

TASMANIA

**ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL AMENDMENT
(ENVIRONMENT PROTECTION AUTHORITY)
BILL 2007**

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Sections 12 and 13 substituted
 12. Establishment of Environment Protection Authority
 13. Board of Environment Protection Authority
 - 13A. Membership of Board
6. Section 14 amended (Functions and powers of Board)
7. Section 15 substituted
 15. Ministerial statement of expectation
 - 15A. Contents of ministerial statement of expectation
 - 15B. Statement of intent
 - 15C. Conduct to be consistent with ministerial statement of expectation and statement of intent
8. Section 18 substituted
 18. Director, Environment Protection Authority
9. Section 20 amended (Authorized officers)
10. Section 21A inserted
 - 21A. Annual report

11. Section 96A amended (Environment Protection Policy Review Panel)
12. Section 96D amended (Contents of environment protection policy)
13. Section 96G amended (Notice of proposal to prepare draft environment protection policy)
14. Section 96I amended (Notice of draft environment protection policy)
15. Section 96N amended (Review of environment protection policy)
16. Section 96O repealed
17. Section 107A inserted
 - 107A. Transitional and savings provisions consequent on *Environmental Management and Pollution Control Amendment (Environment Protection Authority) Act 2007*
18. Schedule 3 amended (Provisions with respect to Membership of the Board)
19. Schedule 7 inserted
 - Schedule 7 – Transitional and Savings Provisions Consequent on *Environmental Management and Pollution Control Amendment (Environment Protection Authority) Act 2007*

**ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL AMENDMENT
(ENVIRONMENT PROTECTION AUTHORITY)
BILL 2007**

*(Brought in by the Minister for Tourism, Arts and the
Environment, the Honourable Paula Catherine Wriedt)*

A BILL FOR

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

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:

1. Short title

This Act may be cited as the *Environmental
Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007*.

2. Commencement

This Act commences on a day to be proclaimed.

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 3

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 definition after the definition of “article”:

“Authority” means the Environment Protection Authority established under section 12;

- (b) by omitting the definition of “Board” and substituting the following definition:

“Board” means the Board of the Environment Protection Authority established under section 13;

- (c) by omitting the definition of “Director” and substituting the following definition:

“Director” means the Director, Environment Protection Authority appointed under section 18;

*No. 44 of 1994

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 5

5. Sections 12 and 13 substituted

Sections 12 and 13 of the Principal Act are repealed and the following sections are substituted:

12. Establishment of Environment Protection Authority

- (1) The Environment Protection Authority is established.
- (2) The Authority consists of the Board of the Environment Protection Authority and the Director.
- (3) The Authority is part of the State's resource management and planning system, the objectives of which are set out in Schedule 1.

13. Board of Environment Protection Authority

The Board of the Environment Protection Authority is established.

13A. Membership of Board

- (1) The Board consists of –
 - (a) the chairperson, being a person who has expertise or experience in public administration and environmental or natural resource management; and
 - (b) the Director; and

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 5

- (c) a person with practical knowledge of, and experience in, environmental management in industry, commerce or economic development; and
 - (d) a person with practical knowledge of, and experience in, environmental management and expertise in one or more of the following:
 - (i) environmental conservation;
 - (ii) natural resource management;
 - (iii) air, noise or water pollution;
 - (iv) management and prevention of waste;
 - (v) environmental health;
 - (vi) social and economic analysis; and
 - (e) a person with practical knowledge of, and experience in, environmental management in local government.
- (2) The Board is to include at least one person of each sex.

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 6

- (3) The members of the Board referred to in subsection (1)(a), (c), (d) and (e) are to be appointed by the Governor.
- (4) A State Service officer or State Service employee is not entitled to be appointed as a member of the Board under subsection (3).
- (5) The Governor may appoint a member referred to in subsection (1)(c), (d) or (e) as the deputy chairperson of the Board.
- (6) Schedules 3 and 4 have effect with respect to the membership and meetings of the Board.

6. Section 14 amended (Functions and powers of Board)

Section 14(1) of the Principal Act is amended as follows:

- (a) by omitting paragraph (a);
- (b) by omitting paragraph (d) and substituting the following paragraph:
 - (d) to advise the Minister, on the request of the Minister or at the discretion of the Board, on any matter that may significantly affect the achievement of the objectives of this Act; and

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 7

7. Section 15 substituted

Section 15 of the Principal Act is repealed and the following sections are substituted:

15. Ministerial statement of expectation

- (1) The Minister must provide the Board with a ministerial statement of expectation by 31 March in each even-numbered year.
- (2) The Minister may at any time, at his or her discretion or on receipt of an application by the Board –
 - (a) amend the ministerial statement of expectation; or
 - (b) revoke the ministerial statement of expectation and substitute another ministerial statement of expectation –

by providing the amendment or substituted ministerial statement of expectation to the Board.
- (3) In preparing the ministerial statement of expectation, the Minister must consult with the Board.
- (4) The ministerial statement of expectation and any amendment to the ministerial statement of expectation is to be in writing and signed by the Minister.

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 7

- (5) The ministerial statement of expectation or an amendment to the ministerial statement of expectation takes effect on a day specified in it, being a day not earlier than the day on which it is issued to the Board.
- (6) The Board is to make the ministerial statement of expectation available to the public in the manner determined by the Board.

15A. Contents of ministerial statement of expectation

- (1) The ministerial statement of expectation is to specify the objectives of the Minister on any matter relating to the functions of the Board.
- (2) The ministerial statement of expectation –
 - (a) may not prevent the Board from performing a function it is required to perform or otherwise complying with any Act; and
 - (b) may not extend the functions and powers of the Board.

15B. Statement of intent

- (1) Within 3 months after receiving the ministerial statement of expectation or any amendment to the ministerial

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 7

statement of expectation, the Board must provide to the Minister a statement of intent.

- (2) A statement of intent is to –
 - (a) specify the objectives of the Board for the period covered by the statement of intent; and
 - (b) address matters raised in the ministerial statement of expectation; and
 - (c) state the nature and scope of the activities to be carried out by the Board during the period covered by the statement of intent; and
 - (d) specify the performance criteria and other measures by which the performance of the Board is to be assessed against the objectives of the Board for the period covered by the statement of intent.
- (3) The statement of intent may contain any other matter the Board considers appropriate.
- (4) The Board may at any time at its own discretion or on the request of the Minister –
 - (a) amend the statement of intent; or

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 8

- (b) revoke the statement of intent and substitute another statement of intent.
- (5) The statement of intent and any amendment to the statement of intent is to be in writing and signed by the chairperson of the Board.
- (6) The statement of intent or any amendment to the statement of intent takes effect on the day on which it is approved by the Minister or on a later day specified by the Minister.
- (7) The Board is to make the statement of intent available to the public in the manner determined by the Board.

15C. Conduct to be consistent with ministerial statement of expectation and statement of intent

The Board is to conduct its business and affairs in a manner that is consistent with the ministerial statement of expectation and the statement of intent.

8. Section 18 substituted

Section 18 of the Principal Act is repealed and the following section is substituted:

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 9

18. Director, Environment Protection Authority

- (1) The Governor may appoint a State Service officer or State Service employee to be Director, Environment Protection Authority and that person holds office in conjunction with State Service employment.
- (2) The Director has the functions and powers specified in this Act or any other Act.

9. Section 20 amended (Authorized officers)

Section 20 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “Secretary of the Department” and substituting “Director”;
- (b) by omitting from subsection (4) “Secretary of the Department” and substituting “Director”;
- (c) by omitting from subsection (5) “Secretary of the Department” and substituting “Director”.

10. Section 21A inserted

After section 21 of the Principal Act, the following section is inserted in Division 1:

21A. Annual report

- (1) The Board must prepare for the Authority an annual report for each financial year.
- (2) The annual report must contain a report on the activities and performance of the Board and the Director during the relevant financial year.
- (3) The Board must provide a copy of the annual report to the Minister so as to enable it to be tabled in accordance with subsection (4).
- (4) On or before 31 October in each year, the Minister is to cause a copy of the annual report to be laid on the table of each House of Parliament.
- (5) If the Minister is unable to comply with subsection (4) because a House of Parliament is not sitting on 31 October in any year, the Minister must –
 - (a) on or before that day, provide copies of the annual report to the clerk of that House; and

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 11

- (b) on or before that day, make copies of the annual report available for purchase by the public; and
- (c) within the first 7 sitting-days after that day, cause copies of the annual report to be laid before that House.

11. Section 96A amended (Environment Protection Policy Review Panel)

Section 96A of the Principal Act is amended as follows:

- (a) by omitting paragraphs (b), (c) and (d) from subsection (2) and substituting the following paragraph:
 - (b) at least 3 other members with appropriate skills, qualifications and experience who are appointed by the chairperson.
- (b) by inserting the following subsections after subsection (2):
 - (2A) The members appointed by the chairperson under subsection (2)(b) are appointed for the duration of the assessment of the draft environment

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 12

protection policy in respect of
which they are appointed.

- (2B) The chairperson may delegate to another member of the Panel or to a member of the Resource Planning and Development Commission any of his or her functions or powers under this Act other than this power of delegation.

12. Section 96D amended (Contents of environment protection policy)

Section 96D of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (b) in subsection (2):
 - (ba) specify who is responsible for the implementation or enforcement, or both, of the whole policy or specified parts of it;
- (b) by omitting from subsection (4)(a) “Panel” and substituting “Board”;
- (c) by omitting from subsection (4)(c) “policy; and” and substituting “policy.”;
- (d) by omitting paragraphs (d), (e) and (f) from subsection (4).

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 13

13. Section 96G amended (Notice of proposal to prepare draft environment protection policy)

Section 96G of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (3) The Minister may extend the period referred to in subsection (2)(e) for a period not exceeding 30 days if he or she considers it necessary.
- (4) The power referred to in subsection (3) may be exercised by the Minister on one or more occasions.

14. Section 96I amended (Notice of draft environment protection policy)

Section 96I of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (3) The Minister may extend the period referred to in subsection (2)(e) for a period not exceeding 30 days if he or she considers it necessary.
- (4) The power referred to in subsection (3) may be exercised by the Minister on one or more occasions.

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 15

15. Section 96N amended (Review of environment protection policy)

Section 96N(1) of the Principal Act is amended by omitting “5 years” and substituting “10 years”.

16. Section 96O repealed

Section 96O of the Principal Act is repealed.

17. Section 107A inserted

After section 107 of the Principal Act, the following section is inserted in Division 2:

107A. Transitional and savings provisions consequent on *Environmental Management and Pollution Control Amendment (Environment Protection Authority) Act 2007*

Schedule 7 has effect.

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

Schedule 3 to the Principal Act is amended as follows:

- (a) by omitting from clause 1 “section 13(1)(c), (d) or (e).” and substituting “section 13A(1)(a), (c), (d) or (e).”;

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 18

- (b) by omitting clause 2 and substituting the following clause:

2. Term of appointment

- (1) An appointed member is to be appointed for such term, not exceeding 3 years, as is specified in the member's instrument of appointment and, if otherwise qualified, is eligible for re-appointment.
- (2) Despite subclause (1), if an appointed member has served consecutively 2 terms in office as an appointed member of the Board, the appointed member may not be appointed for a further consecutive term of office.
- (c) by omitting from clause 4(2) "A member of the Board who is a State Service officer or State Service employee" and substituting "The Director";
- (d) by omitting from clause 6(1) "a member of the Board." and substituting "an appointed member of the Board other than the chairperson.";
- (e) by omitting paragraph (a) from clause 6(2);

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 18

- (f) by omitting from clause 6(2)(b) “member referred to in section 13(1)(b)” and substituting “Director”;
- (g) by omitting from clause 6(2)(c) “section 13(1)(c), (d) or (e)” and substituting “section 13A(1)(c), (d) or (e)”;
- (h) by omitting from clause 6(3) “deemed” and substituting “taken”;
- (i) by inserting the following subclause after subclause (3) in clause 6:
 - (3A)** If the chairperson is unable for any reason to perform the duties of chairperson –
 - (a) the deputy chairperson may perform the duties of chairperson and, when doing so, is taken to be the chairperson; and
 - (b) the deputy of the deputy chairperson may perform the duties of the deputy chairperson and, when doing so, is taken to be the member of the Board holding the office of deputy chairperson.

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 19

19. Schedule 7 inserted

After Schedule 6 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 7 – TRANSITIONAL AND SAVINGS
PROVISIONS CONSEQUENT ON *ENVIRONMENTAL
MANAGEMENT AND POLLUTION CONTROL
AMENDMENT (ENVIRONMENT PROTECTION
AUTHORITY) ACT 2007***

Section 107A

PART 1 – PRELIMINARY

1. Interpretation

In this Schedule –

“commencement day” means the day on which the *Environmental Management and Pollution Control Amendment (Environment Protection Authority) Act 2007* commences;

“former Act” means this Act as in force immediately before the commencement day;

“former Board” means the Board of Environmental Management and Pollution Control established under section 12 of the former Act;

“former Director” means the Director of Environmental Management holding office under section 18 of the former Act immediately before the commencement day.

PART 2 – BOARD

2. First ministerial statement of expectation

Despite section 15(1), in 2008 the Minister is to provide the Board with a ministerial statement of expectation within 3 months after the commencement of the *Environmental Management and Pollution Control Amendment (Environment Protection Authority) Act 2007*.

3. Abolition of former Board

The former Board is abolished.

4. Documents

A reference in any document to the former Board is taken, where appropriate, to be or include a reference to the Board.

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 19

5. Continuation and institution of proceedings

On and after the commencement day –

- (a) any legal or other proceedings instituted by or against the former Board before, and pending on, the commencement day may be continued by or against the Board; and
- (b) any legal or other proceedings that, immediately before the commencement day, could have been instituted by or against the former Board may be instituted by or against the Board; and
- (c) a judgment or order of a court obtained before the commencement day by or against the former Board may be enforced by or against the Board; and
- (d) a document relating to legal or other proceedings that has been served on or by the former Board before the commencement day is taken, where appropriate, to have been served on or by the Board.

6. Actions

Any action done or omitted by the former Board is taken, where appropriate, to have been done or omitted by the Board.

PART 3 – DIRECTOR

7. Director

The person appointed, and holding office immediately before the commencement day, as Director of Environmental Management under section 18 of the former Act is taken to have been appointed as Director, Environment Protection Authority under section 18 on the same conditions and for a term expiring on the same day.

8. Documents

A reference in any document to the former Director is taken, where appropriate, to be or include a reference to the Director.

9. Actions

Any action done or omitted by the former Director is taken, where appropriate, to have been done or omitted by the Director.

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 19

PART 4 – PANEL

10. Constitution of Panel for assessment of draft environment protection policy

- (1) If, before the commencement day, notice has been given of a draft environment protection policy in accordance with section 96I, and the Panel has not –
- (a) commenced the process of considering any submissions received in respect of that policy in accordance with section 96J; or
 - (b) in the opinion of the chairperson, substantially progressed in that process of considering submissions –

the Panel is to be reconstituted in accordance with section 96A.

- (2) If, before the commencement day, notice has been given of a draft environment protection policy in accordance with section 96I, and the Panel has –
- (a) commenced the process of considering any submissions received in respect of that policy in accordance with section 96J; and
 - (b) in the opinion of the chairperson, substantially progressed in that

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 19

process of considering
submissions –

the Panel as constituted immediately before the commencement day is to continue the process of the assessment of the relevant draft environment protection policy.

(3) If –

- (a) a person immediately before the commencement day was a member of the Panel referred to in section 96A(2)(b), (c) or (d) of the former Act; and
- (b) that person's membership of the Panel is continued by reason of subclause (2) –

that person is taken, for the purpose of the assessment of the draft environment protection policy in relation to which the membership is continued under subclause (2), to be a member of the Panel until the completion of that assessment.

11. Cessation of membership of Panel

A person whose membership of the Panel ceases by reason of the amendments to section 96A effected by the

*Environmental Management and Pollution Control Amendment
(Environment Protection Authority) Act 2007
Act No. of*

s. 19

*Environmental Management and
Pollution Control Amendment
(Environment Protection Authority) Act
2007* is not entitled to any compensation
or other payment in respect of the
cessation of that membership.

PART 5 – AUTHORIZED OFFICERS

12. Authorized officers

A person appointed by the Secretary of the Department, and holding office immediately before the commencement day, as an authorized officer under section 20(2) or (4) of the former Act is taken to have been appointed by the Director as an authorized officer under section 20(2) or (4) on the same terms and conditions and for a term expiring on the same day.