

TASMANIA

ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL AMENDMENT BILL 2022

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ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL AMENDMENT BILL 2022

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
25 October 2022

*(Brought in by the Minister for Environment and Climate
Change, the Honourable Roger Charles Jaensch)*

A BILL FOR

An Act to amend the *Environmental Management and Pollution Control Act 1994*

Be it enacted by Her 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:

1. Short title

This Act may be cited as the *Environmental Management and Pollution Control Amendment Act 2022*.

2. Commencement

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

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3. Principal Act

In this Act, 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 the following definitions after the definition of *environment*:

environmental standards means environmental standards, as amended from time to time, that are made under section 96Q(1) and that are in effect;

environmental standards condition means a provision, of any environmental standards, that is a provision of the kind referred to in section 96O(4)(d);

environmental standards offence provision means a provision, of any environmental standards, that is a provision of the kind referred to in section 96O(4)(c);

- (b) by inserting the following definition after the definition of *State waters*:

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technical standard means a technical standard, as amended from time to time, that is made under section 96Y(1) and that is in effect;

5. Section 5B amended (Environmental audit)

Section 5B(f) of the Principal Act is amended by omitting “or an environment protection policy” and substituting “, an environment protection policy, an environmental standards condition, an environmental standards offense provision or a technical standard”.

6. Section 15 amended (Ministerial statement of expectation)

Section 15 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “by 31 March in each even-numbered year”;
- (b) by inserting the following subsections after subsection (2):
 - (2A) The Minister must review a ministerial statement of expectation as soon as reasonably practicable after the end of the 5-year period after it was provided to the Board under subsection (1), if the ministerial statement of

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expectation has not been reviewed, amended, or substituted, at any time within that period.

(2B) The Minister may review a ministerial statement of expectation at any time.

(c) by omitting from subsection (5) “issued to the Board” and substituting “provided to the Board under this section”.

7. Section 15A amended (Contents of ministerial statement of expectation)

Section 15A(2) of the Principal Act is amended by inserting before paragraph (a) the following paragraphs:

(aa) must further the objectives specified in Schedule 1; and

(aab) must specify which of, and the manner in which, the objectives specified in Schedule 1 are being furthered by the ministerial statement of expectation; and

(aac) must be consistent with the functions and powers of the Board; and

8. Section 18A inserted

After section 18 of the Principal Act, the following section is inserted in Division 1:

18A. Independence of Director

- (1) The Director is authorised and required to act independently in relation to the performance and exercise of the functions and powers of the Director and, subject to this Act and any other Act, has complete discretion in the performance and exercise of those functions and powers.
- (2) In particular, the Director is not subject to direction from anyone in relation to a decision of the Director –
 - (a) to grant, renew or vary, or not to grant, renew or vary, an environmental licence, or to transfer, or refuse to transfer, an environmental licence; or
 - (b) to suspend or cancel, or not to suspend or cancel, an environmental licence; or
 - (c) to impose, or not to impose, a condition or requirement on an environmental licence; or
 - (d) to issue, amend or revoke, or not to issue, amend or revoke, an environment protection notice, an investigation notice, a remediation notice, a site management notice or a technical standard; or

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- (e) to investigate or prosecute, or not to investigate or prosecute, a person; or
- (f) to issue, or not to issue, a report or recommendation; or
- (g) as to the contents of any report or recommendation issued by the Director; or
- (h) to issue, or not to issue, a requirement, authorization or direction, or to enter into, or not to enter into, an agreement.

9. Section 19 amended (Staff)

Section 19(2) of the Principal Act is amended by omitting “Secretary of the Department” and substituting “Director”.

10. Section 23 amended (Trade secrets)

Section 23 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (5) This section does not apply in relation to any information that is, under section 23AA(2), published, provided, or made available for viewing by members of the public or a person or body.

11. Section 23AA inserted

After section 23 of the Principal Act, the following section is inserted in Division 2:

23AA. Environmental monitoring information

(1) In this section –

council-owned company means a company, incorporated under the Corporations Act, that is controlled by one or more councils or another company that is so controlled;

public authority means –

- (a) an Agency, within the meaning of the *State Service Act 2000*; and
- (b) the University of Tasmania; and
- (c) the Police Service; and
- (d) a council; and
- (e) a statutory authority; and
- (f) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose; and

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- (g) a body whose members, or a majority of whose members, are appointed by the Governor or a Minister of the Crown; and
- (h) a Government Business Enterprise, within the meaning of the *Government Business Enterprises Act 1995*; and
- (i) a council-owned company; and
- (j) a State-owned company;

relevant information means information that –

- (a) results from, or relates to, monitoring of the environmental effects of an activity, including but not limited to any of the following:
 - (i) the results of any type of test or measurement of any emissions, discharge or deposition of a substance;

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- (ii) reports as to the condition of the environment at the place where the activity occurs or that is in the proximity of that place;
 - (iii) any interpretation, or analysis, of such results or reports;
 - (iv) any photographs, visual recordings, audio recordings or audio-visual recordings; and
- (b) is required, under an environmental licence, environment protection notice, permit, environment protection policy or under environmental standards, to be collected; and
- (c) is provided under this Act, or another prescribed Act, to the Board or the Director, otherwise than in accordance with a requirement imposed on a

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person under section 43 or
section 92;

State-owned company means a
company, incorporated under the
Corporations Act, that is
controlled by –

- (a) the Crown; or
- (b) a Government Business
Enterprise; or
- (c) a statutory authority; or
- (d) another company that is
so controlled.

(2) The Director may –

- (a) publish any relevant information;
or
- (b) provide relevant information to
members of the public or a person
or body; or
- (c) make relevant information
available for viewing by members
of the public or a person or
body –

in the manner and form that the Director
thinks fit.

(3) Subsection (2) applies in relation to
relevant information whether or not the

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person or body that provided the information to the Director or the Board agrees to the information being dealt with in accordance with that subsection.

- (4) In determining whether to, under subsection (2), publish, provide, or make available for viewing by members of the public or a person or body, any relevant information, the Director must consider whether the information is information related to the business affairs of a person, other than a public authority, which, if it were information of a public authority, would be exempt information within the meaning of the *Right to Information Act 2009*.

12. Section 25 amended (Assessment of permissible level 2 activities)

Section 25(6) of the Principal Act is amended by inserting after paragraph (e) the following paragraph:

- (ea) a condition that gives effect to an environmental standards condition or a technical standard; and

13. Section 37 amended (Environmental improvement programme)

Section 37(b) of the Principal Act is amended by omitting “environmental standard” and

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substituting “standard for the environment, environmental standards or a technical standard”.

14. Section 39 amended (When environmental improvement programme required)

Section 39(1) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) it is not practicable for a person to comply with an environmental standards condition, an environmental standards offense provision, or a technical standard, with which the person is required to comply; or

15. Section 42Z amended (Conditions and restrictions of licences)

Section 42Z(2) of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (i):
 - (ia) a condition or restriction that is an environmental standards condition;
- (b) by omitting from paragraph (j) “or an environment protection policy” and substituting “, an environment protection policy or a technical standard”.

16. Section 44 amended (Environment protection notices)

Section 44 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or an environment protection policy” and substituting “, an environment protection policy, environmental standards or a technical standard”;
- (b) by omitting from subsection (2) “or an environment protection policy” and substituting “, an environment protection policy, environmental standards or a technical standard”.

17. Part 7, Division 1B inserted

After section 96N of the Principal Act, the following Division is inserted in Part 7:

Division 1B – Environmental standards and technical standards

Subdivision 1 – Environmental standards

96O. Purpose and contents of environmental standards

- (1) Environmental standards may be made for the purpose of –

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- (a) assisting in managing, mitigating, avoiding or reducing potential environmental harm; or
 - (b) giving effect to best practice environmental management in relation to an activity.
- (2) Environmental standards must specify the purposes or intent of provisions of the environmental standards.
- (3) Environmental standards may include any of the following:
 - (a) provisions that may be included in environmental standards in accordance with this section;
 - (b) provisions that are necessary or convenient for the effective operation of the environmental standards.
- (4) Environmental standards may include –
 - (a) a provision –
 - (i) to which the Board must have regard in determining whether to direct a planning authority, or the Commission, to refuse to grant a permit; or

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- (ii) to which the Board and the Director must have regard in determining whether to grant or vary an environmental licence; or
 - (iii) to which the Director must have regard in determining whether to issue or vary a notice under Part 5A or an environment protection notice under section 44; and
- (b) a provision to which the Board and the Director must have regard in conducting an assessment, or making a decision, under this Act or another Act; and
- (c) a provision (an *environmental standards offence provision*) with which a person to whom the provision applies must comply or else the person will be guilty of an offence against section 96U(4); and
- (d) a provision (an *environmental standards condition*) that may be imposed as a condition or restriction on a permit, an environmental licence, a notice

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under Part 5A or an environment
protection notice under
section 44.

(5) Environmental standards may include a provision requiring that if the Director or the Board –

(a) decides not to impose an environmental standards condition on a permit, an environmental licence, a notice under Part 5A or an environment protection notice under section 44; or

(b) decides to exercise a discretion given to the Board or the Director in the environmental standards –

the Director or the Board must give notice, on a website of the Authority, of the decision and of the reasons for the decision.

(6) Environmental standards may relate to any one or more of the following:

(a) an environmentally relevant activity;

(b) a pollutant or class of pollutants;

(c) a chemical or class of chemicals;

(d) an industry or activity;

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- (e) waste management;
 - (f) environmental monitoring;
 - (g) the adoption of a national standard or an international standard.
- (7) Environmental standards may specify whether the environmental standards, or a provision of the environmental standards, apply or applies in all of the State or only in a part of the State that is specified in the environmental standards or the provision.
- (8) Environmental standards may –
- (a) authorise any act, matter, or thing, that is referred to in the environmental standards to be from time to time determined, applied or regulated by the Board or the Director; and
 - (b) refer to an Australian Standard or an instrument, of a legislative or administrative character, made under an Act of the Commonwealth, another State or a Territory –
 - (i) as the Australian Standard or instrument is in force at the time at which the reference to the

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- Australian Standard or instrument is included in the environmental standards; or
 - (ii) as the Australian Standard or instrument is amended from time to time after the Australian Standard or instrument is included in the environmental standards; and
 - (c) authorise or require the Director to make a technical standard for the purposes of enabling the effective implementation of the environmental standards; and
 - (d) contain conditions or restrictions; and
 - (e) apply only to persons, or members of a class of persons, specified in the environmental standards; and
 - (f) be made so as to apply differently according to any factors, limitations or restrictions, whether as to time, circumstances or otherwise, specified in the environmental standards.
- (9) The *Acts Interpretation Act 1931* applies to the interpretation of environmental

standards as if the environmental standards were by-laws.

- (10) The provisions that are specified in environmental standards to be provisions that apply to the interpretation of the environmental standards apply to the interpretation of the environmental standards for the purposes of this Act.

96P. Consistency with certain instruments

- (1) Environmental standards must be consistent with the objectives set out in Schedule 1.
- (2) Environmental standards must not be inconsistent with –
- (a) this Act; or
 - (b) any State policy; or
 - (c) any environment protection policy.
- (3) If there is an inconsistency between a provision of environmental standards and this Act, any State policy, or any environment protection policy, the provision of the environmental standards is of no effect to the extent of the inconsistency.
- (4) If there is an inconsistency between –

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(a) a condition, of a permit, an environmental licence, or an environment protection notice, that is an environmental standards condition imposed on the permit, licence or notice; and

(b) another condition of the permit, licence or notice –

the condition referred to in paragraph (b) is of no effect to the extent of the inconsistency.

(5) If there is an inconsistency between –

(a) a condition, of a permit, an environmental licence or an environment protection notice; and

(b) an environmental standards offence provision –

the condition of the permit, environmental licence or environment protection notice is of no effect to the extent of the inconsistency.

96Q. Making, amendment and revocation of environmental standards

(1) The Minister may make environmental standards.

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- (2) The Minister may amend environmental standards.
- (3) The Minister may revoke environmental standards.
- (4) The Minister, before making, amending or revoking environmental standards –
 - (a) is to consult with the Secretary and the Director; and
 - (b) may consult with any other person as the Minister thinks fit.
- (5) The Minister must not make, amend or revoke environmental standards, unless –
 - (a) the Minister has complied with section 96R in relation to a draft of the environmental standards, amendment or revocation; and
 - (b) the period in which a person may make to the Minister under section 96R(4) a submission in relation to the draft of the environmental standards, amendment or revocation has expired; and
 - (c) the Minister has considered all submissions made under section 96R(4) in relation to the draft of the environmental

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standards, amendment or
revocation.

(6) Environmental standards made or amended under this section may be environmental standards that –

(a) are in the form of the draft environmental standards, or the draft amendment of the environmental standards, respectively, exhibited under section 96R; or

(b) are in the form of the draft environmental standards or the draft amendment of the environmental standards exhibited under section 96R, as modified by the Minister after complying with subsection (5).

96R. Public consultation in relation to proposed environmental standards

(1) In this section –

exhibition documents, in relation to a draft of the environmental standards or a draft of an amendment or revocation of environmental standards, means –

(a) the draft of the environmental standards,

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draft amendment or
revocation, as the case
may be; and

(b) a statement as to the
reasons why the Minister
is proposing to –

(i) make
environmental
standards in the
form of the draft
of the
environmental
standards; or

(ii) make an
amendment of
environmental
standards in the
form of the draft
of the amendment
of environmental
standards; or

(iii) revoke the
relevant
environmental
standards;

exhibition notice, in relation to a draft
of the environmental standards or
a draft of an amendment or
revocation of environmental
standards, means an exhibition

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notice, in accordance with subsection (3), in relation to the draft of the environmental standards, amendment or revocation;

exhibition period, in relation to a draft of the environmental standards or a draft of an amendment or revocation of environmental standards, means the period of 6 weeks –

- (a) beginning on the day on which, in accordance with subsection (2)(b), the exhibition documents in relation to the draft of the environmental standards, amendment or revocation begin to be available for viewing by members of the public; and
 - (b) excluding any days on which the offices of the Authority are closed during normal business hours.
- (2) If the Minister is proposing to make, amend or revoke environmental standards, the Minister must ensure that –

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- (a) an exhibition notice, in relation to the draft of the environmental standards, amendment or revocation, is published in a newspaper that is published, and circulates generally, in Tasmania; and
 - (b) the exhibition documents in relation to the draft of the environmental standards, amendment or revocation have been made available, for all of the exhibition period, for viewing by members of the public at the electronic address, and at the places specified, in accordance with subsection (3), in the exhibition notice.
- (3) An exhibition notice in relation to a draft of the environmental standards or a draft of an amendment or revocation of environmental standards, is to specify –
- (a) that the Minister is proposing to make environmental standards, or amend or revoke environmental standards, as the case may be, in the form of the draft of the environmental standards, amendment or revocation; and
 - (b) the exhibition period in relation to the draft of the environmental

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standards, amendment or
revocation; and

(c) that a copy of the draft of the
environmental standards,
amendment or revocation may be
viewed by members of the public,
during the exhibition period, at an
electronic address, and the offices
of the Authority, specified in the
notice; and

(d) that a copy of the reasons why the
Minister is proposing to –

(i) make environmental
standards in the form of
the draft of the
environmental standards;
or

(ii) make an amendment of
environmental standards
in the form of the draft of
an amendment of
environmental standards;
or

(iii) revoke the relevant
environmental standards –

may be viewed by members of
the public, during the exhibition
period, at an electronic address,
and the offices of the Authority,
specified in the notice; and

- (e) that members of the public are invited to make to the Minister, within the exhibition period and in the manner specified in the notice, submissions in relation to the draft of the environmental standards, amendment or revocation, as the case may be.
- (4) A person may, within the exhibition period in relation to a draft of the environmental standards or a draft of an amendment or revocation of environmental standards, make to the Minister a submission in relation to the draft of the environmental standards, amendment or revocation, respectively.

96S. Environmental standards, &c., not statutory rules

The following are not statutory rules for the purposes of the *Rules Publication Act 1953*:

- (a) environmental standards made under section 96Q(1);
- (b) an amendment of environmental standards under section 96Q(2);
- (c) a revocation of environmental standards under section 96Q(3).

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96T. Environmental standards, &c., may be disallowed by House of Parliament, &c.

Section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply in relation to –

- (a) environmental standards made under section 96Q(1); and
- (b) an amendment of environmental standards under section 96Q(2); and
- (c) a revocation of environmental standards under section 96Q(3) –

as if the environmental standards, or the amendment or revocation of environmental standards, were regulations within the meaning of that Act.

96U. Effect of environmental standards

- (1) If the environmental standards indicate that a provision included, in accordance with section 96O(4)(a), in the environmental standards is a provision to which the Board must have regard in determining whether to –
 - (a) grant or vary an environmental licence; or

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- (b) direct a planning authority, or the Commission, to refuse to grant a permit –

the Board, in making such a determination, must have regard to the provision and any related provision of the environmental standards.

- (2) If the environmental standards indicate that a provision included, in accordance with section 96O(4)(a), in the environmental standards is a provision to which the Director must have regard in determining whether to –

- (a) grant or vary an environmental licence; or
- (b) issue or vary a notice under Part 5A or an environment protection notice under section 44 –

the Director, in making such a determination, must have regard to the provision and any related provision of the environmental standards.

- (3) If the environmental standards indicate that a provision included, in accordance with section 96O(4)(b), in the environmental standards is a provision to which the Board and the Director must have regard in conducting an assessment, or making a decision, under this Act or

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another Act, the Board, or the Director, respectively, must have regard to –

- (a) the provision; and
- (b) any related provision of the environmental standards –

in conducting such an assessment, or making such a decision, under this Act or another Act.

- (4) If a provision of environmental standards is, in accordance with section 96O(4)(c), an environmental standards offence provision, a person to whom the provision applies who contravenes the provision commits an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
 - (b) an individual, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.
- (5) If a provision of environmental standards is, in accordance with section 96O(4)(d), an environmental standards condition, the environmental standards condition may be imposed as a condition or

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restriction on a permit, an environmental licence, a notice under Part 5A or an environment protection notice.

(6) If –

(a) a condition or restriction is imposed on a permit, an environmental licence, a notice under Part 5A or an environment protection notice; and

(b) the condition or restriction was, when it was imposed, an environmental standards condition –

the condition or restriction imposed on the permit, environmental licence, notice under Part 5A or environment protection notice is taken to be revoked if the provision of the environmental standards containing the environmental standards condition is revoked.

(7) If a provision of environmental standards is a provision referred to in section 96O(5), the Board or the Director, as the case may be, to whom the provision applies must comply with the requirements of the provision.

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96V. Copies of environmental standards to be made available for viewing by public

The Minister is to ensure that a copy of any environmental standards is published on a website of the Authority and made available to the public in any other manner that the Minister considers appropriate.

96W. Review of environmental standards

The Minister must, within the 6-month period beginning on the tenth anniversary of the day on which any environmental standards came into effect, review the environmental standards to determine whether or not they should be amended or revoked.

Subdivision 2 – Technical standards

96X. Purposes, and contents, of technical standards

- (1) A technical standard may be made for the purposes of –
 - (a) environmental standards; or
 - (b) assisting in the implementation of a State Policy, environment protection policy or National Environment Protection Measure.

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- (2) A technical standard must specify the purpose, referred to in subsection (1), for which it is made.
- (3) A technical standard may contain –
 - (a) a scientific method; or
 - (b) a description of a process; or
 - (c) an environmental monitoring method; or
 - (d) a data collection and management protocol; or
 - (e) a qualitative or quantitative assessment method; or
 - (f) a scientific equipment standard; or
 - (g) any other matter.
- (4) A technical standard may –
 - (a) authorise any act, matter, or thing, that may be included in the technical standard to be from time to time determined, applied or regulated by the Board or the Director; and
 - (b) refer to an Australian Standard or an instrument, of a legislative or administrative character, made under an Act of the

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Commonwealth, another State or
a Territory –

- (i) as the Australian Standard or instrument is in force at the time at which the reference to the Australian Standard or instrument is included in the technical standard; or
 - (ii) as the Australian Standard or instrument is amended from time to time after the Australian Standard or instrument is included in the technical standard.
- (5) The *Acts Interpretation Act 1931* applies to the interpretation of a technical standard as if it were by-laws.

96Y. Making, amendment, revocation and expiry of technical standard

- (1) The Director, by order, may make a technical standard.
- (2) The Director, by order, may amend a technical standard.
- (3) The Director, by order, may revoke a technical standard.

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- (4) The Director, before making, amending or revoking a technical standard, may consult with any person as the Director thinks fit.
- (5) A technical standard, an amendment of a technical standard or a revocation of a technical standard under this section comes into effect –
 - (a) on the day on which notice of the technical standard, amendment or revocation appears in the *Gazette*, unless paragraph (b) applies in relation to the technical standard, amendment or revocation; or
 - (b) on a later day specified in the amendment or revocation as the day on which the technical standard, amendment or revocation comes into effect.
- (6) The Director is to revoke under subsection (3) a technical standard if the environmental standard, State Policy, Environment Protection Policy, or National Environment Protection Measure, for the purposes of which the technical standard was made, is revoked or expires.

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96Z. Technical standards, &c., are not statutory rules

The following are not statutory rules for the purposes of the *Rules Publication Act 1953*:

- (a) a technical standard made under section 96Y(1);
- (b) an amendment of a technical standard under section 96Y(2);
- (c) a revocation of a technical standard under section 96Y(3).

96ZA. Copies of technical standards, &c., to be made available for viewing by public

- (1) The Director is to ensure that the following are published on a website of the Authority:
 - (a) each technical standard, as in effect from time to time;
 - (b) the reason why the Director has made a technical standard;
 - (c) notice that a technical standard has been amended or revoked and the reason for the amendment or revocation.
- (2) The Director is to ensure that each technical standard, as in effect from time

to time, is made available to the public in the manner, if any, that the Minister considers appropriate.

18. Section 100 amended (Analysts)

Section 100 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “, or the Director,” after “Department”;
- (b) by inserting in subsection (2) “, or the Director,” after “Secretary”.

19. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.