

The Environmental Management and Pollution Control (Amendment) Bill 2012

Clause 1	<p>Short Title</p> <p>The <i>Environmental Management and Pollution Control Amendment Act 2012</i>.</p>
Clause 2	<p>Commencement</p> <p>The Act will commence on the day on which it received Royal Assent</p>
Clause 3	<p>The Principal Act is –</p> <p>The <i>Environmental Management and Pollution Control Act 1994</i> (No.44 of 1994).</p>
Clause 4	<p>Section 3 amended – “Interpretation”</p> <p>(a),(b) The definition of environmental nuisance is amended to align it with the existing meaning of “pollute” in the Act, which includes the discharge, deposition and disturbance of pollutants, not just the emission of pollutants.</p> <p>(c) A definition of threatened species is inserted to support a reference in the new Schedule 5. The definition is taken from the <i>Threatened Species Act 1995</i></p>
Clause 5	<p>Section 9 amended – “Interaction with other Acts”</p> <p>Subsection (2) is deleted to allow the Act to apply to marine oil spills in waters for which Tasmania has responsibility. The intent is for EMPCA to deal with minor incidents from any vessel, but particularly those involving small boats and recreational vessels, while allowing the <i>Pollution of Waters by Oil and Noxious Substances Act 1987</i> to focus, as it is intended to do, on major incidents and large ships.</p>
Clause 6	<p>Section 22 amended – “Registers of environmental management and enforcement instruments”</p> <p>The current requirement for the Board to keep public registers of various notices under the Act is amended to include notices issued under Part 5A of the Act, which was inserted in 2007 to address contaminated site identification and management.</p>
Clause 7	<p>Section 24 amended – “Assessment of permissible level 1 activities”</p> <p>Subsection (4) is amended to clarify that a called-in level 1 activity is to be assessed under section 25 <u>as if it was</u> a permissible level 2 activity, but regulated as a level 1 activity unless the Board determines it warrants regulation as a level 2 by the Director.</p>

<p>Clause 8</p>	<p>Section 25 amended – “Assessment of permissible level 2activities”</p> <p>(a) Subsection (2)(e) is amended to clarify that the time limits specified in section 57 of the <i>Land Use Planning and Approvals Act 1991</i> for finalisation of permit applications by a planning authority, which are suspended during assessment by the EPA Board under section 25 of EMPCA, are re-commenced on completion of the Board’s assessment.</p> <p>(b) Subsection (5) is amended to clarify that it refers to completion of an assessment under this section, because there are separate assessment processes under sections 25A and 27.</p>
<p>Clause 9</p>	<p>Section 25A amended – “Assessment of applications for permits under Division 2A of Part 3 of the <i>Land Use Planning and Approvals Act 1993</i>”</p> <p>Subsection (4) is amended to confirm that the assessment process of Division 1A of EMPCA does not apply to the assessment process for these applications, because s.25A includes its own specific time-limited process.</p>
<p>Clause 10</p>	<p>Section 27A substituted – “Classes of assessment”</p> <p>The substitution requires the Board to use new criteria [expanded from the original criteria of s.27A, and now housed in a new Schedule 5], to determine an appropriate assessment process for an application under sections 25 or 27. The amendment does not change what applications must be assessed, only the criteria used to determine the time frame within which they are required to be assessed.</p> <p>The Minister may amend Schedule 5 by Order.</p> <p>The Order is to be interpreted as if it were regulations in accordance with section 47(3)-(7) of the <i>Acts Interpretation Act 1931</i>, and hence must be published in the Gazette and laid before both Houses of Parliament, either of which may resolve that the Order is disallowed.</p>
<p>Clause 11</p>	<p>Section 27B amended - “Notice of Intent”</p> <p>The section is amended to confirm the intent that the information included in a Notice of Intent needs to satisfy the requirements of the Board, as currently set out in the section.</p>
<p>Clause 12</p>	<p>Section 27C amended – “Board to advise of proposed class of assessment”</p> <p>Subsection (a) is amended to confirm that where a Notice of Intent is lodged, the information therein needs to be acceptable to the Board, before the time limits on notification of the proposed class of assessment apply.</p>

<p>Clause 13</p>	<p>Section 27E amended – “Board may require further information”</p> <p>Subsection (2) is amended to extend the “clock-stop” provision, which currently applies only to Class 2C assessments, to also apply to Class 2A and 2B assessments, where the Board requires additional information to assist in the compilation of detailed guidelines for the preparation by the applicant of the case for assessment.</p>
<p>Clause 14</p>	<p>Section 27I amended – “Additional information”</p> <p>Subsection (1) is amended to confirm the intent the this section, so that it clearly applies only after the expiration of the public comment period set out in section 27G.</p>
<p>Clause 15</p>	<p>Section 28 amended – “Environmental agreements”</p> <p>Subsection (6) is deleted, thereby removing the requirement for Ministerial approval before the EPA Board may enter into agreements which reward industry or activity groups that perform beyond the basic environmental requirements of the Act.</p> <p>However, the current requirement of s.29(4) is retained, whereunder the Board must get Treasury or local council approval for any agreement that includes remission of fees, rates or taxes payable to the Crown or to the council, respectively.</p>
<p>Clause 16</p>	<p>Section 32 amended – “Notification of incidents”</p> <p>(a), (b),(c) Subsection (1) and (2) are amended to clarify the notification obligations in respect of incidents of environmental nuisance occurring in relation to activities that, under section 24(4), are determined by the Board to be treated for the purposes of regulation under the Act as either a level 1 or level 2 activity.</p> <p>If the activity is to be treated as a level 1, nuisance incidents are to be reported to the local council, if as a level 2, nuisance incidents should be reported to the Director.</p>
<p>Clause 17</p>	<p>Section 35 amended – “Financial assurance to secure compliance with the Act”</p> <p>(a),(b),(c) Subsections (1) and (1)(c)(ii) are amended, and subsection (d) is inserted to confirm the broad current intent that financial assurances may be sought to ensure compliance with notices issued under Part 5A – “Contaminated sites”.</p> <p>(c) Subsection (1)(e) is inserted to provide that financial assurances may be required in relation to conditions or restrictions that the Board may, under s.60L(8) of the <i>Land Use Planning and Approvals Act 1991</i>, require to be imposed in a special permit for a project of regional significance.</p>

<p>Clause 18</p>	<p>Section 43A inserted – “False or misleading statements”</p> <p>An offence provision is inserted for the making of a false or misleading statement, written or oral, in connection with any information submitted, or required to be furnished under the Act. Penalties are included for a natural person and a body corporate.</p>
<p>Clause 19</p>	<p>Section 43B inserted – “Interpretation of Division”</p> <p>For the purposes of this Division only [Environment Protection Notices] the definition of “environmentally relevant activity” is extended to include an activity that is no longer being conducted. This confirms the intent of the Division, in that the Director may already serve an EPN on a person who <u>is or was</u> responsible for an activity.</p>
<p>Clause 20</p>	<p>Section 44 amended “Environment protection notices” [EPNs]</p> <p>(a),(b),(c),(d)&(e) - Subsections (1)(d), (2)(d), (8), (8)(a)&(8)(b) are amended to confirm that EPNs issued under these subsections to vary permit <u>conditions</u>, may also vary the <u>restrictions</u> of a permit.</p> <p>(f) - Subsection (9) is inserted to provide that a single EPN may be issued to provide an operator with a consolidated set of environmental conditions or restrictions in the case where a number of permit activities are conducted as an integrated operation. As confirmed by the insertion of subsection (10), the EPN must ensure that in consolidating the conditions or restrictions, none of the activities endorsed by the permits are compromised; and</p> <p>Subsection (10) is inserted to confirm that the Director [or a council officer in the case of 44(2)(d) EPNs] may vary the operating conditions or restrictions of the permit by changing existing conditions or restrictions, adding additional conditions or restrictions, and deleting redundant conditions or restrictions, provided that the variation does not fundamentally change the land use and development that was authorised by the original permit. Any such variation may be appealed by the person to whom he EPN is issued.</p>
<p>Clause 21</p>	<p>Section 44A inserted – “Correction of mistakes in EPNs”</p> <p>The provision is inserted to allow the issuer of an EPN to correct a minor error on the notice, in a similar manner to the provision for a council to correct a minor error on a permit issued under the <i>Land Use Planning and Approvals Act 1993</i> [section 55].</p>
<p>Clause 22</p>	<p>Section 45 amended – “Duties arising under EPNs”</p> <p>Subsections (1) and (2) are omitted, and substituted by –</p> <ul style="list-style-type: none"> • An amended subsection (1), to more clearly apply to a person who is responsible for an environmentally relevant activity to which an EPN relates, and

	<ul style="list-style-type: none"> • To require that the person must provide notification where they intend to cease being responsible, or to conduct the activity, prior to that cessation; and • Where the intention is to cease to be responsible for the activity, to include details of any person to whom responsibility is to pass; and • A new subsection (2) requiring notification 30 days in advance where a person intends to re-commence an activity to which an EPN relates;
<p>Clause 23</p>	<p>Section 45A inserted – “Transfer of an EPN”</p> <ul style="list-style-type: none"> • Subsection 45(1) is inserted to provide that, on receipt of notification under s.45(1)(a) from a person responsible for an environmentally relevant activity which is subject to an EPN served on the person, who intends to relinquish that responsibility, and further notification under s.45(1)(b) of the full particulars identifying any person who is to assume that responsibility, the regulator may amend the EPN by substituting the name of the person providing the notification under s45(1)(a) with the name of any newly responsible person identified in the particulars of s45(1)(b); • Subsection (2)(a) and (b) inserted to provide that the amended notice must be served on the newly responsible person without the notice being appealable by that person [because the only thing that is changed is the name of the person to whom it applies]; • Subsection (2)(c) inserted to provide that the original person on whom the EPN was served is no longer bound by the notice – [although they would still be liable for breaches of the notice caused while they were responsible, but the effect of which only come to light after they have ceased to be responsible]; and • Subsection (3) inserted to provide that the service of the amended EPN is taken to be service of an EPN under s.44(1) or (2). This confirms the intent that the newly responsible person is bound by that notice for all purposes under the Act [with the exception of appeals against the conditions or restrictions included in the EPN amended and served under this section, which would not have been changed – see 2nd dot point, this clause].
<p>Clause 24</p>	<p>Section 46 amended</p> <p>(a) Subsection (3) is amended to correct a reference relating to actions the Registrar of Titles is to take. These Actions are set out in subsection (2), not subsection (1), which deals with actions to be taken by the Director.</p> <p>(b) Subsection (5A) is inserted to confirm the clear intent of the existing section 44(6) that if an EPN is registered on a land title, the owner and occupier of the land at the time of registration, and any subsequent owner or occupier, as long as the notice remains registered on the title, are</p>

	bound to the extent set out in the requirements of the notice.
Clause 25	<p>Section 51B inserted –“Offence of contravening permit conditions”</p> <p>An offence provision is inserted to specifically deal with breaches of the conditions or restrictions that the EPA Board requires [pursuant to an assessment under section 25 of the Act] to be imposed on a permit issued by a planning authority under the <i>Land Use Planning and Approvals Act 1993</i>, or that the Director has subsequently varied under section 44(1)(d) by issue of an environment protection notice. Penalties, at a comparable level to those currently applying in the Act to a contravention of the requirements of an environment protection notice, are set for a natural person and for a body corporate.</p>
Clause 26	<p>Section 55A amended – “General environmental duty defence”</p> <p>Subsections (1)(a) and (1)(b) are amended to extend the protection afforded by the defence to holders of special permits which can now be issued under the <i>Land Use Planning and Approvals Act 1991</i>, in relation to projects of regional significance.</p>
Clause 27	<p>Section 70 repealed – “Service of Environmental Infringement Notices”</p> <p>The s.70 requirement for Infringement Notices to be served by delivering them in person is repealed to allow section 29AB of the <i>Acts Interpretation Acts 1931</i> to have effect. This allows for personal and postal delivery on individuals, and postal delivery on corporations [as also required by section 109X of the <i>Corporations Act 2001(Cwlth)</i>].</p>
Clause 28	<p>Section 74D amended – “Content of notices generally”</p> <p>The amendment to subsection (2) clarifies that notices may refer to the taking of actions, as well as to the conducting of works, to more appropriately align with the existing wording of subsection (1).</p>
Clause 29	<p>Section 74T substituted – “Action if person to be served cannot be found”</p> <p>Under the current subsection (a), if the Director has identified who should be served with a notice regarding a contaminated site, but that person’s whereabouts is unknown, the Director may, after reasonable enquiry, take the action required by the notice. The amendment inserts subsection (2) to confirm that, in relation to such persons [those mentioned in what is now subsection (1)(a)], “reasonable enquiry” includes advertising in the daily press in the relevant region.</p>
Clause 30	<p>Section 92 amended – “Powers of authorised officers and council officers”</p> <p>Subsection (1)(j) is amended to require a person suspected of contravening a special permit, issued under the <i>Land Use Planning and Approvals Act 1991</i>, to provide identification to an officer on request.</p>

<p>Clause 31</p>	<p>Section 95A inserted – “Self incrimination”</p> <p>Part 7, Division 1, section 92 sets out the powers of authorised officers to investigate incidents, and gather information in relation to them, and s.95 mandates that answers or information must be given or provided when reasonably required. A new section is inserted providing that it is not an excuse to fail or refuse to comply with such requirements on the basis of self incrimination.</p> <p>However, answers and information provided in compliance with requirements under this Division cannot be used in evidence against a natural person, thereby protecting the common law privilege. Such information could however be used against a corporation, which is consistent with s.187 of the <i>Evidence Act 2001</i>.</p> <p>The major intent of this provision is –</p> <ul style="list-style-type: none"> • to ensure that authorised officers are not prevented from gathering all relevant information to allow an informed decision to be made regarding the potential seriousness of a pollution incident, in order that appropriate action to minimise the environmental harm may readily be determined; and • to encourage officers and employees of corporations to cooperate with investigating officers, with the knowledge that the information they provide cannot be used against them as individuals.
<p>Clause 32</p>	<p>Section 100A amended – “<i>Listening Devices Act 1991</i> not to apply”</p> <p>The existing section provides that section 5(1) of the <i>Listening Devices Act 1991</i> does not apply to the use of videotaping equipment for recording an interview, and the amendment clarifies that the provision also applies to audio recording equipment.</p>
<p>Clause 33</p>	<p>Section 102 amended – “<i>Regulations</i>”</p> <p>Subsection (7)(d) is amended to allow Regulations to specify more substantial fines in relation to offences under the Regulations.</p>
<p>Clause 34</p>	<p>Schedule 2 amended – “<i>Level 2 activities</i>”</p> <p>(a) “Coal Processing Works” – Item 1(b). The amendment corrects an error by inserting a comma.</p> <p>(b),(c) “Resource recovery” – Item 3(d)(i)(C) “anaerobic digesters” The amendment confirms that this activity, which is currently classified for regulation as a level 2 “waste depot” is more appropriately classified as a “resource recovery” activity.</p> <p>(d) “Milk Processing Works” – Item 4(d). The amendment rewords the provision to allow “evaporated milk” to be recognised as a raw material, as well as a product. In so doing, it confirms the industry’s existing understanding, but does not “capture” any additional premises.</p>

	<p>(e) “Other” – Item 7(e) “Conduct of Certain Activities in Waters Within the Limits of the State”. This item is amended by replacing the current item, renaming it, and further clarifying the activities to which it applies in Tasmanian waters, in order to more closely align with the <i>Environment Protection (Sea Dumping) Act 1981</i> of the Commonwealth. It will avoid capturing a number of activities that can be more appropriately dealt with using less formal mechanisms for environmental impact assessment and approval.</p>
Clause 35	<p>Schedule 3 amended “Provisions with respect to Membership of the Board”</p> <p>Clause 6 of the Schedule is amended to correct an error referring to the Board members, in order to give effect to the intent of this clause that the Governor may appoint a deputy for the Director.</p>
Clause 36	<p>Schedule 5 inserted – “Characteristics to be considered in determining assessment class”</p> <p>Schedule 5 replaces section 27A(2),(3) and (4) and provides criteria to facilitate clearer separation of the relatively small proportion of developments that should receive the most simple or the most complex assessment processes [2A or 2C respectively], from the bulk of developments that are dealt with under the 2B assessment process.</p>
Clause 37	<p>Schedule 6 amended – “Transitional and Miscellaneous Provisions”</p> <p>Clause 3(4)(a) is amended to change a reference to the Director from “Director of Environmental Management” to Director, EPA.</p>
Clauses 38, 39	<p>PART 3 - POLLUTION OF WATERS BY OIL AND NOXIOUS SUBSTANCES ACT 1987 AMENDED</p>
38	<p>Principal Act - In this part, the <i>Pollution of Waters by Oil and Noxious Substances Act 1987</i> [No.95 of 1987] is the Principal Act.</p>
39	<p>Section 8 of the Principal Act substituted - The amendment repeals the current section which provides a prohibition on the discharge of oil or oily mixtures into Tasmanian waters, and substitutes it with a section which more closely reflects the corresponding section [9] of the <i>Protection of the Sea [Pollution from Ships] Act 1983</i> of the Commonwealth, for which it is mirror legislation.</p> <p>The amendment is essential in order to correct a major flaw in the defence against the prohibition as it currently applies to vessels under 400 gross tonnes. It will also serve to mirror the current Commonwealth provision that has been streamlined and updated over recent years.</p>
Clause 40	<p>Repeal of Act</p> <p>The Amendment Act is to be repealed 1 year after it commences, as the amendments are consolidated into the Principal Acts.</p>

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