

RECENT DEVELOPMENTS

Northern Territory

Waste Management and Pollution Control Act 1998

Introduction

On the 18th June 1999 the *Waste Management and Pollution Control Act 1998* entered into force in the Northern Territory. The Act updates legislation for the management of environmental harm, and brings it into line with the States. The Act provides for administration (Pt 2), establishes environmental duties (Pt 3), sets out environmental protection objectives (Pt 4), provides for environmental protection approvals, licences and best practice licences (Pt 5), contains requirements for environmental audits (Pt 6), compliance plans (Pt 7), performance agreements (Pt 8), accreditation (Pt 9), enforcement (Pt 10), and offences, penalties and criminal proceedings (Pt 11). The Act is supplemented by the *Waste Management and Pollution Control (Administration) Regulations 1998*, which contain requirements in relation to registration and the issuing of infringement notices. The Act binds the Crown - s 3, and preserves existing civil remedies - s 7.

Objectives and Exemptions

The Act provides for best practice environmental management of environmental harm. Objectives set out in s 5 are:

- (a) to protect, and where practicable to restore and enhance the quality of the Territory environment...
- (b) to encourage ecologically sustainable development; and
- (c) to facilitate the implementation of National Environment Protection Measures.

The Act does not apply to contaminants or waste resulting from mining or petroleum activity - ss 6(2) and (3). Neither does it apply to contaminants or waste released from a pipeline and authorised under other legislation - ss 6(3) and (4). It doesn't apply if oil pollution legislation is applicable - s 6(8).

General Environmental Duty

A General Environmental Duty requires that any person conducting an activity or performing an action that causes or is likely to cause pollution must take all measures that are reasonable or practicable to prevent or minimise the pollution or environmental harm, and reduce the amount of waste. - s 12(1). In determining what measures to take, regard is to be had to the nature of the harm and the sensitivity of the environment, the availability of current technical information, and the financial implications of implementing the measures - s 12(2). If a Code of Practice has been approved by the Minister and followed, the duty is deemed to have been complied with - s 13. There is a duty to notify of incidents causing or threatening to cause pollution - s 14. Penalties are set out for failing to notify.

Environment Protection Objectives

Environment Protection Objectives are designed to establish the principles on which environmental quality is to be maintained, enhanced, managed or protected; pollution, or environmental harm resulting from it is assessed, prevented, reduced, rectified or cleaned up; and waste management is to be implemented or evaluated - s 15. Matters dealt with by objectives include air, water and soil quality, types or class of contaminants, waste, industry or activity; waste management, a technology or process, and a pollution control practice - s 16. Objectives may specify goals, standards, guidelines or protocols - s 17(1)(a), and indicators - s 17(1)(c). The Minister may propose the preparation of a draft Environment Protection Objective - s 19(1), by following a statutory procedure - ss 19-21. National Environment Protection Measures may be incorporated as Environment Protection Objectives - s 22.

Environment Protection Approvals, Licences and Best Practice Licences

A person must not conduct a specified activity or alter or modify premises on which such activity is being carried out, except in accordance with an Environment Protection Approval, Licence or Best Practice Licence - s 30(1)-(3). Matters to be considered in deciding whether to grant approval include: all relevant Environment Protection Objectives; a relevant Compliance Plan or Performance Agreement; the siting, design and layout of the premises; the sensitivity of the surrounding land use and environment; and whether the activity or premises have already been assessed under the *Environment Assessment Act* - s 32(1). Additional matters are to be considered in deciding whether to grant a Best Practice Licence - s 33; a Best Practice Licence may be downgraded to an Environment Protection Licence - s 44. Conditions may be attached to any approval or licence - ss 35-36. Failure to comply with a licence, approval or condition is an offence - s 39.

Environmental Audits, Compliance Plans and Performance Agreements

Provision is made for these in s 47 of the Act. Environmental Audits evaluate a number of things, including the ability of systems to manage waste and pollution; the extent to which actions to be taken have been taken; the extent, nature and source of waste; and the likelihood of waste or pollution resulting in environmental harm. An environmental audit program may be required to specify various matters - s 48. If offences have been committed under the Act, they may be ordered by the court - s 49; alternatively, they may be applied voluntarily - s 54. Provision is made for accreditation of auditors - s 67, and for the establishment of a register of qualified persons - s 68.

Compliance Plans require the staged implementation of approvals and licences in waste and pollution management for those who are unable to comply with provisions of the Regulations or Environment Protection Objectives - s 55. They must set out details of compliance, specifying the compliance period and the detailed program for achieving it. Provisions are also made for monitoring - s 56. Plans may also be ordered by the court - s 59, or made voluntarily - s 57.

Performance Agreements may be entered into between the Minister and a person conducting an activity that causes or is likely to cause pollution resulting in environmental harm, or that generates

or is likely to generate waste. The person must be the owner or occupier of the land that is polluted - s 66(1). The agreement may provide for a program to protect, restore and enhance the environment - s 66(2). In return, the agreement may provide assistance to the owner or occupier from the Territory - s 66(3).

Offences, Defences, Penalties and Enforcement

Offences are set out in s 83. The main offences are Serious Environmental Harm, whether intentional or not - s 83(1) and (2), and Material Environmental Harm, whether intentional or not - s 83(3) and (4). Lesser offences are Environmental Nuisance - s 83(5), and the storage of contaminants or waste, whether intentional or not - s 83(6) and (7). Due diligence is a defence to all of the offences except s 83(5) and (7) - s 84. It is also a defence (other than to s 83(5) and (7)), if it is proved that the defendant complied with a provision in an Environment Protection Objective, or complied with an Environment Protection Approval or a provision in the Regulations.

Penalties range from a fine of \$500 for a level 4 offence (storage of contaminants or waste), to a fine of \$25,000 or imprisonment for a level 1 offence (serious environmental harm). Directors and partners may be personally liable for level 1 offences - ss 91 and 92. Authorised officers may be appointed to enforce provisions of the Act - s 70. Pollution Abatement Notices may be used for the purpose - s 77.

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