

South Australia



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ELIZABETHAE II REGINAE
A.D. 2002

STATUTES AMENDMENT (ENVIRONMENT PROTECTION) ACT 2002

No. 43 of 2002

[Assented to 5 December 2002]

An Act to amend the Environment Protection Act 1993 and the Radiation Protection and Control Act 1982.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Environment Protection) Act 2002*.

Commencement

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

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF ENVIRONMENT PROTECTION ACT 1993**

Amendment of s. 3—Interpretation

4. Section 3 of the principal Act is amended—

(a) by striking out from the definition of "appointed member" in subsection (1) "Authority" and substituting "Board";

(b) by inserting after the definition of "beverage container approval" in subsection (1) the following definition:

"Board" means the Board of the Environment Protection Authority established as the governing body of the Authority under Division 1 of Part 3;

(c) by inserting after the definition of "business" in subsection (1) the following definition:

"Chief Executive" of the Authority means the person for the time being holding or acting in the office of Chief Executive of the Authority under Division 1 of Part 3;

Amendment of s. 7—Interaction with other Acts

5. Section 7 of the principal Act is amended by striking out paragraphs (b) and (c) of subsection (2).

Repeal of s. 12

6. Section 12 of the principal Act is repealed.

Amendment of s. 13—Functions of Authority

7. Section 13 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The Authority has the following functions:

(a) to prepare draft environment protection policies;

- (b) to conduct regular reviews of environment protection policies, regulations and other measures and practices under this Act to ensure that they are adequate and effective to secure the objects of this Act;
- (c) to contribute to the development of national environment protection measures and ensure their effective application in this State;
- (d) to facilitate the pursuit of the objects of this Act by Commonwealth, State and local government bodies, the private sector and the public;
- (e) to authorise activities of environmental significance through an authorisation system aimed at the control and minimisation of pollution and waste;
- (f) to conduct investigations for the purpose of assessing compliance with this Act or conditions of licences under this Act;
- (g) to institute or supervise environmental monitoring and evaluation programmes;
- (h) to provide advice and assistance in relation to the development and implementation of best environmental management practices and for that purpose encourage and, where necessary, undertake or require environmental audits, emergency planning, environment improvement programmes, environment performance agreements, and similar measures;
- (i) to conduct and promote programmes and projects for the protection, restoration or enhancement of the environment;
- (j) to provide advice to the Minister in relation to the administration and enforcement of this Act and in relation to other legislation that has, or may have, an impact on the environment;
- (k) to administer and enforce this Act and perform any other functions assigned to the Authority by or under any other Act.

Amendment of s. 14—Powers of Authority

8. Section 14 of the principal Act is amended by striking out paragraph (b) and substituting the following paragraph:

- (b) if the Chief Executive of the Authority is declared under section 13 of the *Public Sector Management Act 1995* to have the powers and functions of Chief Executive of an administrative unit of the Public Service, make use of the services of the administrative unit's employees and of its facilities; and.

Insertion of ss. 14A and 14B

9. The following sections are inserted after section 14 of the principal Act:

Chief Executive

14A. (1) The office of Chief Executive of the Authority is established.

(2) The Chief Executive is, subject to the control and direction of the Board, responsible for giving effect to the policies and decisions of the Board.

(3) The Chief Executive will be appointed by the Governor, on conditions determined by the Governor, for a term, not exceeding 7 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(4) The Governor may appoint a person (on terms and conditions determined by the Governor) to act in the office of Chief Executive of the Authority.

(5) A person appointed to act in the office of the Chief Executive under subsection (4)—

- (a) may act in that office during a temporary absence of the Chief Executive or while the office of the Chief Executive is temporarily vacant; and
- (b) has, while so acting, all the powers, duties and functions of the Chief Executive.

Board of Authority

14B. (1) The *Board of the Environment Protection Authority* is established as the governing body of the Authority.

(2) The Board is to consist of not less than seven and not more than nine members.

(3) The Chief Executive of the Authority is a member of the Board *ex officio* and the remaining members of the Board will be appointed by the Governor.

(4) The Minister must consult with prescribed bodies, in accordance with the regulations, in relation to the selection of persons for appointment under this section.

(5) The Board's membership must include persons who together have, in the Governor's opinion, the following attributes:

- (a) qualifications and experience relevant to environmental protection and management or natural resources management;
- (b) practical knowledge of, and experience in, industry, commerce or economic development;
- (c) practical knowledge of, and experience in, environmental conservation and advocacy on environmental matters on behalf of the community;
- (d) practical knowledge of, and experience in, the reduction, re-use, recycling and management of waste or the environmental management industry;
- (e) legal qualifications and experience in environmental law;
- (f) qualifications and experience relevant to management generally and public sector management;
- (g) practical knowledge of, and experience in, local government.

(6) At least one member of the Board must be a woman and one a man.

(7) The Chief Executive of the Authority will chair meetings of the Board.

(8) The Governor may appoint a suitable person to be deputy of a member of the Board (other than the Chief Executive) and a person so appointed may act in the place of the member of whom he or she has been appointed deputy during any absence of that member.

Amendment of s. 15—Terms and conditions of office

10. Section 15 of the principal Act is amended—

- (a) by striking out subsection (1);
- (b) by striking out from subsection (2) "Authority (other than the person appointed to chair the Authority)" and substituting "Board";
- (c) by striking out from subsections (3), (4), (5), (6) and (7) "Authority" (wherever occurring) and substituting, in each case, "Board".

Amendment of s. 16—Proceedings of Board

11. Section 16 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:
 - (1) The Board must meet at least 12 times in each calendar year or more frequently where necessary for the performance of its functions.;
- (b) by striking out subsections (2) and (3) and substituting the following subsections:
 - (2) The Chief Executive of the Authority must preside at meetings of the Board.
 - (3) A quorum of the Board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus one.;
- (c) by striking out from subsections (4), (5), (6), (7), (8), (9), (10) and (11) "Authority" (wherever occurring) and substituting, in each case, "Board".

Amendment of s. 17—Board may establish committees and subcommittees

12. Section 17 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:
 - (1) The Board—
 - (a) must establish the committees or subcommittees required by the regulations; and
 - (b) may establish such other committees or subcommittees as the Board thinks fit,

to advise the Authority on any aspect of its functions, or to assist the Authority in the performance of its functions.;

- (b) by striking out from subsections (2) and (3) "Authority" (wherever occurring) and substituting, in each case, "Board".

Amendment of s. 18—Conflict of interests

13. Section 18 of the principal Act is amended by striking out from subsections (1) and (3) "Authority" (wherever occurring) and substituting, in each case, "Board".

Amendment of s. 19—Round-table conference

14. Section 19 of the principal Act is amended by striking out subsections (4) and (5) and substituting the following subsections:

(4) The Chief Executive of the Authority or, if the Chief Executive is unable to attend, a member of the Board must be present at a round-table conference.

(5) The Chief Executive of the Authority, or his or her nominee, will preside at a round-table conference.

Amendment of s. 24—Environment Protection Fund

15. Section 24 of the principal Act is amended by inserting after paragraph (e) of subsection (3) the following paragraph:

- (ea) any amount paid to the Authority that is required under Part 15 to be paid into the Fund;

Amendment of s. 28—Normal procedure for making policies

16. Section 28 of the principal Act is amended by striking out subsection (3a) and substituting the following subsection:

(3a) Where a committee or subcommittee of the Board is established under this Act to advise the Authority in relation to the preparation or contents of a draft environment protection policy, the Authority must obtain and consider the advice of the committee or subcommittee in relation to the policy.

Amendment of s. 79—Causing serious environmental harm

17. Section 79 of the principal Act is amended—

- (a) by striking out from subsection (1) "serious" (second occurring);
- (b) by striking out the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

Penalty: If the offender is a body corporate—\$2 000 000.

If the offender is a natural person—\$500 000 or Division 4 imprisonment or both.;

- (c) by striking out the penalty provision at the foot of subsection (2) and substituting the following penalty provision:

Penalty: If the offender is a body corporate—\$500 000.

If the offender is a natural person—\$250 000.

Amendment of s. 80—Causing material environmental harm

18. Section 80 of the principal Act is amended—

- (a) by striking out from subsection (1) "material" (second occurring);
- (b) by striking out the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

Penalty: If the offender is a body corporate—\$500 000.

If the offender is a natural person—\$250 000 or Division 5 imprisonment or both.;

- (c) by striking out the penalty provision at the foot of subsection (2) and substituting the following penalty provision:

Penalty: If the offender is a body corporate—\$250 000.

If the offender is a natural person—\$150 000.

Amendment of s. 83—Notification of incidents causing or threatening serious or material environmental harm

19. Section 83 of the principal Act is amended by striking out the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

Penalty: If the offender is a body corporate—\$250 000.

If the offender is a natural person—\$150 000.

Amendment of s. 117—Notices, orders or other documents issued by Authority or authorised officers

20. Section 117 of the principal Act is amended—

- (a) by striking out from subsection (2) "Authority" (second and third occurring) and substituting, in each case, "Board";
- (b) by striking out from subsection (3) "Authority" (second occurring) and substituting "Board".

Amendment of s. 122—Immunity from personal liability

21. Section 122 of the principal Act is amended by striking out from subsection (1) "Authority" and substituting "Board".

Amendment of s. 133—Orders by court against offenders

22. Section 133 of the principal Act is amended—

- (a) by inserting after subsection (1) the following subsections:

(1a) Where a person is convicted of an offence against this Act, the court may, in addition to any penalty it may impose, order the convicted person to pay to the Authority an amount not exceeding the court's estimation of the amount of the economic benefit acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence.

(1b) For the purposes of subsection (1a), an economic benefit obtained by delaying or avoiding costs will be taken to be an economic benefit acquired as a result of commission of an offence if commission of the offence can be attributed (in whole or in part) to that delay or avoidance.;

(b) by inserting after subsection (2) the following subsection:

(3) An amount paid to the Authority in accordance with an order under subsection (1a) must be paid into the Environment Protection Fund.

PART 3
AMENDMENT OF RADIATION PROTECTION AND CONTROL ACT 1982

Substitution of s. 19

23. Section 19 of the principal Act is repealed and the following section is substituted:

Confidentiality

19. A person must not divulge any information relating to trade processes or financial information obtained (whether by that person or some other person) in the administration or enforcement of this Act except—

- (a) as authorised by or under this Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration or enforcement of this Act; or
- (d) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act.