



Explanatory paper: consultation draft Environment Protection (Waste Reform) Amendment Bill 2016

*Reforming waste management – creating certainty
for an industry to grow*

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Invitation to comment

Engagement and collaboration with members of the waste management and resource recovery industry and other key stakeholders has assisted the state government in formulating initial waste reform priorities, including the proposals for strengthening of legislative powers as contained in this consultation draft *Environment Protection (Waste Reform) Amendment Bill 2016* (the Bill).

This engagement included the Waste Summit (March 2015) convened by the Minister for Sustainability, Environment and Conservation, the Hon Ian Hunter MLC; consultation on the discussion paper, *Reforming waste management – creating certainty for an industry to grow* (August–October 2015), and regular discussions with the high-level stakeholder forums established by the Environment Protection Authority (EPA).

Building on this broad engagement, the objectives of this explanatory paper are to:

- outline key feedback previously received regarding proposed Act amendments designed to strengthen the regulatory environment to provide greater certainty for the industry
- summarise the legislative reform options in the draft Bill
- discuss how these reforms will assist to address the key issues faced by the waste management and resource recovery industry, and how they relate to other intended reforms as relevant,
- help us to seek your views on the draft reforms in the consultation Bill, and
- nominate the initial reform priorities within the waste reform program following early stakeholder engagement.

We are keen to obtain your observations and advice on the proposed legislative reforms presented in this paper, including your views on whether the Bill will suitably empower and support improved management of the key issues, namely:

- static or growing stockpiles
- waste promoted as ‘product’ and issues around ensuring environmental risks from such materials are reliably tested
- potentially re-useable ‘fill materials’ ending up at landfill due to development pressures
- the need to deal with certain problematic wastes
- illegal dumping.

You may choose to address all elements of the Bill, focus on particular issues of interest or put forward additional ideas for inclusion in the Bill. Your views will be used to assist in determining the final Bill to be presented for government consideration and then introduction to Parliament.

Submissions should clearly reference the section and page to which each comment relates and need to be submitted by **18 November 2016**.

Comments may be forwarded by mail or email (preferred) to:

Waste Reform Project
Environment Protection Authority
GPO Box 2607
ADELAIDE SA 5001
Email: epainfo@epa.sa.gov.au [mark subject as ‘Environment Protection (Waste Reform) Amendment Bill’]

All submissions received by the EPA during the consultation period will be acknowledged and treated as public documents unless provided in confidence, subject to the requirements of the *Freedom of Information Act 1991*, and may be quoted in EPA reports.

Foreword

South Australia has established itself as one of the world's best recyclers with good policy and industry innovation.

We now want to lead the world in waste management and resource recovery.

The waste management and resource recovery sector is a billion dollar industry that employs around 5,000 South Australians.

While activity in the sector has steadily increased over the past 10 years, incentivised through government policy, including Zero Waste SA programs with complementary regulation administered by the Environment Protection Authority (EPA), we know we can continue to grow this important industry,

The state government wants to unlock future potential and drive innovation in the sector with targeted and effective changes to regulations.

Engagement with the industry, including the Waste Summit in March 2015 and consultation on the discussion paper, *Reforming waste management – creating certainty for an industry to grow*, has identified a suite of potential reforms to promote industry certainty and achieve robust regulation that better support a more level playing field and a healthy environment.

The state government has since taken initial actions towards improving certainty, innovation and growth in the sector and the broader green economy including:

- Increasing the solid waste levy in stages over four years and reinvesting all the additional funding into waste, environmental and climate change programs, including funding initiatives for local government waste and resource recovery infrastructure, waste education, new solutions for problematic wastes and to help recycling waste into more valuable commodities, accelerating new business opportunities and job creation in the resource recovery sector.
- From 1 September 2016, significantly reducing the levy for packaged asbestos waste (\$31 per tonne for metropolitan waste, \$15.50 per tonne for non-metropolitan waste) to promote the safe and lawful disposal of this hazardous material.
- Introducing legislation for the statutory establishment of the new entity, Green Industries SA, in place of Zero Waste SA, whose primary objectives will be to promote:
 - (a) waste management practices that, as far as possible, eliminate waste or its disposal to landfill; and
 - (b) innovation and business activity in the waste management, resource recovery and green industry sectors, recognising that these areas present a valuable opportunity to contribute to the state's economic growth.

I am now pleased to announce the release of the draft *Environment Protection (Waste Reform) Amendment Bill 2016* for consultation. This Bill will provide the necessary underpinning for the EPA to be able to better tackle illegal dumping and achieve a suite of waste reforms. Your comments will help inform finalisation of the Bill ready for consideration by the state government for introduction to Parliament.

We seek to continue to lead the way in demonstrating that protecting the environment need not come at the expense of industry activity – but can support business and job growth.



The Hon Ian Hunter MLC
Minister for Sustainability, Environment and Conservation



Introduction

The South Australian Government is seeking to help realise the economic potential from innovation in waste and resource recovery technologies, while at the same time protecting our environment. It is committed to providing the right setting to attract investment, drive innovation and create jobs. This is being achieved through new initiatives such as the establishment of Green Industries SA and pursuing a regulatory regime that underpins the confident and fair operation of this sector.

The discussion paper *Reforming waste management – creating certainty for an industry to grow*, released for consultation during August–October 2015 recognised the key drivers influencing waste management and identified a broad mix of mechanisms that could be used to support sound regulation to support fair and equitable competition, stability, growth and innovation in the sector by addressing key issues and opportunities faced.

Policy options for addressing the following issues were considered:

- static or growing stockpiles
- waste promoted as ‘product’ and issues around ensuring environmental risks are reliably tested
- potentially re-useable ‘fill materials’ ending up at landfill due to development pressures
- the need to deal with certain problematic wastes
- illegal dumping.

Discussion also included the opportunities to respond to increasing interest in energy from waste schemes and to pursue further development of safe resource recovery activity.

The full range of policy options considered in the discussion paper are listed in Appendix 1.

Drawing from stakeholder advice, the EPA is committed to providing the right regulatory settings to support the sustainable operation of the waste and resource recovery sector by seeking to:

- minimise the risk of environmental harm occurring
- support the highest and best, safe available use of secondary materials in accordance with the waste management hierarchy
- provide more certainty and fairness for lawful operators, promoting investment, innovation and growth of the sector
- stamp out illegal operators
- obtain levy revenue due to the South Australian Government.

The full collection of potential waste reforms identified through early engagement will require amendments to the *Environment Protection Act 1993* (EP Act), *Environment Protection (Waste to Resources) Policy 2010*, *Environment Protection Regulations 2009* and the implementation of these changes as well as administrative policy and operational actions. The general role of different legislative elements is shown in Figure 1.

Stakeholder feedback on the discussion paper, together with input from the EPA’s regular stakeholder engagement groups, comprising representatives from the waste industry, local government, Renewal SA, the Conservation Council, Keep South Australia Beautiful and Greening Industries SA, has been used to help identify the initial waste reform priorities. These priorities are set out in Box 1.

The initial priorities comprise a mix of new or amended legislation and policy and administrative changes. A number of the proposed legislative changes will be facilitated by changes being made to the EP Act first.

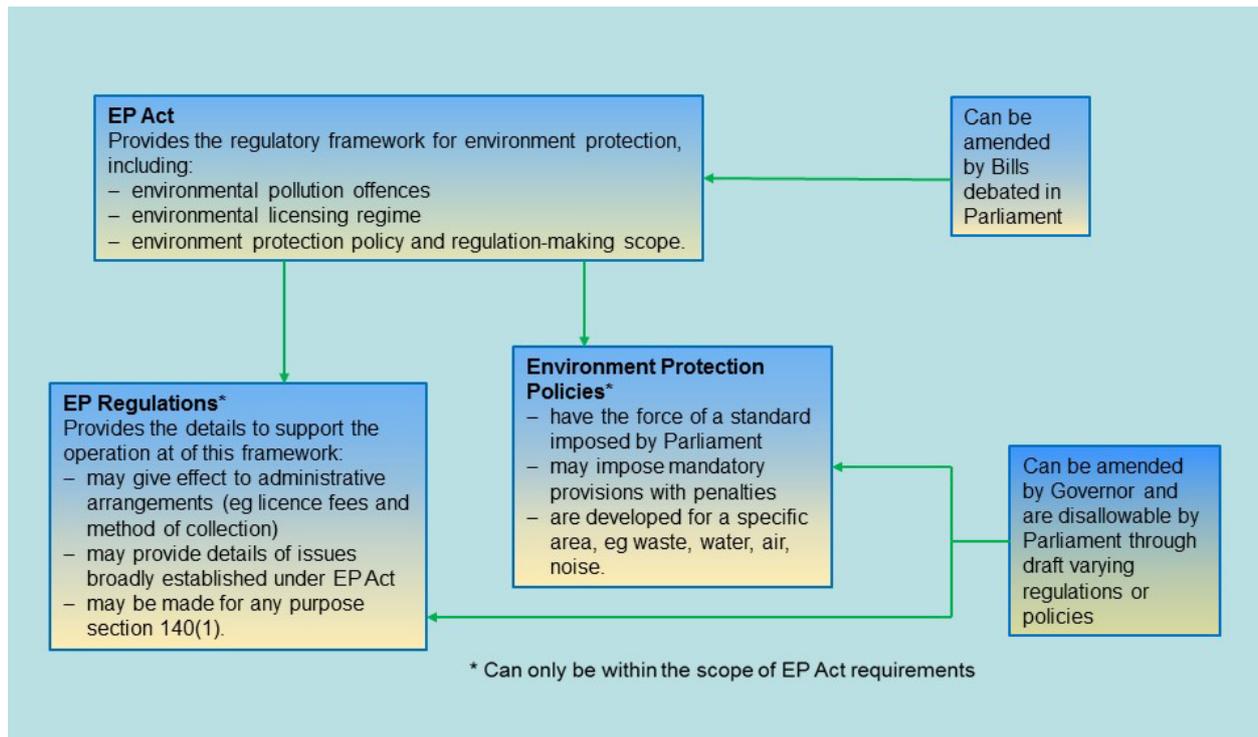


Figure 1 The role of different legislative elements and amendment process

Next steps in the waste reform process

Well-framed legislation and policy that is effectively used is an essential element in supporting industry. This Bill to amend the EP Act, is considered the necessary first legislative step to empower the EPA to address the most pressing issues. During consultation on the discussion paper stakeholders generally expressed support for the proposed Act changes. Therefore, the EP Act amendments are to form the first phase of legislative changes within the suite of reform proposals.

Feedback on potential EP Act changes as presented within the discussion paper *Reforming waste management – creating certainty for an industry to grow*, has helped inform the development of features in the Bill now presented for consultation and a brief summary of the submissions received on key issues proposed for the Bill is given in the next section.

Your views are sought to assist in determining the finalised Bill to be presented for government consideration and then introduction to Parliament.

Implementation of this Bill will support various other reform priorities proposed in Box 1, such as the making of mass balance reporting and upfront levy liability regulations, as well as establishing better tools to tackle illegal dumping and a framework for the assessment of new resource recovery proposals. The role of the Bill in helping to address key issues faced in the waste and resource recovery industry is detailed in subsequent sections of this paper.

Box 1 Initial reform priorities identified through consultation processes

The collection of initial reform priorities, including those that will be empowered by changes by the EP Act, are as follows.

Proposed new or amended legislation

- Introduction of mass balance reporting (via regulations).
- Introduction of an amended manner of collection of levy at landfills to achieve material flow reform and effective levy payment (via regulations).
- Exploration of the introduction of an upfront levy liability (via regulations and requiring mass balance reporting as a pre-requisite).
- Exploration of new legislative and policy measures that will keep South Australia as a resource recovery leader – particularly, promoting food waste recycling and investigating a ban on polystyrene food packaging (via policy and amendment of the *Environment Protection (Waste to Resources) Policy 2010* and other new legislation).
- Exploration of expanded waste transporter licensing to support reporting and waste flow measures (via regulations).

Proposed policy and administrative changes

- Implementation of effective stockpiling controls (pre-requisites include Act changes and a financial assurances policy).
- Effective recovery of illegally obtained economic benefits.
- Better management of waste soils and waste derived materials, including revision of the *Waste derived fill standard*.
- Development of policy guidance for Energy from Waste facilities.
- Introduction of better options for managing problematic wastes (eg asbestos) including through differential levy use.
- Seeking to influence government procurement practices for better promotion of enhanced resource recovery and safe waste management.

Further reforms are intended to be pursued subsequent to these changes.

Summary of submissions

Engagement on the proposed changes to the EP Act occurred through consultation on the discussion paper *Reforming waste management – creating certainty for an industry to grow*, and has been used to help inform development of the draft Bill.

Feedback received during the consultation sessions on the discussion paper indicated active support for the EPA having increased powers to tackle illegal dumping and to expiate contraventions of breaches of licence conditions. Other proposed EP Act amendments attracted little discussion. Stakeholders expressed support for EP Act changes to be made swiftly. Subsequently, amongst out of a total of 59 written submissions on the discussion paper, 31 submissions were received on the proposed EP Act changes.

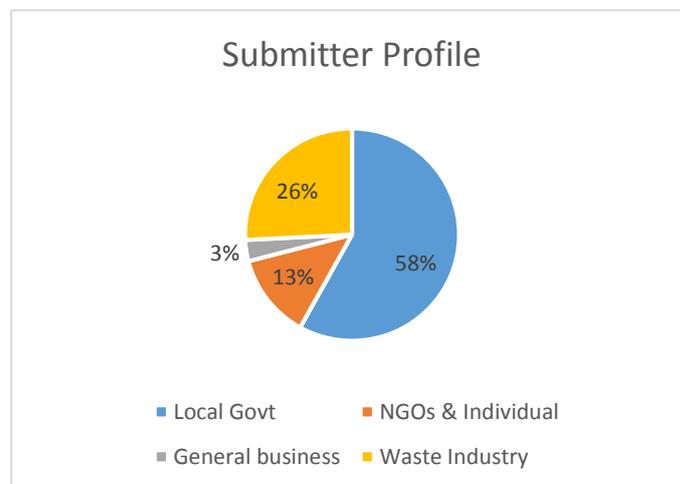


Figure 2 EP Act changes submitter profile

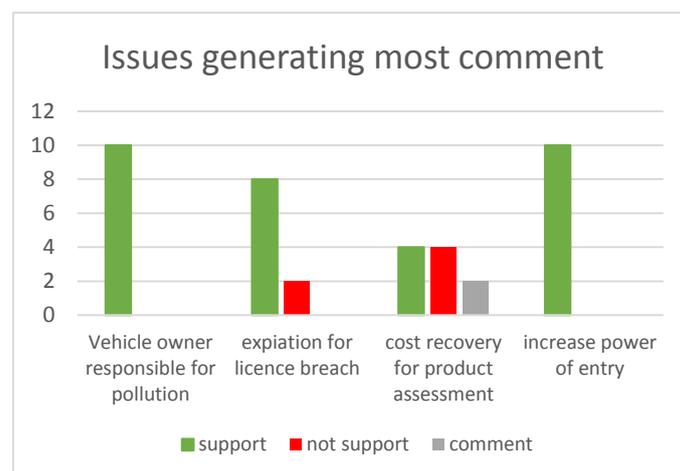


Figure 3 EP Act changes generating most comment

The submissions received on EP Act changes expressed general support for waste reforms and the need for better illegal dumping and stockpiling controls. Issues of primary interest were:

- registered owner responsibility for pollution: 100% support for the proposal
- new expiation for breaches of licence conditions: 80% agreed that an expiation is a suitable tool
- increased powers of entry for authorised officers: 100% support for the proposal.

Submitters held mixed views regarding the proposal for cost recovery measures to support the efficient and thorough assessment by the EPA of waste as a new product. The assessment of whether a material can be safely used as a new product is often complex and time consuming. As other waste and resource recovery activities are potentially cross-subsidising the more complex aspects of new resource recovery proposals, the EPA intends to retain the ability to cost recover through regulatory impact assessment.

Additionally, 10 submissions responded to the request for information about the impacts of the proposal to require nominated waste transporters to install approved tracking devices. The majority or 90% commented on the increased cost impact that a requirement to install GPS on vehicles would have on business while 10% were in support of the proposal. Separately, the majority of larger industry participants observed that they already used GPS on all vehicles.

The role of the Bill in helping address key issues

Early engagement, including consultation on the discussion paper, *Reforming waste management – creating certainty for an industry to grow*, has highlighted key issues being faced in the waste and resource recovery industry.

No single reform option can successfully address all of these key issues. The EPA is pursuing a suite of reforms to better support fair and equitable competition, stability, growth and innovation in the sector. The Bill is an important element for enabling further reforms.

The discussion below reiterates the key issues, desired outcomes for that issue and an outline of the Bill features that will particularly assist with addressing that issue. This section should be read in conjunction with the explanation of clauses in the next section and the Bill itself to ensure that all proposed changes are evident.

Static or growing stockpiles

There are significant levels of waste stockpiling occurring in South Australia. On the basis of information available to the EPA through inspection, the most prevalent materials being stockpiled include soils, fill and overburden and construction and demolition waste, while substantial amounts of timber and green waste are also being stockpiled. Stockpiling has been repeatedly raised by industry as a significant concern due to the potential for levy avoidance through the indefinite holding of material without either recovering and selling the materials or disposing of the material to landfill.

There is a need to balance the genuine need of many businesses and local governments to undertake some degree of stockpiling against excessive stockpiling that can create environmental, abandonment or unfair competition risks. Through its reforms, the EPA seeks to material flows with no excessive stockpiling. The EPA recognises that this is not a 'one-size fits all' solution as different waste types will need to be considered on their own merits to ensure the most cost-effective and appropriate management approach is established for industry participants.

The Bill will empower the EPA to achieve balanced material flows, most particularly through proposed amendments to the Objects of the EP Act to explicitly the EPA to promote material flow in the waste industry, revising the circumstances when financial assurances can be used (including insurance) and enhancing the its ability to readily act on licence condition breaches. The changes from the Bill will support the development of strengthened administrative policies and licence conditions, and also lead to enable further regulatory changes for the improved monitoring of material flows in the waste industry and to influence the financial drivers applying to waste material flows.



Large stockpiles of mixed waste derived from construction and demolition waste (with a scrap metal stockpile in the foreground)

Waste promoted as ‘product’

This issue is characterised by the significant processing of mixed waste with infrequent testing of ‘products’ made to determine consistency of character and contaminant levels together with low levels of residual waste to landfill. Often, such ‘products’ may be used by the producer themselves or a related entity. Through its reforms, the EPA seeks the use of only genuine recovered products, with materials that pose harm risks being safely disposed as waste. .

The Bill will support the EPA in ensuring that products are genuine and safe, with potentially harmful wastes being disposed to landfill, most particularly by amending the definition of ‘waste’, explicitly providing for the establishment of an application and assessment process for the approval of material as a recovered resource (with the potential for cost recovery). The Bill will grant better powers for tackling breaches of licence conditions, and ensure that if the EPA alleges that a material is a waste, the defendant is responsible for offering proof to the contrary. These changes ,are to be supported by, new regulations setting clear assessment requirements and processes for proposed recovered resources.



Materials will be able to be formally assessed for suitability as approved recovered resources

Potentially re-useable ‘fill materials’ ending up at landfill due to development pressures

When land is being developed, uncertainty regarding testing and treatment, and time-cost pressures can lead to waste soils simply being removed from development sites, with disposals costs paid. From 2004–05 to 2012–13, research undertaken for Zero Waste SA found that around 82% of landfill soil was of low risk and suitable for potential reuse. Through its reforms, the EPA seeks safe soil management and reuse through suitable facilities.

Greater clarity to better support the re-use of suitable ‘fill materials’ will be achieved through the Bill supporting the EPA in ensuring that products are genuine and safe, with potentially harmful waste being disposed to landfill as discussed above.

Dealing with certain problematic wastes

Cost-effective recovery and disposal mechanisms do not exist for particular waste streams. It is recognised that the safest place for some hazardous wastes, for example, asbestos, is disposed in appropriate landfill. Other wastes that are currently problematic but potentially recoverable may benefit from new approaches. Through its reforms, the EPA seeks more equitable waste management options with resources safely recovered and potentially harmful waste disposed to landfill.

The Bill offers additional opportunities to effectively manage problematic wastes, hazardous or recoverable, through supporting the EPA to be able to ensure that products are genuine and safe, with potentially harmful waste being disposed to landfill as discussed earlier. The Bill also introduces a broader objective and power to clearly enable the EPA to promote effective material flows in the waste industry.

Illegal dumping

The EPA and local government respond to many illegal dumping incidents a year on both public and private land at significant cost to the South Australian community. Instances faced each year can range from small, opportunistic dumping to large illegal landfill operations. The EPA has a strong focus on commercial level or hazardous illegal dumping, with a dedicated Illegal Dumping Unit.

Over the past two years, the EPA has achieved its highest ever conviction rates for illegal dumping, including its first custodial sentence for the disposal of around 260 tonnes of demolition waste. More can still be done however to prevent illegal dumping and support successful prosecutions for such dumping.

Through its reforms, the EPA seeks improved illegal dumping controls for a more level playing field and business investment in the waste and resource recovery sector with the true costs of waste disposal being appropriately borne by waste generators.

The Bill will strengthen the EPA's ability to prosecute illegal dumping cases for the benefit of our community and the legitimate waste and resource recovery industry. Measures in the Bill include addressing car owners' responsibility for pollution, enabling tracking device use and expanding Authorised Officer powers to enter and mark materials that may be dumped. The Bill also supports improved monitoring of material flows that will assist with tracing waste sources and destinations.



Dumped asbestos waste

Clause-by-clause explanation

Below is a clause-by-clause explanation of the draft Bill to be read with the draft Bill (Appendix 2). This explanation is a guide only and seeks to describe proposed changes and in a helpful, accessible way. In considering potential obligations and implications, it is important that you consider the draft Bill, seek further information from the EPA if necessary and, where appropriate, seek your own legal advice.

Part 1 – Preliminary

Clause 1: Short title

Clause 1 names the Bill.

Clause 2: Commencement

Clause 2 provides that the proposed amendment Act will come into operation on a day to be fixed by proclamation.

Clause 3: Amendment provisions

Clause 3 provides that a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2 – Amendment of Environment Protection Act 1993

Clause 4: Amendment of section 3 – Interpretation

Clause 4 provides amendment to specific explanations which are contained in the EP Act as necessary for the proper interpretation of the legislation. In summary clause 4 introduces new interpretations to the following terms:

- resource recovery
- surveillance device
- treatment of waste or other matter [see proposed new subsection 3(4) of the EP Act]
- unauthorised stockpiling of waste or other matter [see proposed new subsection 3(5) of the EP Act]
- vessel
- waste management hierarchy [see proposed new section 4B]
- waste transport business
- water protection area.

Clause 4 provides for the amendment to the current interpretations in section 3 of the following terms:

- vehicle
- waste (to improve clarity and certainty for both the waste and resource recovery sector and the EPA when a particular material constitutes a recovered resource and ceases to be a 'waste' by specifically excluding from the definition of 'waste' anything declared by the EPA to be an 'approved recovered resource' in accordance with the proposed new section 4C of the EP Act or anything declared by regulation or an environment protection policy not to be waste).

Clause 5: Substitution of section 4

Clause 5 provides for the amendment of section 4 of the EP Act that identifies responsibility for pollution from a place or vehicle and inserts new sections 4A–E as discussed further.

Clause 5: Amendment of section 4 – Liability for pollution from places

This amendment ensures that the offence of illegal dumping includes the illegal disposing of waste. Amendment is proposed to section 4 of the EP Act such that the wording ‘discharged, emitted or deposited’ specifically includes all instances of disposing of waste, to ensure that it covers illegal dumping occurring from the disposing of waste. The unlawful disposal of waste is further defined in the proposed new section 4D.

Clause 5: New section 4A – Liability for offences from vehicles

Section 4A creates a new section to address the difficulty faced by the EPA and relevant authorities in establishing the person responsible for pollution from a vehicle by holding the registered owner responsible for the pollution unless they can establish they were not the person in charge of the vehicle.

The ability to associate an offence with a vehicle will provide an additional tool in identifying illegal dumpers. Illegal dumping from a vehicle, or associated with a vehicle, can be witnessed by other drivers and this provision associated with public reporting of illegal dumping offences will provide tools necessary to fine these offenders and curb this type of offending.

Illegal dumping usually occurs in isolated areas. However the use of surveillance cameras in known illegal dumping hotspots combined with the ability to determine the owner of a vehicle as responsible for the offence will provide a significant deterrent. Current legislation requires evidence of the identity of the person using the vehicle, which limits the ability to prove an offence even if the vehicle involved is readily identifiable.

Section 174A of the *Road Traffic Act 1961* relates to vehicle owner-onus for an offence, without derogating from the liability of any other person. If a vehicle is involved in a prescribed offence, the owner of the vehicle is guilty of an offence and liable to the same penalty as is prescribed for the principal offence and the expiation fee that is fixed for the principal offence applies in relation to an offence against this section. This provision also applies where a person is witnessed offending outside of a vehicle but nonetheless a vehicle is used by the offender at the time of the offence. Section 45G of the Victorian *Environment Protection Act 1970* provides a similar provision for litter from a vehicle.

The owner and driver of a vehicle are not both liable, through the operation of this section, to be convicted of an offence arising out of the same circumstances. Consequently, conviction of the owner exonerates the driver or passenger and conversely conviction of the driver exonerates the owner.

This proposed provision allows for an owner, via statutory declaration, to state that someone else is responsible for the offence as is the case with speed and red-light camera offences. There is also a defence provision should the vehicle have been stolen or otherwise was not in the possession or control of the owner through some unlawful act at the time of the alleged offence.

There is also provision for the exemption of drivers of passenger vehicles where there is waste or other matter from the vehicle (buses and taxis) due to the action of passengers. However, such persons are deemed responsible where they are witnessed as committing the offence themselves.

This new section 4A has been drafted to be consistent with the new *Local Nuisance and Litter Control Act 2016*.

Clause 5: New section 4B – Waste management hierarchy

Currently, the waste management hierarchy referred to in the Environment Protection (Waste to Resources) Policy 2010, has the same meaning as in the *Zero Waste SA Act 2004* and is to appear in the proposed new Green Industries SA legislation.

Clause 5: New section 4C – Approved recovered resources

The new section 4C sets out a process for an application to the EPA for a declaration that a specified matter constitutes an approved recovered resource and therefore does not constitute waste for the purposes of the EP Act. The section contains new regulation making powers to further prescribe the process including the manner and forms of applications and to set an application fee. Future consultation will occur on the content of such regulations after any EP Act changes are made, including the amount of such an application fee.

Clause 5: New section 4D – Unlawful disposal of waste, etc

The new section 4D amendment to section 4 of the EP Act defines what constitutes the unlawful disposal of waste and includes unauthorised stockpiling of waste.

Clause 5: New section 4E – Use of surveillance devices

The new section 4E provides regulation making powers controlling the use of surveillance devices for identifying, tracking or monitoring the source, location, movement, receipt, storage, transfer or disposal of waste or other matter for the purposes of the EP Act. For example the government may wish to consider a regulation to require security cameras at waste depot weighbridges.

The regulations may also require the owner of a vehicle used for transporting waste to install and use a tracking device to manage the risk imposed by the transport of waste and the likelihood of illegal dumping of waste. A tracking device such as a GPS installed on a vehicle could assist the EPA to track illegal dumping.

The regulation would prescribe the class of vehicles requiring the installation of tracking devices and would be developed on advice from the EPA based on vehicles identified by the EPA as required to manage the risk imposed by the transport of waste and the likelihood of illegal dumping of waste. It would be the responsibility of the relevant transporter to ensure the approved vehicle tracking device in the vehicle was operating.

The clause also provides for regulations to be made authorising the EPA to access information collected by surveillance devices.

Clause 6: Amendment of section 10 – Objects of Act

Clause 6 provides for the amendment of section 10 of the EP Act that details the objects of the Act. The amendment adds a new object to promote the circulation of materials through the waste management process and to support a strong market for recovered resources and specifically refers to regulating the stockpiling of waste.

The objective of this amendment is to ensure the EPA is able to impose maximum stockpile limits as a licence condition on material stored at waste or recycling depots listed in clause 3(3) of Schedule 1 of the EP Act and implement controls on material flows to prevent excessive accumulation of material, irrespective of direct environmental harm risks and whether or not material meets the physical and chemical criteria of a product.

Clause 7: Amendment of section 13 – Functions of Authority

Clause 7 provides for a minor drafting amendment to section 13 of the EP Act that clarifies it is a function of the EPA to conduct investigations for the purpose of assessing compliance with 'other authorisations under this Act' as well as for the purpose of assessing compliance with the EP Act or conditions of licences. This amendment reflects the

interpretation of environmental authorisations in section 3 that states 'environmental authorisation means a works approval, licence or exemption'.

Clause 8: Amendment of section 27 – Nature and contents of environment protection policies

Clause 8 provides for an amendment to section 27 of the EP Act stating that the provisions of an environment protection policy may incorporate a code prepared or published by a body specified in the policy. Currently section 27 refers to a standard or other document.

Clause 8 also proposes to add a new subsection 27(5) of the EP Act that is being removed from section 33 and explains how a code, standard or other document referred to in an environment protection policy must be kept and how evidence of a code, standard or other document may be given in any legal proceedings and clarifying the code, standard or other document has effect as if it forms part of the policy. The amendment allows the Minister to certify that a code, standard or other document is a true copy as currently the EP Act refers to the EPA providing this certification.

Clause 9: Amendment of section 28 – Normal procedure for making policies

Clause 9 provides for a minor drafting amendment to section 28 of the EP Act.

Clause 10: Amendment of section 32 – Certain amendments may be made by Gazette notice only

Clause 10 provides for an amendment of section 32 of the EP Act to enable the Minister to amend an environment protection policy if it is necessary in consequence for an amendment to the EP Act, other prescribed Acts or, certain variations to regulations or another environment protection policy, without following normal procedure for amending an environment protection policy.

Clause 11: Repeal of section 33

Clause 11 provides for the deletion of section 33 of the EP Act which is to be incorporated in the proposed amended section 27 of the EP Act in subsection 27(5).

Clauses 12–14

The Bill provides for the removal of all references to Divisional Penalties and substitutes with the monetary value of the penalties and years of imprisonment for ease of interpretation. This amendment appears in clauses 12 to 14 and other clauses identified below. The Bill does not propose an increase in the monetary amount of penalties.

Clause 15: Amendment of section 45 – Conditions

Clause 15 provides for the amendment to section 45 of the EP Act to add an expiation fee of \$1,000 as a penalty for the offence of contravention of a condition of environmental authorisation such as a licence. The amendment also provides for a regulation may be made to prescribe conditions and corresponding expiation fees so that the Government could make regulations prescribing an amount if there are kinds of conditions that warrant a expiation amount other than \$1,000.

The proposed new subsection 45(3)(c) of the EP Act allows the EPA to impose or vary a condition of an environmental authorisation (such as a licence condition) imposing a maximum allowable stockpile limit at any time if the EPA considers it necessary to promote the circulation of materials through the waste management process.

The proposed new subsection 45(5) provides that the new expiation penalty can be pursued for breach of existing licence conditions.

The proposed new subsections 45(6) and (7) of the EP Act provides for a default penalty notice to be issued for breach of reporting deadline licence condition. The amended section 45 will include a default penalty notice in the event that there

is a breach of licence condition that has a reporting deadline. This is similar to section 48(4) that provides a default penalty where the holder of an authorisation fails to lodge the annual return or pay the annual authorisation fee.

Clause 16: Amendment of section 46 – Notice and submissions in respect of proposed 15 variations of conditions

Clause 16 provides for the minor correction of section 46(5)(a) of the EP Act to delete paragraph (a) which referring to Part 8 Division 3 which was removed from the EP Act in 2008.

Clause 17: Amendment of section 47 – Criteria for grant and conditions of environmental authorisations

Clause 17 provides for amendment of subsection 47(3) of the EP Act to enable the EPA to refuse an environmental authorisation if the applicant is required to provide a financial assurance as part of the application and the applicant has failed to provide the financial assurance as required.

Clause 18: Substitution of section 51 – Conditions requiring financial assurance

Clause 18 provides for the substitution of section 51 of the EP Act that sets out the provisions around financial assurances that may be required as a condition of an environmental authorisation. The proposed new section 51 sets out the kinds of financial assurances that may be required and clarifies the purposes for which a financial assurance may be sought to include any costs associated with making good any environmental damage as a result of a contravention. The proposed new subsection 51(1)(c) specifies that a financial assurance may take the form of a policy of insurance and subsection 51(6) outlines the provisions applying to a policy of insurance.

Clause 18 also allows the EPA to amend a licence condition at any time to require a financial assurance. The clause also provides that the EPA may require a financial assurance as part of an application for an environmental authorisation and that the financial assurance can extend to when no clean up or remediation is required even following cessation of the activity.

Clauses 19–21

Clauses 19–21 provide for the removal of reference to Divisional Penalties and substitutes with the monetary value of the penalties for ease of interpretation. The Bill does not propose an increase in the monetary amount of penalties i.

Clause 22 -23

Clauses 22–23 provide for a drafting correction and the replacement of the reference to 'spiritous liquor' with 'spirituous liquor'.

Clauses 24–30

Clauses 24–30 provide for the removal of reference to Divisional Penalties and substitutes with the monetary value of the penalties for ease of interpretation. The Bill does not propose an increase in the monetary amount of penalties.

Clause 31: Amendment of section 72 – Certain containers prohibited

Clause 31 provides for the amendment to subsection 72(2) of the EP Act to delete 'recovery, recycling, reprocessing or reuse' and substitute with 'resource recovery' which is a consequential amendment to introduce a definition of resource recovery in subsection 3(1) of the EP Act as stated in clause 4 of the Bill.

Clause 31 provides for the removal of reference to Divisional Penalties and substitutes with the monetary value of the penalties for ease of interpretation. The Bill does not propose an increase in the monetary amount of penalties.

Clause 32–36

Clauses 32–36 provide for the removal of reference to Divisional Penalties and substitutes with the monetary value of the penalties and years of imprisonment for ease of interpretation. The Bill does not propose an increase in the monetary amount of penalties.

Clause 37: Amendment of section 87 – Powers of authorised officers

Clause 37 provides for the amendment of the authorised officer powers of entry in section 87 of the EP Act.

Amendment of section 87 expands the circumstances when an authorised officer may with the authority of a warrant enter a premises to allow an officer to use a range of identifying or tracking technology, such as microdots or GPS, for the purpose of identifying, tracking or monitoring waste, including the illegal dumping of waste.

The amendment also expands the type of premises where an authorised officer may enter to premises where there is construction, demolition, excavation or other earthworks or preparation thereof, and where the activity may have disturbed, uncovered or produced waste or there are such works on premises where a potentially contaminating activity has previously taken place.

The objective of this amendment is to provide authorised officers with a power to enter a premises if something may be found in the premises that may be used in illegal dumping and to allow the marking of something that an authorised officer reasonably suspects may give rise to evidence of a contravention of the EP Act.

Clause 38: Amendment of section 88 – Issue of warrants

Clause 38 provides for the amendment of section 88 of the EP Act which explains the circumstances for the issuing of warrants authorising an authorised officer to break into or open a vehicle or place. The proposed amendment to section 88 details the issuing of a tracking warrant allowing the use of the new powers of entry in section 87 of the EP Act. The clause adds a new subsection 88(1a) such that a justice may issue a tracking warrant if satisfied there are reasonable grounds to believe that a contravention of the Act has been, is being or is likely to be committed and the exercise of the power under section 87(1)(ib) is reasonably justified.

Clauses 39–41

Clauses 39–41 provide for the removal of reference to Divisional Penalties and substitutes with the monetary value of the penalties and years of imprisonment for ease of interpretation. The Bill does not propose an increase in the monetary amount of penalties.

Clause 42: Amendment of section 93 – Environment protection orders

Clause 42 provides for the removal of reference to Divisional Penalties and substitutes with the monetary value of the penalties for ease of interpretation in section 93(8) and (9) of the EP Act. The clauses also provides for new sections 93(8aa), (8aab) and (8aac) that introduces a continuing default penalty that may be issued for failing to comply with an environment protection order issued to secure compliance with a condition of an environmental authorisation. The EPA may recover a continuing default penalty of one-fifth expiation for each day on which the non-compliance continues.

Clauses 43–58

Clauses 43–58 provide for the removal of reference to Divisional Penalties and substitutes with the monetary value of the penalties and years of imprisonment for ease of interpretation.

Clause 59: Amendment of section 119 – False or misleading information

Clause 59 provides for the removal of reference to Divisional Penalties and substitutes with the existing monetary value of the penalties for ease of interpretation. In addition clause 58 introduces a maximum two years imprisonment as an

alternative to the current \$60,000 monetary penalty if a person makes a false or misleading statement. By way of comparison other sections of the EP Act that contain an imprisonment option are the following offences:

- Section 34 – offence to contravene mandatory provisions of policy. A natural person who intentionally or recklessly contravenes a mandatory provision of an environment protection policy for a category A offence maximum penalty: 2 years imprisonment
- Section 79 – intentionally or recklessly causing serious environmental harm maximum penalty: 4 years imprisonment
- Section 80 – Intentionally or recklessly causing material environmental harm maximum penalty: 2 years imprisonment
- Section 90 – Assaulting an authorised officer: maximum penalty: 2 years imprisonment
- Section 103X – site contamination auditor conflict of interest and honesty offence maximum penalty: 1 year imprisonment.

Clauses 60–62

Clauses 60–62 provide for the removal of reference to Divisional Penalties and substitutes with the monetary value of the penalties for ease of interpretation. The Bill does not propose an increase in the monetary amount of penalties.

Clause 63: Amendment of section 139 – Evidentiary

Clause 63 provides for certification by an authorised officer that a vehicle was stopped, parked or in a specified place or a specified person was the owner of a specified vehicle as elements of evidence as proof, in the absence of proof to the contrary.

This clause also inserts 'waste' into section 139(3) of the EP Act. Under the proposed amendment if the EPA alleges that a matter is waste it constitutes proof, in the absence of proof to the contrary.

Clause 64: Amendment of section 140 – Regulations

Clause 64 establishes a provision of regulation making powers to support the Bill.

The clause contains an amendment to describe further how the regulations may vary the provisions of Schedule 1 of the EP Act that lists prescribed activities of environmental significance.

The clause provides for regulations to be made to provide for monitoring the movement of waste which supports regulations to be made in the future to implement mass balance reporting.

The clause provides for regulations to be made to include evidentiary provisions to facilitate proof of contraventions of this Act for the purposes of proceedings for offences that links to clause 63.

The clause provides for the removal of reference to Divisional Penalties and substitutes with the monetary value of the penalties for ease of interpretation and inserts the ability to prescribe expiation fees (not exceeding \$1,000) for alleged offences against the regulations.

The clause provides that regulations under the EP Act may refer to or incorporate a code, standard or other document prepared or published by a prescribed person or body, and sets out how such documents must be made available and the legal effect of such documents.

Schedule 1 – Related amendments

Part 1 – Preliminary

Clause 1: Amendment provisions

This clause puts beyond doubt that the clauses under each part heading have the effect of amending the Act referred to in each part heading.

Part 2 – Amendment of Motor Vehicles Act 1959

Clause 2: Amendment of section 139D – Confidentiality

The proposed amendment to this section of the *Motor Vehicles Act 1959* is necessary to allow for details of vehicle registrations to be divulged for the purpose of determining the liability of vehicle owners for an offence pursuant to clause 5 of this Bill that provides for a new section 4A liability for offences from vehicles.

Appendix 1 Reform options to address identified issues

Section references given are for the discussion paper *Reforming waste management – Creating certainty for an industry to grow*

Proposed reform options – with potential level of influence on issue (major, moderate or supportive to improvements)	Problems, opportunities and other underlying issues								
	Static or growing stockpiles	Waste promoted as ‘product’ and ensuring environmental risks are reliably tested	Potential ‘fill’ materials end up at landfill due to development pressure	Dealing with problematic wastes	Illegal dumping	Increasing interest in ‘Energy from Waste’ schemes	Further developing safe resource recovery	Balancing risk-based flexibility and clarity/ certainty for reuse of wastes	Inability to identify detailed resource recovery requirements
Mass balance reporting (5.1)	Supporting	Supporting	Supporting	Supporting	Moderate	Supporting	Supporting	Supporting	Major
Upfront levy liability (5.2)	Major	Supporting						Supporting	
Improving stockpiling controls (5.3), eg licence conditions, audits	Major	Supporting	Supporting	Moderate			Supporting	Supporting	
Better managing waste soils & fill (5.4)		Major	Major					Major	
Changes to the waste levy (5.5), eg collection, differential levy, rate		Major (potentially)	Major (potentially)	Major (potentially)	Moderate	Major (potentially)	Major (potentially)	Supporting	Supporting
Use of financial assurances (5.6)	Major	Major		Supporting		Moderate		Moderate	

Reforming waste management – creating certainty for an industry to grow

Proposed reform options – with potential level of influence on issue (major, moderate or supportive to improvements)	Problems, opportunities and other underlying issues								
	Static or growing stockpiles	Waste promoted as ‘product’ and ensuring environmental risks are reliably tested	Potential ‘fill’ materials end up at landfill due to development pressure	Dealing with problematic wastes	Illegal dumping	Increasing interest in ‘Energy from Waste’ schemes	Further developing safe resource recovery	Balancing risk-based flexibility and clarity/ certainty for reuse of wastes	Inability to identify detailed resource recovery requirements
Expanded transport licensing (5.7)		Supporting			Moderate		Supporting		
Proximity principle (5.8)				Moderate			Moderate		
Enhanced recovered product plans (5.9)	Supporting	Major	Supporting	Supporting		Moderate	Major	Major	Supporting
Certificates of compliance (5.10)	Supporting	Supporting				Supporting	Supporting	Supporting	
Recovering illegally obtained economic benefit (5.11)	Major (potentially)	Major (potentially)			Major			Major (potentially)	
Energy from waste technical and policy guidance (5.12)				Supporting		Major	Supporting		
Improved site monitoring (5.13)	Supporting	Supporting		Supporting			Supporting	Supporting	Supporting
Simplifying waste taxonomy and definitions (5.14)	Supporting	Supporting	Supporting	Supporting		Supporting		Supporting	

Consultation draft Environment Protection (Waste Reform) Amendment Bill 2016

Proposed reform options – with potential level of influence on issue (major, moderate or supportive to improvements)	Problems, opportunities and other underlying issues								
	Static or growing stockpiles	Waste promoted as ‘product’ and ensuring environmental risks are reliably tested	Potential ‘fill’ materials end up at landfill due to development pressure	Dealing with problematic wastes	Illegal dumping	Increasing interest in ‘Energy from Waste’ schemes	Further developing safe resource recovery	Balancing risk-based flexibility and clarity/ certainty for reuse of wastes	Inability to identify detailed resource recovery requirements
Environment Protection Act amendments (6)	Supporting – major	Supporting – major		Supporting	Supporting – major			Supporting – major	
Innovative change ideas (7)				Moderate	Moderate	Moderate	Major		
Pursuance of options will help achieve the intended better outcomes (‘what the EPA seeks’)									

Appendix 2 **Draft *Environment Protection (Waste Reform) Amendment Bill 2016***

South Australia

Environment Protection (Waste Reform) Amendment Bill 2016

A BILL FOR

An Act to amend the *Environment Protection Act 1993*.

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Environment Protection (Waste Reform) Amendment Bill 2016

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Schedule 1—Related amendments

Part 1—Preliminary

1 Amendment provisions

Part 2—Amendment of *Motor Vehicles Act 1959*

2 Amendment of section 139D—Confidentiality

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Environment Protection (Waste Reform) Amendment Act 2016*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Environment Protection Act 1993*

4—Amendment of section 3—Interpretation

(1) Section 3(1), after the definition of *repealed environmental law* insert:

resource recovery, in relation to waste or other matter, means—

- 15
- (a) reusing the waste or matter; or
 - (b) recycling the waste or matter; or
 - (c) recovering energy or other resources from the waste or matter;

(2) Section 3(1), after the definition of *spouse* insert:

20 *surveillance device* has the same meaning as in the *Surveillance Devices Act 2016*;

treatment of waste or other matter—see subsection (4);

unauthorised stockpiling of waste or other matter—see subsection (5);

(3) Section 3(1), definitions of *vehicle* and *waste*—delete the definitions and substitute:

vehicle includes—

- 25
- (a) any vessel or aircraft; and

(b) a vehicle within the meaning of the *Road Traffic Act 1961*;
vessel has the same meaning as in the *Harbors and Navigation Act 1993*;

waste means—

- 5 (a) any discarded, rejected, abandoned, unwanted or surplus matter, whether or not intended for sale or for purification or resource recovery by a separate operation from that which produced the matter and whether or not of value; or
- 10 (b) subject to paragraph (c), anything declared by regulation (after consultation under section 5A) or by an environment protection policy to be waste,

but does not include—

- 15 (c) an approved recovered resource whilst it is being dealt with in accordance with the declaration of that resource—see section 4C; or
- (d) anything declared by regulation or by an environment protection policy not to be waste;

waste management hierarchy—see section 4B;

waste transport business means a waste transport business (category A) or a waste transport business (category B), each within the meaning of Schedule 1 Part A clause 3;

(4) Section 3(1), after the definition of *water* insert:

water protection area—see section 61;

(5) Section 3—after subsection (3) insert:

(4) For the purposes of this Act, unless the contrary intention appears—

- 25 (a) a reference to the treatment of waste or other matter includes a reference to the treatment of waste or other matter for resource recovery; and
- (b) a reference to the treatment of waste or other matter for resource recovery is a reference to the treatment of the waste or matter in some way—
- 30 (i) to recover material from the waste or matter that may be reused or recycled; or
- (ii) to recover energy or other resources from the waste or matter; or
- 35 (iii) to prepare the waste for further treatment to recover material from the waste or matter that may be reused or recycled or to recover energy or other resources from the waste or matter,

40 and includes, but is not limited to, sorting, shredding, crushing, compacting or packaging the waste or matter; and

(c) a reference to waste or matter of a particular kind includes a reference to material that contains waste or matter of that kind to a significant extent.

5 (5) For the purposes of this Act, *unauthorised stockpiling* of waste or other matter will be taken to have occurred if a maximum allowable stockpile limit imposed by or under this Act in relation to such waste or other matter has been exceeded.

5—Substitution of section 4

Section 4—delete the section and substitute:

4—Liability for pollution from places

10 For the purposes of this Act, if a pollutant is disposed of to the environment at or from a place, the occupier or person in charge of the place will be taken to have polluted the environment with the pollutant (but without affecting the liability of any other person in
15 respect of the pollution).

4A—Liability for offences from vehicles

(1) If—

(a) an activity is carried on—

(i) in, at or from a vehicle; or

20 (ii) in connection with the use of a vehicle; and

(b) the activity results in a principal offence,

the owner of the vehicle is guilty of an offence against this section and is liable to the same penalty as is prescribed for the principal offence and the expiation fee (if any) that is fixed for the principal
25 offence also applies in relation to the offence against this section.

(2) However, the owner of a vehicle and the person who committed the principal offence (the *alleged principal offender*) are not both liable through the operation of this section to be found guilty of, or to expiate, an offence arising out of the same circumstances, and consequently a finding of guilt in relation to, or expiation by, the
30 owner exonerates the alleged principal offender and conversely a finding of guilt in relation to, or expiation by, the alleged principal offender exonerates the owner.

(3) An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a vehicle for an alleged offence against this section involving the vehicle must be accompanied by a notice inviting the owner, if he or she was not the
35 alleged principal offender, to provide the issuing authority specified in the notice, within the period specified in the notice, with a statutory declaration—

(a) setting out the name and address of the person who the owner believes to have been the alleged principal offender;
40 or

- 5 (b) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged principal offence and has complied with the *Motor Vehicles Act 1959* or the *Harbors and Navigation Act 1993* (as the case may require) in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).
- (4) If the vehicle is owned by 2 or more persons—
- 10 (a) a prosecution for an offence against this section may be brought against 1 of the owners or against some or all of the owners jointly as co-defendants; and
- (b) if the case for the prosecution is proved and a defence is not established, the defendant or each of the defendants who does not establish a defence is liable to be found guilty of an offence against this section.
- 15 (5) Before proceedings are commenced against the owner of a vehicle for an offence against this section, the complainant must send the owner a notice—
- (a) setting out particulars of the alleged principal offence; and
- 20 (b) inviting the owner, if he or she was not the alleged principal offender or the owner of the vehicle at the time of the alleged principal offence, to provide the complainant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subsection (3)(a) and (b).
- 25 (6) Subsection (5) does not apply to—
- (a) proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or
- 30 (b) proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the alleged principal offender.
- (7) Subject to subsection (8), in proceedings against the owner of a vehicle for an offence against this section, it is a defence to prove—
- 35 (a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of commission of the alleged principal offence; or
- (b) that the owner provided the complainant with a statutory declaration in accordance with an invitation under this section.
- 40 (8) The defence in subsection (7)(b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.

- (9) If—
- (a) an expiation notice is given to a person named as the alleged principal offender in a statutory declaration under this section; or
- 5 (b) proceedings are commenced against such a person, the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged principal offender.
- (10) The particulars of the statutory declaration provided to the alleged principal offender must not include the address of the person who provided the statutory declaration.
- (11) In proceedings against a person named in a statutory declaration under this section for the offence to which the declaration relates, it will be presumed, in the absence of proof to the contrary, that the person was present in or at the vehicle at the time at which the alleged principal offence was committed.
- 15 (12) In proceedings against the owner of a vehicle or the alleged principal offender for an offence against this Act, an allegation in the complaint that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.
- 20 (13) For the purposes of this section, an activity consisting of the disposal of waste or other matter to the environment will be presumed, in the absence of proof to the contrary, to have been carried on in connection with the use of a vehicle if the waste or matter has been disposed of to the environment and the vehicle was seen arriving at the place of disposal before the disposal or leaving that place after the disposal.
- 25 (14) This section does not apply in relation to the disposal of waste or other matter by a passenger of a taxi or a train, tram, bus, ferry, passenger ship, or other public transport vehicle, that was being used for a public purpose at the time.
- 30 (15) In this section—
- owner* of a vehicle—
- 35 (a) in the case of a vessel, has the same meaning as in the *Harbors and Navigation Act 1993*, and includes the operator of the vessel within the meaning of that Act;
- (b) in the case of a vehicle within the meaning of the *Road Traffic Act 1961*, has the same meaning as in section 5(1) of the *Road Traffic Act 1961*, and includes the operator of the vehicle within the meaning of that Act;
- 40

principal offence means—

- (a) an offence against—
- (i) Part 8 Division 2; or

- (ii) Part 9; or
- (b) an offence prescribed by regulation.

4B—Waste management hierarchy

In this Act, a reference to the *waste management hierarchy* is a reference to an order of priority for the management of waste in which—

- (a) avoidance of the production of waste; and
- (b) minimisation of the production of waste; and
- (c) reuse of waste; and
- (d) recycling of waste; and
- (e) recovery of energy and other resources from waste; and
- (f) treatment of waste to reduce potentially degrading impacts; and
- (g) disposal of waste in an environmentally sound manner,

are pursued in order with, first, avoidance of the production of waste, and second, to the extent that avoidance is not reasonably practicable, minimisation of the production of waste, and third, to the extent that minimisation is not reasonably practicable, reuse of waste, and so on.

4C—Approved recovered resources

- (1) The Authority may, by notice in the Gazette, declare that specified matter constitutes an *approved recovered resource* and therefore does not, while it is being dealt with in accordance with the declaration, constitute waste for the purposes of this Act.
- (2) Regulations may be made in relation to declarations under this section and may, without limiting the generality of subsection (1), provide for—
 - (a) the manner and form of applications for declarations; and
 - (b) application fees relating to declarations; and
 - (c) the criteria against which applications will be determined; and
 - (d) the provision of further information by applicants; and
 - (e) the imposition of conditions of declarations; and
 - (f) the term and renewal of declarations; and
 - (g) the grounds for refusing applications; and
 - (h) the variation or revocation of declarations by further notice in the Gazette; and
 - (i) the circumstances in which declarations may be varied or revoked.

4D—Unlawful disposal of waste etc

For the purposes of this Act, unless the contrary intention appears, a reference to the disposal of waste or other matter to the environment includes a reference to—

- 5 (a) the discharge, deposit, dumping, discarding or emission of the waste or matter; or
- (b) unauthorised stockpiling of the waste or matter; or
- (c) abandoning the waste or matter; or
- (d) the escape of the waste or matter; or
- 10 (e) causing, allowing or failing to prevent the disposal (including in a manner referred to in a preceding paragraph) of the waste or matter.

4E—Use of surveillance devices

- 15 (1) The Governor may make regulations regulating the use of surveillance devices for identifying, tracking or monitoring, for the purposes of this Act, the source, location, movement, receipt, storage, transfer or disposal of waste or other matter.
- (2) Without limiting the generality of subsection (1), regulations made under this section may—
- 20 (a) require the installation, use or maintenance of optical surveillance devices at depots, facilities or works of a kind described in Schedule 1 Part A clause 3 at which waste is received; and
- (b) require the installation, use or maintenance of tracking devices in or in relation to vehicles of a prescribed class (including, but not limited to, vehicles used in the course of a prescribed activity of environmental significance); and
- 25 (c) require the furnishing to the Authority, another administering agency or an authorised officer of reports, data or other information collected by surveillance devices; and
- 30 (d) authorise the Authority or another administering agency to access, use or retain information collected by surveillance devices.
- 35 (3) In this section—

optical surveillance device has the same meaning as in the *Surveillance Devices Act 2016*;

tracking device has the same meaning as in the *Surveillance Devices Act 2016*, and includes a GPS.

6—Amendment of section 10—Objects of Act

- (1) Section 10(1)—after paragraph (a) insert:
- (ab) to ensure that all reasonable and practicable measures are taken to protect, restore and enhance the quality of the environment having regard to the principles of ecologically sustainable development; and
- (2) Section 10(1)(b)—delete "to ensure that all reasonable and practicable measures are taken to protect, restore and enhance the quality of the environment having regard to the principles of ecologically sustainable development," and substitute:
- in particular, to ensure that, as far as is reasonably practicable, the following measures are taken:
- (3) Section 10(1)(b)(i)(A)—delete subparagraph (A) and substitute:
- (A) by programs to encourage and assist action by industry, public authorities and the community aimed at pollution prevention, clean production and technologies and resource recovery; and
- (AB) by programs to encourage and assist industry, public authorities and the community to apply the waste management hierarchy; and
- (4) Section 10(1)(b)(i)(B), second dot-point—delete "transportation, treatment and disposal of waste; and" and substitute:
- handling, transportation, treatment and disposal of waste or other matter;
- (5) Section 10(1)(b)—after subparagraph (i) insert:
- (iaa) to promote the circulation of materials through the waste management process and to support a strong market for recovered resources—
- (A) by programs to encourage and assist industry, public authorities and the community to engage in resource recovery; and
- (B) by regulating resource recovery; and
- (C) by regulating the handling and stockpiling of waste or other matter;
- (6) Section 10(1)(b)(ia) to (viii) (inclusive)—delete "; and" wherever occurring and substitute in each case:
- ;

7—Amendment of section 13—Functions of Authority

Section 13(1)(f)—after "licences" insert:

or other authorisations

8—Amendment of section 27—Nature and contents of environment protection policies

- (1) Section 27(4)(c)—after "modification, a" insert:
- code,

(2) Section 27(4)(d)—delete "or another administering agency" and substitute:
 , another administering agency, an authorised officer or a prescribed person or
 body;

(3) Section 27—after subsection (4) insert:

5 (5) If an environment protection policy refers to a code, standard or
 other document—

10 (a) a copy of the code, standard or other document must be kept
 available for inspection by members of the public, without
 charge and during normal office hours, at an office or
 offices specified in the regulations; and

15 (b) in any legal proceedings, evidence of the contents of the
 code, standard or other document may be given by
 production of a document purporting to be certified by or on
 behalf of the Minister or the Authority or another
 administering agency as a true copy of the code, standard or
 other document; and

 (c) the code, standard or other document has effect as if it
 formed part of the policy.

9—Amendment of section 28—Normal procedure for making policies

20 Section 28(8)—delete "subsection (3)" and substitute:
 subsection (6)

10—Amendment of section 32—Certain amendments may be made by Gazette notice only

 Section 32(1)—after paragraph (b) insert:

25 (ba) if the Minister considers it necessary to amend the policy in
 consequence of—

30 (i) an amendment to this Act or the making, variation or
 revocation of regulations under this Act or the making,
 amendment or revocation of another environment protection
 policy; or

 (ii) the commencement of, or an amendment to, a prescribed
 Act; or

11—Repeal of section 33

 Section 33—delete the section

12—Amendment of section 34—Offence to contravene mandatory provisions of policy

(1) Section 34(1), penalty provision—delete the penalty provision and substitute:

 Maximum penalty:

40 (a) for a category A offence—

 (i) in the case of a body corporate—\$250 000;

(ii) in the case of a natural person—\$120 000 or imprisonment for 2 years, or both;

(b) for a category B, C, D or E offence—\$30 000.

(2) Section 34(2), penalty provision—delete the penalty provision and substitute:

5 Maximum penalty:

(a) for a category A offence—

(i) in the case of a body corporate—\$150 000;

(ii) in the case of a natural person—\$60 000;

(b) for a category B offence—\$4 000;

10 (c) for a category C offence—\$2 000;

(d) for a category D offence—\$500;

(e) for a category E offence—\$100.

Expiation fee:

(a) for a category B offence—\$300;

15 (b) for a category C offence—\$200;

(c) for a category D offence—\$100;

(d) for a category E offence—\$50.

13—Amendment of section 35—Requirement for works approval

Section 35(1), penalty provision—delete the penalty provision and substitute:

20 Maximum penalty:

(a) in the case of a body corporate—\$120 000;

(b) in the case of a natural person—\$60 000.

14—Amendment of section 36—Requirement for licence

Section 36(1), penalty provision—delete the penalty provision and substitute:

25 Maximum penalty:

(a) in the case of a body corporate—\$120 000;

(b) in the case of a natural person—\$60 000.

15—Amendment of section 45—Conditions

(1) Section 45(3)—after paragraph (b) insert:

30 or

(c) in addition, in the case of a condition imposing a maximum allowable stockpile limit—at any time if the Authority considers it necessary to impose or vary the condition in order to promote the circulation of materials through the waste management process.

35 (2) Section 45(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of a body corporate—\$120 000;
- (b) in the case of a natural person—\$60 000.

Expiation fee:

- (a) for a prescribed condition—the corresponding prescribed expiation fee;
- (b) for any other condition (other than a reporting-deadline condition)—\$1 000.

(3) Section 45—after subsection (5) insert:

(6) Where the holder of an authorisation (including the holder of an authorisation that has been suspended) fails to comply with a reporting-deadline condition, the Authority may, by notice in writing, require the holder to make good the default and, in addition, to pay the Authority the amount prescribed as a penalty for default.

(7) A penalty for default payable under subsection (6) is recoverable by the Authority as a debt due to the Authority.

(8) Despite any provision of this section, a requirement under a provision of this Act that relates to activities carried on under an environmental authorisation will, subject to the terms of the provision—

- (a) apply in relation to such activities, whether the environmental authorisation authorising the activities was granted before or after the commencement of the provision; and
- (b) prevail over conditions of such an environmental authorisation to the extent of any inconsistency.

(9) In this section—

reporting-deadline condition means a condition of a kind referred to in section 52(1)(a) requiring a specified report on the results of tests or monitoring to be made to the Authority before a specified date.

16—Amendment of section 46—Notice and submissions in respect of proposed variations of conditions

Section 46(5)(a)—delete paragraph (a)

17—Amendment of section 47—Criteria for grant and conditions of environmental authorisations

(1) Section 47(3)—delete the subsection and substitute:

- (3) The Authority may refuse an environmental authorisation if—
 - (a) the Authority is not satisfied that the applicant is a suitable person to be granted the authorisation; or

- (b) in the case of an applicant who has been required to provide a financial assurance to the Authority under section 51 as part of the application for the authorisation—the applicant has failed to provide the financial assurance as required.

5 (2) Section 47(4)—delete "subsection (3)" and substitute:

subsection (3)(a)

18—Substitution of section 51

Section 51—delete the section and substitute:

51—Conditions requiring financial assurance

- 10 (1) Subject to this section, the Authority may, by conditions of an environmental authorisation, require the holder of the authorisation to provide the Authority with a financial assurance in the form of any 1 or more of the following:
- 15 (a) a bond;
 - (b) a specified pecuniary sum;
 - (c) a policy of insurance;
 - (d) a letter of credit or a guarantee given by a bank;
 - (e) any other form of security approved by the Authority,
- 20 to be used or claimed against for any 1 or more of the following purposes:
- (f) in the event of the holder of the authorisation contravening a requirement imposed by or under this Act;
 - (g) in the event of a failure by the holder of the authorisation to 25 take specified action within a specified period to achieve compliance with this Act;
 - (h) for any costs associated with making good any environmental damage, or for any claims for compensation to a person who has suffered loss or damage to property, as a result of—
 - 30 (i) a contravention referred to in paragraph (f); or
 - (ii) a failure to take the specified action as referred to in paragraph (g); or
 - (iii) any environmental harm caused by or in connection with the activity authorised under the environmental 35 authorisation.
- (2) A condition under this section may be imposed or varied at any time.

- (3) The Authority must, in determining whether to impose a condition under this section or the nature, term or any other particulars of, a financial assurance, have regard to the following:
- 5 (a) the degree of risk of environmental harm associated with the activity authorised under the environmental authorisation or any activity previously undertaken at the place to which the authorisation relates;
 - (b) the likelihood of action being required to make good any resulting environmental damage;
 - 10 (c) the nature and cost of such action and the length of time such action is likely to take (including following cessation of the activity so authorised);
 - (d) whether the holder of the authorisation has previously contravened this Act (whether or not in connection with the activity authorised under the environmental authorisation) and if so, the nature, number or frequency of the contraventions;
 - 15 (e) in the case of a financial assurance required for the purposes of subsection (1)(h)—the Authority's reasonable estimate of the total of the costs referred to in that paragraph that might be incurred as a result of the activity authorised under the environmental authorisation;
 - 20 (f) any other matters considered relevant by the Authority or prescribed by regulation.
- (4) The Authority may (without limitation) require the financial assurance—
- 25 (a) to be provided as part of an application for an environmental authorisation under section 38; or
 - (b) to extend to such time as it is satisfied that no clean up or remediation will be required as a result of the activity undertaken under the environmental authorisation (including following cessation of the activity).
 - 30
- (5) The following provisions apply in relation to a condition requiring a financial assurance in the form of a bond or pecuniary sum:
- 35 (a) the Authority may not require the lodgement of financial assurance (comprised of or including a bond or a pecuniary sum) representing an amount greater than the amount that, in the opinion of the Authority, represents the total of the likely costs, expenses, loss and damage that might be incurred or suffered by persons as a result of failure by the holder of the authorisation to satisfy the conditions of discharge or repayment of the financial assurance;
 - 40

5 (b) a pecuniary sum lodged with the Authority must be paid into the Environment Protection Fund and the amount of the pecuniary sum that has not been repaid or forfeited to the Fund must, on satisfaction of the conditions of repayment, be repaid to the holder of the authorisation together with an amount representing interest calculated in accordance with the regulations;

10 (c) if the holder of an authorisation fails to satisfy the conditions of discharge or repayment of a financial assurance comprised of or including a bond or pecuniary sum lodged with the Authority, the Authority—

15 (i) may determine that the whole or part of the amount of the bond or pecuniary sum is forfeited to the Environment Protection Fund;

(ii) may apply from the Fund any money so forfeited in payments for or towards the costs, expenses, loss or damage incurred or suffered by the Crown, a public authority or other person as a result of the failure by the holder of the authorisation;

20 (iii) may, in the case of a pecuniary sum, on the expiry or termination of the authorisation and when satisfied that there is no reasonable likelihood of any or further valid claims in respect of costs, expenses, loss or damage incurred or suffered as a result of the failure of the holder of the authorisation, repay any amount of the pecuniary sum that has not been repaid or forfeited to the Fund.

25 (6) The following provisions apply in relation to a condition requiring a financial assurance in the form of a policy of insurance:

30 (a) the Authority may require that it be a joint insured or a beneficiary of the insurance;

(b) the Authority will be taken to have an insurable interest in the subject matter covered by the insurance policy.

35 **19—Amendment of section 57A—Requirement for endorsement of licence**

Section 57A, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$40 000.

40 **20—Amendment of section 58—Protection for information produced in voluntary environmental audits**

Section 58(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$40 000.

21—Amendment of section 60—Registration of environment performance agreements in relation to land

Section 60(4), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

5 **22—Amendment of section 65—Interpretation**

Section 65, definition of *spiritous liquor*—delete "*spiritous liquor*" and substitute:
spirituous liquor

23—Amendment of section 66—Division not to apply to certain containers

Section 66—delete "spiritous liquor" and substitute:
spirituous liquor

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24—Amendment of section 69—Approval of collection depots and super collectors

Section 69(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty:

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- (a) in the case of a body corporate—\$60 000;
- (b) in the case of a natural person—\$30 000.

25—Amendment of section 69B—Sale and supply of beverages in containers

(1) Section 69B(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

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Expiation fee: \$300.

(2) Section 69B(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

Expiation fee: \$300.

(3) Section 69B(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

25

26—Amendment of section 69C—Offence to claim refund on beverage containers purchased outside State or corresponding jurisdiction

(1) Section 69C(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$30 000.

30

(2) Section 69C(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

Expiation fee: \$300.

(3) Section 69C(4), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

35

Expiation fee: \$300.

27—Amendment of section 69D—Offence to contravene condition of beverage container approval

Section 69D, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$4 000.

Expiation fee: \$300.

28—Amendment of section 70—Retailers to pay refund amounts for certain empty category A containers

Section 70(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$4 000.

Expiation fee: \$300.

29—Amendment of section 71—Collection depots to pay refund amounts for certain empty category B containers

Section 71(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$4 000.

Expiation fee: \$300.

30—Amendment of section 71A—Manner of payment of refund amounts

Section 71A, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$4 000.

Expiation fee: \$300.

31—Amendment of section 72—Certain containers prohibited

(1) Section 72(2)—delete "recovery, recycling, reprocessing or reuse" and substitute:
resource recovery

(2) Section 72(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

Expiation fee: \$300.

(3) Section 72(4), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

Expiation fee: \$300.

32—Amendment of section 79—Causing serious environmental harm

(1) Section 79(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty:

(a) in the case of a body corporate—\$2 000 000;

(b) in the case of a natural person—\$500 000 or imprisonment for 4 years, or both.

(2) Section 79(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$250 000.

33—Amendment of section 80—Causing material environmental harm

- (1) Section 80(1), penalty provision—delete the penalty provision and substitute:

5 Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$250 000 or imprisonment for 2 years, or both.

- (2) Section 80(2), penalty provision—delete the penalty provision and substitute:

10 Maximum penalty:

- (a) in the case of a body corporate—\$250 000;
- (b) in the case of a natural person—\$150 000.

34—Amendment of section 82—Causing environmental nuisance

- (1) Section 82(1), penalty provision—delete the penalty provision and substitute:

15 Maximum penalty:

- (a) in the case of a body corporate—\$60 000;
- (b) in the case of a natural person—\$30 000.

- (2) Section 82(2), penalty provision—delete the penalty provision and substitute:

20 Maximum penalty:

- (a) in the case of a body corporate—\$15 000;
- (b) in the case of a natural person—\$4 000.

Expiation fee: \$300.

35—Amendment of section 83—Notification where serious or material environmental harm caused or threatened

- 25 Section 83(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of a body corporate—\$250 000;
- (b) in the case of a natural person—\$150 000.

36—Amendment of section 83A—Notification of site contamination of underground water

- 30 Section 83A(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of a body corporate—\$120 000;
- (b) in the case of a natural person—\$60 000.

37—Amendment of section 87—Powers of authorised officers

(1) Section 87(1)—after paragraph (b) insert:

- (ba) with the authority of a warrant issued under section 88(1a), use prescribed tracking technology on or in relation to any matter or thing found in any place or vehicle that the authorised officer reasonably suspects may constitute, or will or may give rise to, evidence of a contravention of this Act (whether committed at that place or vehicle, or elsewhere) in relation to the handling, storage, treatment, transfer, transportation, or disposal of waste or other matter;

(2) Section 87(2)—after paragraph (c) insert:

- (d) construction, demolition, excavation or other earthworks, or any activity carried out in preparation for construction, demolition, excavation or other earthworks, is being or has been carried on at the premises and—
- (i) the works or activity has or may have disturbed, uncovered or produced waste or pollutants of a kind prescribed by regulation; or
- (ii) a potentially contaminating activity of a kind prescribed by regulation has previously taken place there.

(3) Section 87—after subsection (9) insert:

(10) In this section—

construction includes alteration or refurbishment;

prescribed tracking technology means—

- (a) microdots or similar identification technology; or
- (b) spray paint; or
- (c) admixed or implanted foreign objects; or
- (d) a surveillance device; or
- (e) any other identifying or tracking agent or device prescribed by regulation;

use, in relation to prescribed tracking technology, includes apply, place, install, maintain, replace or retrieve the technology.

38—Amendment of section 88—Issue of warrants

(1) Section 88—after subsection (1) insert:

- (1a) The following provisions apply in relation to a warrant for the exercise of the power under section 87(1)(ba) (a ***tracking warrant***):
- (a) a justice may, on application by an authorised officer, issue a tracking warrant if satisfied—

- 5 (i) that there are reasonable grounds to believe that a contravention of this Act has been, is being, or is likely to be, committed in relation to the handling, storage, treatment, transfer, transportation, or disposal of waste or other matter; and
- 10 (ii) that the exercise of the power is reasonably justified in the circumstances, having regard to—
- (A) the nature and gravity of the criminal conduct to which the contravention relates; and
 - (B) the availability of alternative means of investigating the conduct; and
 - (C) any other matter that the justice considers relevant;
- 15 (b) a tracking warrant will, unless otherwise specified in the warrant, be taken to authorise—
- 20 (i) the breaking into or opening of any part of, or anything in or on, a place or vehicle specified in the warrant or any other interference with anything found in such a place or vehicle, as reasonably required in connection with the exercise the power; and
 - 25 (ii) the use of reasonable force in connection with the actions authorised under subparagraph (i); and
 - 30 (iii) the exercise of powers under subparagraphs (i) and (ii) by, or under the authority of, the authorised officer at any time and with such assistants as the officer considers necessary;
- (c) subject to subsection (8), a tracking warrant will be in force for a period (not exceeding 90 days) specified in the warrant.

- (2) Section 88(7)—after "a warrant" insert:
(other than a tracking warrant)

39—Amendment of section 89—Provisions relating to seizure

- 35 Section 89(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

40—Amendment of section 90—Offence to hinder etc authorised officers

- (1) Section 90(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$15 000.
- 40 (2) Section 90(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$15 000 or imprisonment for 2 years, or both.

41—Amendment of section 92—Offences by authorised officers

Section 92(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$4 000.

42—Amendment of section 93—Environment protection orders

5 (1) Section 93(8), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) if the order was issued for the purpose of securing compliance with a requirement imposed by or under this Act and a penalty is fixed by this Act for contravention of that requirement—that penalty;
- 10 (b) if the order was issued in relation to a domestic activity for the purpose of securing compliance with the general environmental duty—\$500;
- (c) if the order was issued in relation to a domestic activity in circumstances specified in an environment protection policy or for
15 the purpose of giving effect to an environment protection policy—\$500;
- (d) in any other case—\$4 000.

Expiation fee:

- 20 (a) if the order was issued for the purpose of securing compliance with a requirement imposed by or under this Act and an expiation fee is fixed by this Act for contravention of that requirement—that expiation fee;
- (b) if the order was issued in relation to a domestic activity for the purpose of securing compliance with the general environmental
25 duty—\$100;
- (c) if the order was issued in relation to a domestic activity in circumstances specified in an environment protection policy or for the purpose of giving effect to an environment protection
30 policy—\$100;
- (d) in any other case—\$300.

(2) Section 93—after subsection (8) insert:

(8aa) If—

- 35 (a) in the case of an offence under subsection (8) of failing to comply with an environment protection order imposing a requirement for the purpose of securing compliance with a condition of an environmental authorisation—the alleged offender has expiated the offence; and
- (b) the act or omission the subject of the requirement continues after that expiation,

40 a continuing default penalty is payable by the person for each day on which the act or omission continues of an amount equal to one-fifth of the expiation fee applying in respect of the offence.

(8aab) For the purposes of the continuing default penalty under subsection (8aa), an obligation to do something is to be regarded as continuing regardless of the fact that any period within which, or time before which, the act is required to be done has expired or passed.

5 (8aac) A continuing default penalty under this section is recoverable by the Authority as a debt due to the Authority.

(3) Section 93(9), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

10 **43—Amendment of section 93A—Environment protection orders relating to cessation of activity**

(1) Section 93A(5), penalty provision—delete the penalty provision and substitute:
Maximum penalty:

- (a) in the case of a body corporate—\$120 000;
- (b) in the case of a natural person—\$60 000.

15 (2) Section 93A(8), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

44—Amendment of section 94—Registration of environment protection orders in relation to land

20 Section 94(5), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

45—Amendment of section 96—Information discovery orders

Section 96(5), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$8 000.

46—Amendment of section 99—Clean-up orders

25 Section 99(8), penalty provision—delete the penalty provision and substitute:
Maximum penalty:

- (a) in the case of a body corporate—\$120 000;
- (b) in the case of a natural person—\$60 000.

30 **47—Amendment of section 101—Registration of clean-up orders or clean-up authorisations in relation to land**

Section 101(6), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$4 000.

48—Amendment of section 103H—Site contamination assessment orders

35 Section 103H(6), penalty provision—delete the penalty provision and substitute:
Maximum penalty:

- (a) in the case of a body corporate—\$120 000;

(b) in the case of a natural person—\$60 000.

49—Amendment of section 103J—Site remediation orders

Section 103J(11), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) in the case of a body corporate—\$120 000;

(b) in the case of a natural person—\$60 000.

50—Amendment of section 103O—Registration of site contamination assessment orders or site remediation orders in relation to land

Section 103O(6), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$4 000.

51—Amendment of section 103S—Prohibition or restriction on taking water affected by site contamination

Section 103S(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$8 000.

52—Amendment of section 103U—Requirement for auditors to be accredited

Section 103U, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$15 000.

53—Amendment of section 103W—Illegal holding out as site contamination auditor

(1) Section 103W(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$15 000.

(2) Section 103W(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$15 000.

54—Amendment of section 103X—Conflict of interest and honesty

(1) Section 103X(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$4 000 or imprisonment for 1 year.

(2) Section 103X(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) in the case of a body corporate—\$60 000;

(b) in the case of a natural person—\$30 000 or imprisonment for 1 year.

55—Amendment of section 103Y—Annual returns and notification of change of address etc

(1) Section 103Y(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$8 000.

- (2) Section 103Y(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$8 000.

56—Amendment of section 103Z—Requirements relating to site contamination audits

- 5 (1) Section 103Z(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$8 000.
- (2) Section 103Z(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$8 000.
- (3) Section 103Z(4), penalty provision—delete the penalty provision and substitute:
10 Maximum penalty: \$8 000.

57—Amendment of section 103ZA—Reports by site contamination auditors and consultants

Section 103ZA, penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$8 000.

15 **58—Amendment of section 103ZB—Provision of false or misleading information**

Section 103ZB, penalty provision—delete the penalty provision and substitute:
Maximum penalty:

- (a) in the case of a body corporate—\$60 000;
- 20 (b) in the case of a natural person—\$30 000.

59—Amendment of section 119—False or misleading information

Section 119, penalty provision—delete the penalty provision and substitute:
Maximum penalty:

- (a) if the person made the statement knowing that it was false or
25 misleading—\$60 000 or imprisonment for 2 years;
- (b) in any other case—\$30 000.

60—Amendment of section 120A—False or misleading reports

Section 120A(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$15 000.

30 **61—Amendment of section 121—Confidentiality**

Section 121, penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$8 000.

62—Amendment of section 135—Recovery of administrative and technical costs associated with contraventions

Section 135(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$1 000.

Expiation fee: \$500.

63—Amendment of section 139—Evidentiary

(1) Section 139(3)—delete "a pollutant" and substitute:

waste, a pollutant or other matter

(2) Section 139—after subsection (4) insert:

(4a) In any proceedings for an offence against this Act, a certificate of an authorised officer certifying that, at a specified time—

(a) a specified vehicle was stopped or parked in a specified place; or

(b) a specified person was the owner of a specified vehicle, constitutes proof, in the absence of proof to the contrary, of those matters.

64—Amendment of section 140—Regulations

(1) Section 140(2)(a)—delete paragraph (a) and substitute:

(a) amend Schedule 1 by—

(i) inserting a provision into, substituting a provision in, or deleting a provision from, the Schedule; or

(ii) inserting material into, substituting material in, or deleting material from, a provision of the Schedule;

(ab) provide for the manner in which Acts or instruments may refer to a prescribed activity of environmental significance (eg by way of an item number or an activity (or both));

(2) Section 140(2)—after paragraph (d) insert:

(da) provide for the monitoring of the receipt, storage, transfer or disposal of waste or other matter at depots, facilities, works or other premises (including the weighing, calculation and certification of mass or volume of the waste or matter so received, stored, transferred or disposed of);

(db) provide for the furnishing to the Authority, another administering agency or an authorised officer of reports, statements, documents or other forms of information;

(3) Section 140(2)—after paragraph (e) insert:

(ea) include evidentiary provisions to facilitate proof of contraventions of this Act for the purposes of proceedings for offences;

- (4) Section 140(2)(f)—delete paragraph (f) and substitute:
- (f) prescribe fines (not exceeding \$10 000) for offences against the regulations;
 - (g) prescribe expiation fees (not exceeding \$1 000) for alleged offences against the regulations.
- (5) Section 140(3)—after paragraph (b) insert:
- (ba) refer to, or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed person or body, as in force from time to time or as in force at a specified time; and
- (6) Section 140(3)(c)—after "Authority" insert:
- , another administering agency, an authorised officer or a prescribed person or body
- (7) Section 140—after subsection (3) insert:
- (3a) If the regulations refer to a code, standard or other document—
 - (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
 - (b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister or the Authority or another administering agency as a true copy of the code, standard or other document; and
 - (c) the code, standard or other document has effect as if it were a regulation made under this Act.

Schedule 1—Related amendments

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Motor Vehicles Act 1959*

2—Amendment of section 139D—Confidentiality

Section 139D(1)(ea)—after subparagraph (ii) insert:

- (iii) section 5D of the *Environment Protection Act 1993*; or