

CLAUSE NOTES

Environmental Management and Pollution Control Amendment Bill 2022

- Clause 1** **Short title**
- This clause explains that the Act will be referred to as the '*Environmental Management and Pollution Control Amendment Act 2022*'.
- Clause 2** **Commencement**
- This clause specifies that the Act will commence on the same day it receives Royal Assent.
- Clause 3** **Principal Act**
- This clause is a standard provision that identifies the Act to be amended, which is the *Environmental Management and Pollution Control Act 1994*.

AMENDMENTS to the ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL ACT 1994 (EMPCA)

- | Clause No. in Bill | Sections Amended in EMPCA |
|--------------------|--|
| Clause 4 | Section 3 amended (Interpretation) <p>This clause describes four (4) new definitions that will appear in section 3 of EMPCA. They are terms used in the new Division 1B – 'Environmental standards and technical standards', covered by Clause 17 of the Bill.</p> <p>The new definitions are:</p> <ul style="list-style-type: none">'environmental standards';'environmental standards condition';'environmental standards offence provision'; and'technical standard'. |
| Clause 5 | Section 5B amended (Environmental audit) <p><i>Purpose:</i></p> <p>The purpose of Clause 5 is to ensure that environmental audits required under EMPCA may, if necessary, refer to relevant parts of any Environmental Standards or Technical Standards made under the new Division 1B.</p> |

Subsection 5B defines the nature and scope of environmental audits, which can include assessing compliance with any permit, licence, State Policy, environment protection policy or any other requirement of the Act.

Subsection 5B(f) has been amended so that environmental audits may also relate to compliance with an environmental standards condition, environmental standard offence provision or a technical standard.

Clause 6 **Section 15 amended (Ministerial statement of expectation)**

Purpose:

The purpose of Clause 6 is to redefine the powers that relate to the Minister's Statement of Expectation.

Current powers:

Section 15 currently requires the Minister to provide the EPA Board with a 'Statement of Expectation', or SoE, every two years.

Section 15 also defines the other requirements for the Minister when making, amending, revoking, and consulting on the SoE, and includes a requirement for the Board to make the SoE available to the public.

Amendments:

Subsection 15(1) has been amended to remove the requirement for the SoE to be provided to the Board "by 31 March in each even-numbered year."

New subsection 2(A) requires the Minister to review the SoE as soon as possible after five years have elapsed since the last review, amendment, or substitution.

This amendment effectively increases the lifespan of an SoE from two years to a maximum of five years.

However, **new subsection 2(B)** provides a power for the Minister to review the SoE at any time.

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

Purpose:

The purpose of Clause 7 is to provide further detail and clarity on what can be included in an SoE. The amendments ensure that an SoE is consistent with other provisions in the Act and must explain how it supports the intent of the Act.

Current powers:

Section 15A requires an SoE to:

- specify the Minister's objectives on any matter relating to the EPA Board's functions, and

- ensure that the SoE does not constrain the Board's lawful functions, nor extend its functions and powers.

Amendments:

New subsections 15A(2)(aa)-(ac) specify that an SoE must:

- further the objectives in Schedule 1 of EMPCA*;
- be consistent with the functions and powers of the Board as given in section 14; and
- explain which EMPCA objectives are being furthered, and how they are being furthered.

*Note that the objectives relate to both the Resource Management and Planning System and the Environmental Management and Pollution Control System established by EMPCA.

Clause 8

Section 18A inserted

Purpose:

The purpose of **new subsection 18A** is to clarify that the Director is to act without direction from anyone, including the Minister, within the scope of their powers and functions listed under subsection 18A(2).

In summary, those powers and functions relate to:

- environmental licensing [(2)(a) – (2)(c)];
- issuing etc. of notices relating to environment protection, investigation, remediation, site management, or issuing of a technical standard [(2)(d)];
- investigations and prosecutions [(2)(e)];
- reports and recommendations [(2)(f) – (2)(g)]; and
- other requirements, authorizations, or agreements [(2)(h)].

Clause 9

Section 19 amended (Staff)

Purpose:

The purpose of Clause 9 is to ensure that the Director can arrange for skilled public service staff to be transferred to the EPA, if required.

Current powers:

Sub-section 19(2) allows the Secretary of the Department of Natural Resources and Environment Tasmania (NRE Tas) to arrange for public service staff in other Agencies to work within NRE Tas and perform duties and functions required under EMPCA.

Amendments:

Subsection 19 (2) has been amended so that this power is transferred from the Secretary to the EPA Director.

Clause 10 **Section 23 amended (Trade secrets)**

Purpose:

The purpose of Clause 10, by means of new subsection 23(5), is to allow monitoring information ‘...published, provided, or made available for viewing by members of the public or a person or body...’ to be exempt from the existing ‘trade secret’ and ‘consent’ constraints in section 23.

Background information - current powers relating to access to information and trade secrets:

EMPCA has two sections (22 and 23) covering public access to information collected by the EPA Board and councils, and constraints related to ‘trade secrets’.

Section 22 requires the Board and councils to keep registers of ‘environmental management and enforcement instruments’.

For the Board, these instruments include:

- Environmental licence documents;
- Environmental agreements and audits;
- Emergency authorisations;
- Financial assurances;
- Environmental improvement programmes; and
- Environmental protection notices.

Council registers must keep details of any environment protection notices, including amendments or revocation.

Subsection 22(2) allows a person, on payment of a fee, to search a register. This effectively means that information stored on Board and council registers is available to the public, businesses, and other organisations.

Section 23 (‘Trade secrets’) places two constraints on the public availability of items on section 22 registers, where that information relates to trade secrets.

Firstly, the Board and councils must consider whether register information could be a trade secret and whether the release of such information would be likely to cause financial loss to any person. If so, the affected person must be consulted and may make a representation to the Board or relevant council, who must then serve a notice on that person about their decision. That person has appeal rights under subsection 23(3) if they do not agree with the decision.

Secondly, subsection 23(4) prevents the disclosure of trade secrets without the consent of the person involved.

Clause 11 **New section 23AA inserted**

Purpose:

The purpose of section 23AA is to define the type of information that can be released by the Director, and the constraints on doing so.

New subsections 23AA(2) and (3) propose that the EPA Director would be able to publish or otherwise make available any 'relevant [environmental monitoring] information' provided under the Act, with or without the approval of the person or body who provided that information to the Director.

In summary, subsection (1) defines 'relevant information' as information relating to monitoring of environmental impacts including:

- Any test or measurement results related to emissions, discharge, or deposition;
- Reports of environmental condition, including any analysis or interpretation; and
- Any photographs or audio/visual recordings.

New subsection 23AA(1) provides definitions for 'council -owned company', 'public authority' and 'State-owned company', as these terms are used in subsection (4) – see below.

This subsection also limits 'relevant information' to information that a licence or permit holder is required to collect, effectively excluding information that may come from other sources (see definition in (1)(b)).

New subsection 23AA(4) requires the Director to consider whether any relevant information relating to the business affairs of a person would be exempt within the meaning of the *Right to Information Act 2009*. This is to ensure consistency between the Act and the Amendment Bill. Exemptions include matters such as business affairs of a third party, disclosure of personal information and information obtained in confidence.

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

Purpose:

The purpose of Clause 12 is to extend the application of environment and technical standards into planning permits, if required.

Current powers:

Subsection 25(6) defines the conditions that the EPA Board may require to be contained in a permit granted by the planning authority (i.e., by the local council) under the *Land Use Planning and Approvals Act 1993* (LUPAA).

Amendment:

Subsection 25(6) is amended to allow the inclusion of a condition that gives effect to an environmental standards condition or a technical standard.

Clause 13

Section 37 amended (Environmental improvement program)

Purpose:

The purpose of Clause 13 is to ensure that the new words 'environmental standard' do not conflict with similar wording in the current section 37.

Current powers:

Section 37 specifies that an 'environmental improvement programme' (EIP) can be used to achieve a particular activity's transition to compliance with EMPCA. (Note that under section 37 the EPA Board may require a person undertaking an activity to prepare and submit a draft EIP for approval.) Subsection 37(b) uses the generic term 'environmental standard', which is unrelated to the proposed new powers within the Bill to create environmental standards for specified activities or purposes.

Amendments:

Subsection 37(b) is amended to change the existing term to 'standard for the environment', to distinguish between the two types of wording.

Subsection 37(b) is amended so that the Board may also require an EIP to detail a transition to an environmental standard or technical standard. Consequently, 37(b) will refer to a '...transition to a standard for the environment, environmental standards or a technical standard.

Clause 14

Section 39 amended (When environmental improvement programme required)

Purpose:

The purpose of Clause 14 is to allow the Board to extend the application of environmental improvement programmes (EIPs) to their consideration of Environmental Standards, if they consider it necessary to do so.

Current powers:

Section 39 specifies when and how the EPA Board may require a person to submit a draft EIP for approval.

Subsection 39(1) enables the Board to require a draft EIP if an activity causes or may cause environmental harm, or if it is not practicable for a person to comply with:

- a State Policy;
- a provision of EMPCA;
- regulations; or
- an environment protection policy (EPP).

Amendment:

New subsection 39(1)(ab) adds a (non-mandatory) power for the Board to require an EIP if it is not practicable for a person to comply with an environmental standards condition or offence provision, or a technical standard.

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

Purpose:

The purpose of Clause 15 is to ensure that Environmental Standards and Technical Standards can be given effect by adding relevant conditions or restrictions within those documents to an environmental licence.

Current powers:

Subsection 42Z(2) lists the conditions or restrictions that may be imposed upon an environmental licence.

Amendments:

New subsection 42Z(2)(ia) adds an 'environmental standards condition' to the list.

Subsection 42Z(2)(j) is amended to add a 'technical standard' to the list.

Clause 16 Section 44 amended (Environment protection notices)

Purpose:

The purpose of Clause 16 is to allow the EPA Director or a council officer to refer to an Environmental Standard or Technical Standard within an environment protection notice (EPN), if they consider it necessary to do so.

Current powers:

Section 44 allows the EPA Director or a council officer to serve an EPN on a person responsible for an 'environmentally relevant activity'. Amongst other things, this can occur if the serving of an EPN is necessary to give effect to a State Policy or EPP.

Amendments:

Subsections 44(1) and (2) are amended to include 'environmental standards' and a 'technical standard' as instruments to which the serving of an EPN may refer.

Clause 17

Part 7, New Division 1B inserted – Environmental standards and technical standards

Subdivision 1 – Environmental standards

96O. Purpose and contents of environmental standards (ES)

The purpose of section 96O is to:

- provide a range of options for the types of provisions that may be included in an ES;
- mandate that each ES must specify the purpose and intent of its provisions [subsection (2)];
- include any provisions that are 'necessary or convenient' for the operation of an ES ([subsection (3)(b)]);
- provide the option of defining which provisions the Board and Director must have regard to when providing direction on planning permits, granting environmental licences, issuing site contamination or environment protection notices, or conducting an assessment [subsection (4)];
- provide a power for an ES to contain an offence provision [subsection (4)]; and
- allow a provision to be imposed as a condition or restriction on a licence, permit or notice [subsection (4)];
- allow a provision requiring the Director or Board to publish their reasons for exercising discretion or deciding not to impose an ES condition on a licence, permit or other approval notice [subsection (5)]; and
- describe the types of environmental matters an ES may relate to [subsection (6)].

Section 96 also allows an ES to:

- specify the area of the State to which it relates [subsection (7)];
- authorise the Board or Director to apply or regulate anything within that ES [subsection (8)];
- refer to standards, legislative instruments etc. from other jurisdictions [subsection (8)];
- authorise or require the Director to make a supporting Technical Standard [subsection (8)];
- specify the persons to whom that ES applies; and

- apply the ES differently according to factors such as time and other circumstances – (for example, by applying environmental management conditions to a certain area for a certain period of time) [subsection (8)].
- explain that, in matters of interpretation, reference should be made to the *Acts Interpretation Act 1931*, with ES to be interpreted as if they were bylaws [subsection (9)].

96P. Consistency with certain instruments

The broad purpose of section 96P is to establish the ‘consistency’ requirements for ES and to describe the legal consequences of any inconsistencies between an ES and another instrument:

Specifically:

Subsection (1) requires the Minister to ensure that an ES is in harmony or correspondence with both the objectives of Tasmania’s Resource Management and Planning System and the Environmental Management and Pollution Control System established by EMPCA. (Note that these objectives establish the Act’s fundamental purpose and intent.)

Subsection (2) imposes the same requirements as in subsection (1), but with respect to EMPCA, and any State Policies or Environment Protection Policies.

Subsection (3) clarifies that in the event of any inconsistency, the relevant provisions within EMPCA, State Policies or Environment Protection Policies will prevail.

Subsections (4) and (5) clarify that in the event of an inconsistency between an ES condition and another condition on a permit etc., the ES condition will prevail.

96Q. Making, amendment and revocation of environmental standards

The purpose of subsections (1) - (3) is to provide the Minister with powers to make, amend or revoke an ES.

The purpose of subsection (4) is to ensure that the Minister undertakes consultation when making, amending, or revoking an ES.

The purpose of subsection (5) is to ensure that the Minister has considered all submissions and does not make, amend or revoke an ES within a submission period.

96R. Public consultation in relation to proposed environmental standards

The overall purpose of section 96R is to explain the public consultation requirements for an ES.

In summary, section 96R requires the Minister to:

- consult with the public before making, amending, or revoking an ES;
- exhibit a draft ES, amendment, or revocation for 6 weeks;

and

- place a notice of exhibition in a newspaper with state-wide circulation.

The notice is to:

- give the period of exhibition;
- provide reasons for the making, amendment, or revocation;
- state where a copy can be viewed; and
- Invite submissions

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

Purpose:

In summary, the purpose of new section 96S is to explain that ES, ES amendments and revoked ES are not, for the purposes of publication and printing:

- regulations, rules, or bylaws made under an Act; or
- proclamations or other notices that affect the operation of an Act; or
- other legislative instruments.

This means that ES are not subject to the printing, numbering and publication rules that normally apply to statutory rules.

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

Purpose:

The purpose of new section 96T is to ensure that both Houses of Parliament may review and, if necessary, disallow an ES, its amendment, or its revocation.

In summary, the relevant parts of section 43 of the *Acts Interpretation Act 1931* require the Minister to:

- place a notice in the Gazette, within 21 days, advising that an ES has been made, amended, or revoked; and
- table the ES, amendment, or revocation in each House of Parliament within 10 sitting days of Gazettal.

Either House, within 15 sitting days of tabling, may pass a resolution to disallow all or part of an ES.

A disallowed ES that is substantially the same cannot take effect within 12 months of its disallowance by either House:

- unless it has been tabled in that House for 30 days, or
- a resolution is passed by that House to allow it.

An ES, amendment or revocation takes effect on Gazettal, or on another date specified in the notice.

96U. Effect of environmental standards

The purpose of subsections (1) - (3) is to require the Director and Board to have regard to any provisions in an ES **IF** those provisions require them to do so when they are considering whether to:

- grant or vary an environmental licence;
- direct a planning authority or the Commission to refuse to grant a permit;
- issue or vary a contaminated site notice or an environment protection notice; or
- undertake an assessment.

Subsection (4) provides for corporate and individual penalties if a person contravenes an offence provision within an ES.

Subsection (5) allows an ES condition to be imposed as condition on a permit, environmental licence, contaminated sites notice or environment protection notice.

Subsection (6) confirms that an ES condition on a permit, licence etc, is taken to be revoked if the 'parent' ES is revoked.

Subsection (7) requires the Board or Director to comply with any relevant provision issued under subsection 96O(5).

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

The purpose of new section 96V is to ensure that the Minister publishes any ES on the EPA's website, and in general makes it available to the public.

96W. Review of environmental standards

The purpose of new section 96W is to ensure that the Minister reviews any ES within 6 months of its 10th anniversary, to determine whether it should be amended or revoked.

Subdivision 2 – Technical standards

96X. Purposes, and contents, of technical standards (TS)

Purpose:

The purpose of new section 96X is to establish some broad parameters for the creation and contents of TS, which will typically describe acceptable scientific methods for environmental assessment, measurement, monitoring and data management.

TS may be made to help industry and regulators comply with and implement the following statutory instruments:

- Environmental Standards

- State Policies
- Environment Protection Policies
- National Environment Protection Measures

Subsection (2) requires each TS to state its purpose.

Subsection (3) defines the 6 main types of scientific and environmental methods, processes and standards that a TS may contain.

The purpose of subsection (4) is to allow a TS to authorise matters that are the responsibility of the Board or Director, and, if necessary, refer to Australian standards and instruments made in other jurisdictions.

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

Purpose:

The purpose of subsections (1), (2) and (3) is to allow the Director to make, amend or revoke a TS.

The purpose of subsection (4) is to allow the Director to consult with any person before making, amending, or revoking a TS.

The purpose of subsection (5) is to specify that a TS, or its amendment or revocation, takes effect on the date of Gazettal or on the date specified in the Gazettal notice.

The purpose of subsection (6) is to require the Director to revoke a TS if its 'parent' statutory instrument is revoked or expires. The statutory instrument could be one of the following:

- Environmental Standard
- State Policy
- Environment Protection Policy
- National Environment Protection Measure

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

Purpose:

The purpose of new section 96Z is to explain that TS, amendments to TS and revocations of TS are not, for the purposes of publication and printing:

- regulations, rules, or bylaws made under an Act; or
- proclamations or other notices that affect the operation of an Act; or
- other legislative instruments.

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

The purpose of new section 96ZA is to require the Director to publish TS on the EPA's website and make them available to the public in any other manner the Minister considers appropriate.

In addition, the Director is required to publish a notice of any making, revocation or amendment of a TS, and the reasons for doing so.

Clause 18 Section 100 amended (Analysts)

Amendment and purpose:

The scope and purpose of the section 100 amendment is to extend the appointment power in subsection (1) to include the EPA Director, and to change the reference in subsection (2) accordingly.

Current powers:

Section 100 allows the Secretary of NRE Tas to appoint analysts with the approval of the EPA Board, and for analyst certificates to be recognised as proof in any proceedings.

Clause 19 Repeal of Act

The purpose of Clause 19 is to automatically repeal the Amendment Act 12 months after its commencement.