

TASMANIA

**ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL AMENDMENT BILL 2012**

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ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL AMENDMENT BILL 2012

*(Brought in by the Minister for Environment, Parks and
Heritage, the Honourable Brian Neal Wightman)*

A BILL FOR

**An Act to amend the *Environmental Management and
Pollution Control Act 1994* and the *Pollution of Waters by
Oil and Noxious Substances Act 1987***

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Environmental
Management and Pollution Control Amendment
Act 2012*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

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**PART 2 – ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL ACT 1994 AMENDED**

3. Principal Act

In this Part, the *Environmental Management and Pollution Control Act 1994** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting “, discharge, depositing or disturbance” after “emission” in paragraph (a) of the definition of *environmental nuisance*;
- (b) by inserting “, discharge, depositing or disturbance” after “emission” in paragraph (b) of the definition of *environmental nuisance*;
- (c) by inserting the following definition after the definition of *State Policy*:

threatened species means a taxon of flora or fauna listed in Schedule 3, 4 or 5 to the *Threatened Species Protection Act 1995*;

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5. Section 9 amended (Interaction with other Acts)

Section 9 of the Principal Act is amended by omitting subsection (2).

6. Section 22 amended (Registers of environmental management and enforcement instruments)

Section 22(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (f) “notice.” and substituting “notice; and”;
- (b) by inserting the following paragraph after paragraph (f):
 - (g) any notice issued under Part 5A in respect of a contaminated site, and any amendment or revocation of any such notice.

7. Section 24 amended (Assessment of permissible level 1 activities)

Section 24(4) of the Principal Act is amended as follows:

- (a) by inserting “if it were” after “under this Act as”;
- (b) by omitting “if it were”.

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- (b) class 2B;
 - (c) class 2C.
- (2) In determining a class of assessment under this Part, the Board is to take into consideration the characteristics set out in Schedule 5.
- (3) The Minister, by order, may amend Schedule 5 by doing any one or more of the following:
- (a) inserting a characteristic in the Schedule;
 - (b) omitting a characteristic from the Schedule;
 - (c) omitting a characteristic from the Schedule and substituting another characteristic.
- (4) The provisions of section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under this section as if the order were regulations within the meaning of that Act.
- (5) An order under this section is not an instrument of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.

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16. Section 32 amended (Notification of incidents)

Section 32 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) A person responsible for –

(a) a level 1 activity, other than an activity in relation to which a determination has been made in accordance with section 24(4A); or

(b) an activity that is not a level 2 activity or a level 3 activity, and that has not been assessed and approved by the Board under section 27 –

must notify the relevant council, as soon as reasonably practicable but not later than 24 hours, after becoming aware of the release of a pollutant occurring as the result of any incident in relation to that activity, including an emergency, accident or malfunction, if this release causes or may cause an environmental nuisance.

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- (e) complying with any conditions or restrictions required by the Board under section 60L(8) of the *Land Use Planning and Approvals Act 1993* to be contained in a special permit granted under section 60T of that Act.

18. Section 43A inserted

After section 43 of the Principal Act, the following section is inserted in Division 1:

43A. False or misleading statements

A person must not, in providing any information or answering any question under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; and

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- (e) by inserting in subsection (8)(b) “or restrictions” after “conditions”;
- (f) by inserting the following subsections after subsection (8):
- (9) Where the Director or, in the case of an environment protection notice issued under subsection (2), a council officer considers that 2 or more environmentally relevant activities that are subject to permits, and in respect of which separate environment protection notices could be issued to vary the conditions or restrictions of those permits, can be viewed as forming one integrated activity, the Director or council officer may issue a single environment protection notice to vary those conditions or restrictions.
- (10) In this section –
- vary the conditions or restrictions of a permit* includes change existing conditions or restrictions and add or remove conditions or restrictions, provided that the fundamental use or

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22. Section 45 amended (Duties arising under environment protection notice)

Section 45 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

- (1) A person who is responsible for an environmentally relevant activity who, having been served with an environment protection notice, intends to cease to be responsible for or, in any event, to cease to conduct, the activity in respect of which the notice was served must, before that cessation –
 - (a) notify the Director or, in the case of an environment protection notice served by a council officer, the council in writing of that intention; and
 - (b) where there is an intention to cease to be responsible for the activity, provide the Director or the council with full particulars in writing of any person succeeding him or her as the person responsible.

Penalty: Fine not exceeding 10 penalty units.

- (2) Where a person who has ceased to conduct an environmentally relevant

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- (a) the amended notice must be served on any person whose name has been inserted in the notice in substitution for another name in accordance with that subsection; and
 - (b) any such person is not, in respect of the service of the amended notice, a person to whom section 44(6) applies; and
 - (c) the person whose name has been omitted in accordance with subsection (1) is no longer bound by the notice, notwithstanding section 45(4).
- (3) On service being effected under subsection (2)(a), the person served is, subject to subsection (2)(b), taken to have been served with an environment protection notice under section 44(1) or (2), as the case may be.

24. Section 46 amended (Registration of environment protection notices)

Section 46 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “subsection (1)(b)” and substituting “subsection (2)(b)”;

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Appeal Tribunal, relates in such a way that constitutes a breach of a condition or restriction of the permit that –

- (a) the Board has required under section 25(5); or
- (b) the Director has caused to be varied under section 44(1)(d).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) a natural person, a fine not exceeding 500 penalty units.

26. Section 55A amended (General environmental duty defence)

Section 55A(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “or a special permit, within the meaning of the *Land Use Planning and Approvals Act 1993*” after “permit”;
- (b) by omitting from paragraph (b)(i) “or permit” and substituting “, permit or a special permit, within the meaning of the

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the Director, by his or her agent, may do any work or take any action that could be required by the notice.

- (2) For the purposes of subsection (1)(a), “reasonable inquiry” includes advertising in a daily newspaper circulating in the relevant region.

30. Section 92 amended (Powers of authorized officers and council officers)

Section 92(1)(j) of the Principal Act is amended by inserting “or special permit” after “permit”.

31. Section 95A inserted

After section 95 of the Principal Act, the following section is inserted in Division 1:

95A. Self-incrimination

- (1) A person is not excused from a requirement under this Division to provide information or answer a question, or to produce or provide any record, document or thing, on the ground that to do so might incriminate the person or make the person liable to a penalty.
- (2) However, any information provided or answer given, or record, document or thing produced or provided, by a natural person in compliance with such a

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- (c) by inserting the following subparagraph after subparagraph (ii) in clause 3(d):
 - (iii) anaerobic digesters with a production capacity of 100 or more tonnes per year of solid or liquid fertiliser product.
 - (d) by inserting in clause 4(d) “, evaporated milk” after “skimmed milk”;
 - (e) by omitting paragraph (e) from clause 7 and substituting the following paragraph:
 - (e) Conduct of Certain Activities in Waters Within the Limits of the State: the dumping of dredge spoil or the dumping or sinking of boats, aircraft, platforms or other man-made structures and the placement of artificial reefs in waters within the limits of the State.

35. Schedule 3 amended (Provisions with respect to Membership of the Board)

Clause 6(1) of Schedule 3 to the Principal Act is amended by omitting “an appointed” and substituting “a”.

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36. Schedule 5 inserted

After Schedule 4 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 5 – CHARACTERISTICS TO BE
CONSIDERED IN DETERMINING CLASS OF
ASSESSMENT**

Section 27A

| Class of assessment | Characteristics |
|---------------------|--|
| 1. Class 2A | <p>Small-scale projects with environmental impacts that –</p> <ul style="list-style-type: none"> (a) are minor in scale or consequence; and (b) are local in extent; and (c) may be readily avoided or mitigated through appropriate management; and (d) are unlikely to generate significant public interest. |
| 2. Class 2B | Any activity that is not included in Class 2A or Class 2C |
| 3. Class 2C | Projects that – |

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| Class of assessment | Characteristics |
|----------------------------|--|
| | <p>(a) are projects of regional significance within the meaning of Part 4 of the <i>Land Use Planning and Approvals Act 1993</i>; or</p> <p>(b) have a reasonable likelihood of –</p> <p style="padding-left: 40px;">(i) requiring approval from the Commonwealth Government under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth; or</p> <p style="padding-left: 40px;">(ii) generating a very high level of public interest; or</p> <p>(c) possess more than one of the following characteristics:</p> <p style="padding-left: 40px;">(i) a high level of public interest;</p> |

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| Class of assessment | Characteristics |
|----------------------------|---|
| | <p>(ii) very large scale of development or potential for environmental impacts across a wide area;</p> <p>(iii) potential to significantly increase pressure on a threatened species;</p> <p>(iv) are subject to unusual or complex factors that are likely to demand additional time during the environmental impact assessment process.</p> |

37. Schedule 6 amended (Transitional and Miscellaneous Provisions)

Clause 3(4)(a) of Schedule 6 to the Principal Act is amended by omitting “Director of

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Environmental Management” and substituting
“Director, Environmental Protection Authority”.

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a term not exceeding 4
years.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) Subsection (1) does not apply to the discharge of oil or of an oily mixture from a ship –
- (a) for the purpose of securing the safety of a ship or saving life at sea; or
 - (b) if the oil or oily mixture, as the case may be, escaped from the ship in consequence of non-intentional damage to the ship or its equipment, and all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimising the escape of oil or oily mixture, as the case may be; or
 - (c) in the case of an oily mixture, if the discharge was for the purpose of combating specific pollution incidents in order to minimise the damage from pollution and was approved by a prescribed officer and, where the discharge

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occurred in the jurisdiction of the government of a country other than Australia, by that government.

- (4) For the purposes of subsection (3)(b), damage to a ship or to its equipment is not non-intentional damage if the damage –
- (a) arose in circumstances where the master or owner of the ship –
 - (i) acted with intent to cause the damage; or
 - (ii) acted recklessly and with knowledge that the damage would probably result; or
 - (b) arose as a result of the negligence of the master or owner of the ship.
- (5) For the purposes of this section, damage to a ship or to its equipment does not include –
- (a) deterioration resulting from failure to maintain the ship or equipment; or

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- (b) defects that develop during the normal operation of the ship or equipment.
- (6) Without limiting the generality of subsection (3) but subject to subsection (7), subsection (1) does not apply to –
- (a) the discharge of oil or an oily mixture from a ship that is not within a special area, if the following conditions are satisfied:
- (i) the ship has a gross tonnage equal to or greater than 400 tonnes;
 - (ii) the ship is proceeding en route;
 - (iii) the oily mixture is processed using oil-filtering equipment meeting the requirements set out by regulations made under section 42 or under section 267A of the Navigation Act;
 - (iv) the oil content of the effluent without dilution does not exceed 15 parts in 1 000 000 parts;

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- (v) if the ship is an oil tanker, the oily mixture does not originate from the cargo pump room bilges of the ship and is not mixed with oil cargo residues; or
- (c) the discharge of oil or an oily mixture within an area other than the Antarctic area from a ship, if the following conditions are satisfied:
 - (i) the ship has a gross tonnage of less than 400;
 - (ii) the ship is proceeding en route;
 - (iii) the ship has in operation equipment, of a kind that meets the requirements set out by regulations made under section 42 or under section 267A of the Navigation Act, that ensures that the oil content of the effluent without dilution does not exceed 15 parts in 1 000 000 parts;
 - (iv) if the ship is an oil tanker, the oily mixture does not

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- quantity of the cargo of oil of which oil discharged formed a part;
- (vi) if the tanker was delivered after 31 December 1979, the total quantity of oil discharged into the sea does not exceed one part in 30 000 parts of the total quantity of the cargo of oil of which oil discharged formed a part;
- (vii) the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by regulations made under section 42 or under section 267A of the Navigation Act; or
- (e) the discharge of washings contaminated with oil from an oil tanker that is not within a special area, if the following conditions are satisfied:
- (i) the tanker is more than 50 nautical miles from the nearest land;

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by regulations made under section 42 or under section 267A of the Navigation Act;

(vii) the discharge of oil or an oily mixture from the cargo area of an oil tanker, either within or outside a special area, if the discharge is of clean or segregated ballast.

(7) A reference to an oily mixture in subsection (6) is to be read as not including a reference to an oily mixture that contains –

(a) chemicals or other substances in quantities or concentrations that are hazardous to the marine environment; or

(b) chemicals or other substances that have been introduced for the purpose of attempting to prevent the application of subsection (1) to the discharge of an oily mixture from a ship.

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Part 4 – Repeal of Act

PART 4 – REPEAL OF ACT

40. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.