handling, storage, use, management, containment, treatment and processing of waste, waste disposal or resource recovery.
- 6.21 Prohibiting disposal of any type, class or category of waste at a landfill site.
- 6.22 Exempting a person, or class of person, with management or control of priority waste from the duty to identify and assess alternatives to waste disposal for the priority waste, whether unconditionally or on specified conditions and to any extent as specified in the regulations.

7 Waste levy scheme

- 7.1 The municipal districts that are subject to higher municipal and industrial waste levy rates.
- 7.2 The calculation and payment of a waste levy.
- 7.3 The calculation of allowable rebates, including the criteria and conditions for claiming allowable rebates.
- 7.4 Regulating any other matter relevant to the calculation or determination of a person's liability to pay a waste levy.

8 Pollution and pollution incidents

- 8.1 Regulating matters in connection with pollution incidents and notifiable incidents.

- 8.2 Regulating or prohibiting the discharge, emission or deposit into the environment of any substance or matter.
- 8.3 Monitoring or observation of any discharge, emission or deposit into the environment of any substance or matter.
- 8.4 Prescribing emission standards (including noise emission standards) and standards of maximum permissible concentrations for emissions or discharges to the environment.
- 8.5 Regulating or prohibiting the emission or discharge of greenhouse gas substances, including for the purposes of contributing to the State's long-term emissions reduction target and interim emissions reduction targets under the **Climate Change Act 2017**.
- 8.6 Prescribing standards for the emission or discharge of greenhouse gas substances, including emission intensity standards and maximum levels of emissions of greenhouse gas substances.
- 8.7 Prescribing the conditions under which greenhouse gas substances may be emitted or discharged.

9 Environmental audits

- 9.1 Appointing and reappointing environmental auditors, including the suspension and revocation of the appointment of environmental auditors.
- 9.2 Regulating matters in connection with the conduct and oversight of environmental auditors.
- 9.3 Regulating matters in connection with preliminary risk screen assessments and environmental audits.

10 Permissions

- 10.1 Prescribing activities or classes of activity to be development activities, operating activities, permit activities or registration activities.
- 10.2 Regulating or prohibiting exemptions from a requirement to hold a permission.
- 10.3 Prescribing circumstances in which persons may, or must not, engage in an activity or class of activity without a permission.
- 10.4 Prescribing permission activities that a person or class of person, including prohibited persons, may not engage in.
- 10.5 Prescribing activities or classes of activities to be permit activities to be administered by a council.
- 10.6 Determining the type of permission that must be held by a person engaging in an activity or class of activity.
- 10.7 Determining the process for changing the type of permission that must be held by a person engaging in an activity or a class of activity.
- 10.8 Regulating or prohibiting conditions to which permissions are subject.
- 10.9 Regulating or prohibiting the surrender or revocation of permissions.
- 10.10 Regulating procedures relating to permissions, including applications for permissions.
- 10.11 Regulating the review of permissions or decisions relating to permissions.
- 10.12 Regulating or prohibiting the factors considered during the determination of decisions relating to permissions.
- 10.13 Regulating consultation procedures and requirements relating to permissions.

11 Appointments

- 11.1 Regulating the appointment of authorised officers.
- 11.2 Regulating the conditions that may be placed on the appointment of a person or a class of person under this Act.

12 Noise

- 12.1 Regulating the prevention, minimisation or control of noise, including—
 - (a) regulating or prohibiting the use, supply, distribution or sale of any item, equipment or vehicle; and
 - (b) regulating or prohibiting the manufacture or assembly of any item, equipment or vehicle.

13 Better environment plans

- 13.1 Regulating the submission and acceptance of proposed better environment plans.
- 13.2 Regulating the content of better environment plans.

14 Issues of environmental concern

- 14.1 Regulating or prohibiting issues declared to be issues of environmental concern.

15 Public Register

- 15.1 Regulating or prohibiting the information to be contained in the Public Register.

16 Economic instruments

- 16.1 Regulating the administration, implementation, compliance and enforcement of economic instruments.
- 16.2 Prescribing the circumstances in which compliance with a requirement under an economic instrument is taken to be compliance with, or an exemption from, a requirement under this Act.

- 16.3 Regulating the rights and duties of holders of entitlements held in relation to an economic instrument.
- 16.4 Prescribing the circumstances in which the application of an economic instrument to a specific person or class of persons, geographical area, segment of the environment, pollution or class of pollution, waste or class of waste may be set by Order of the Authority.
- 16.5 Regulating the approval or recognition of compensatory measures.

17 Product or substance regulation

- 17.1 Regulating the labelling of products with respect to standards of environmental performance.
- 17.2 Regulating or prohibiting the sale or supply of products that do not comply with standards of environmental performance.
- 17.3 Regulating or prohibiting the sale, use, manufacture, assembly, construction or installation of vehicles, facilities, equipment or machinery or other products to ensure compliance with prescribed standards.
- 17.4 Regulating or prohibiting the production of petrol.
- 17.5 Regulating or prohibiting the storage, use, manufacture, containment, handling, transport or disposal of chemical substances.

18 Records and notifications

- 18.1 Regulating the making and keeping of records required under this Act by persons performing functions or duties, or exercising powers, under this Act.
- 18.2 Regulating the giving of notifications required under this Act.

18.3 Regulating the provision or reporting of
information under this Act.

Environment Protection Act 2017
No. 51 of 2017
Schedule 2—Amount payable as waste levy

Schedule 2—Amount payable as waste levy

Sch. 2
inserted by
No. 39/2018
s. 23 (as
amended by
Nos 27/2019
ss 41, 42,
47/2020 s. 28).

Table 1

| <i>Date when waste is received</i> | <i>Amount of waste levy payable under section 145(1) for each tonne of waste received</i> | | | |
|--|---|-------------------------|--|-------------------------|
| | <i>Premises in prescribed municipal districts</i> | | <i>Premises that are not in prescribed municipal districts</i> | |
| | <i>Municipal Waste</i> | <i>Industrial Waste</i> | <i>Municipal Waste</i> | <i>Industrial Waste</i> |
| On or after 1 July 2021 and before 1 July 2022 | \$105.90 | \$105.90 | \$52.95 | \$93.19 |
| On or after 1 July 2022 and before 1 July 2023 | \$125.90 | \$125.90 | \$62.95 | \$110.79 |
| On or after 1 July 2023 | 8·13 fee units | 8·13 fee units | 4·06 fee units | 7·15 fee units |

Note

The regulations may prescribe municipal districts that are subject to a higher waste levy payable for each tonne of municipal waste or industrial waste that is received.

Table 2

| <i>Date when waste is received</i> | <i>Amount of waste levy payable under section 145(2) for each tonne of priority waste received</i> | | | |
|--|--|-------------------------|-------------------------|-------------------------|
| | <i>Packaged waste asbestos</i> | <i>Category B waste</i> | <i>Category C waste</i> | <i>Category D waste</i> |
| On or after 1 July 2021 and before 1 July 2022 | 2·06 fee units | 17·15 fee units | \$105.90 | \$105.90 |
| On or after 1 July 2022 and before 1 July 2023 | 2·06 fee units | 17·15 fee units | \$125.90 | \$125.90 |
| On or after 1 July 2023 | 2·06 fee units | 17·15 fee units | 8·13 fee units | 8·13 fee units |

Note

There is no amount of waste levy payable for receiving Category A waste as receiving Category A at a landfill is prohibited.

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Schedule 2—Amount payable as waste levy

The regulations may prescribe an amount payable as the waste levy for each tonne of priority waste (other than Category B waste, Category C waste, Category D waste or packaged waste asbestos) that is received.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 7 June 2017

Legislative Council: 22 August 2017

The long title for the Bill for this Act was "A Bill for an Act to provide for the continuation of the Environment Protection Authority, to specify a new objective of the Authority, to provide for a new governance structure of the continued Authority, to provide for the Governing Board of the Authority and to make consequential amendments to the **Environment Protection Act 1970** and the **Public Administration Act 2004** and for other purposes."

The **Environment Protection Act 2017** was assented to on 24 October 2017 and came into operation as follows:

Sections 1, 2, 4, 30–32 on 1 January 2018: Special Gazette (No. 433) 12 December 2017 page 1; sections 3, 5–29, 33–46 on 1 July 2018: section 2(2).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

Environment Protection Act 2017
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Endnotes

a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Environment Protection Act 2017** by Acts and subordinate instruments.

Environment Protection Act 2017, No. 51/2017

Assent Date: 24.10.17
Commencement Date: S. 46 on 1.7.18: s. 2(2)
Note: S. 46 repealed Pt 4 (ss 27–46) on 1.7.19
Current State: This information relates only to the provision/s amending the **Environment Protection Act 2017**

Environment Protection Amendment Act 2018, No. 39/2018 (as amended by Nos 27/2019, 3/2020, 11/2020, 47/2020)

Assent Date: 28.8.18
Commencement Date: S. 19 on 28.8.18: s. 2(2) (as amended by No. 11/2020 s. 54); ss 4–18, 20–23 on 1.7.21: Special Gazette (No. 124) 16.3.21 p. 1
Current State: This information relates only to the provision/s amending the **Environment Protection Act 2017**

Transport Legislation Amendment Act 2019, No. 49/2019²

Assent Date: 3.12.19
Commencement Date: S. 186(Sch. 4 item 18) on 1.1.20: Special Gazette (No. 514) 10.12.19 p. 1
Current State: This information relates only to the provision/s amending the **Environment Protection Act 2017**

3 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

4 Explanatory details

¹ Pt 4 (Headings and ss 27–46) (*repealed*): The amendment proposed by section 21 of the **Environment Protection Amendment Act 2018, No. 39/2018** (as amended by Nos 27/2019, 3/2020, 11/2020, 47/2020) is not included in this publication due to the earlier repeal of Part 4 by section 46 of the **Environment Protection Act 2017, No. 51/2017**.

Section 21 reads as follows:

21 Part 4 repealed

Part 4 of the Principal Act is **repealed**.

² Table of Amendments (**Transport Legislation Amendment Act 2019**): The amendment proposed by section 186(Schedule 4 item 18.1) of the **Transport Legislation Amendment Act 2019, No. 49/2019** is not included in this publication because section 338(a) is not part of this Act on the commencement date of section 186(Schedule 4 item 18.1).

Section 186(Schedule 4 item 18.1) reads as follows:

18 Environment Protection Act 2017

18.1 In section 338(a), for "Roads Corporation" **substitute** "Secretary to the Department of Transport".