



Australian Capital Territory

# Environment Legislation Amendment Act 2004

A2004-23

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2003 027B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

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Australian Capital Territory

# Environment Legislation Amendment Act 2004

**A2004-23**

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An Act to amend the *Nature Conservation Act 1980*, and the *Environment Protection Act 1997*

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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2003 027B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Environment Legislation Amendment Act 2004*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

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## Part 2 Nature Conservation Act 1980

### 3 Legislation amended—pt 2

This part amends the *Nature Conservation Act 1980*.

### 4 New section 4

*insert*

### 4 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the offences against this Act in the following divisions:

- div 8.2 (Clearing native vegetation in reserved areas)
- div 8.3 (Damaging land in reserved areas).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

### 5 Division 8.1 heading

*substitute*

## Division 8.1 Restriction on activities in reserved areas

**6 Section 59 heading**

*substitute*

**59 Offences in wilderness areas**

**7 New divisions 8.2 and 8.3 and new part 8A**

*after section 60A, insert*

**Division 8.2 Clearing native vegetation in reserved areas**

**Subdivision 8.2.1 Interpretation for div 8.2**

**60B Definitions for div 8.2**

In this division:

*cause* serious or material harm, means substantially contribute directly or indirectly to the harm.

*native vegetation*, in relation to an area, means any of the following kinds of vegetation indigenous to the area:

- (a) trees;
- (b) understorey plants;
- (c) groundcover consisting of any kind of grass or herbaceous vegetation;
- (d) plants occurring in a wetland or stream.

*Ramsar wetland* means a declared Ramsar wetland under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), section 17.

**60C      Meaning of *clearing* native vegetation**

(1) In this division:

*clearing* native vegetation includes any of the following:

- (a) cutting down, felling, thinning, logging or removing native vegetation;
- (b) burning native vegetation;
- (c) doing anything else that kills or is likely to kill native vegetation.

(2) Native vegetation is *cleared* in an area if vegetation cleared in the area is substantially native vegetation.

**60D      Meaning of clearing causing *serious harm* to reserved area**

(1) The clearing of native vegetation in a reserved area causes *serious harm* to the area if—

- (a) it causes the loss of an endangered ecological community or part of an endangered ecological community; or
- (b) it causes a substantial loss of habitat of native flora or fauna; or
- (c) it happens in a Ramsar wetland; or
- (d) the total area cleared of native vegetation is more than 2 hectares; or
- (e) the cost of action needed to restore native vegetation to the area cleared is more than the prescribed amount.

(2) In this section:

*prescribed amount* means—

- (a) \$50 000; or

- (b) if a higher amount is prescribed under the regulations—that amount.

**60E Meaning of clearing causing *material harm* to reserved area**

- (1) The clearing of native vegetation in a reserved area causes *material harm* to the area if—
  - (a) it happens in a wetland other than a Ramsar wetland; or
  - (b) the total area cleared of native vegetation is more than 0.2 hectares but not more than 2 hectares; or
  - (c) the cost of action needed to restore native vegetation to the area cleared is within the prescribed range.
- (2) In this section:  
*prescribed range* means—
  - (a) more than \$5 000 but not more than \$50 000; or
  - (b) if a higher range is prescribed under the regulations—that range.

**Subdivision 8.2.2 Offences of clearing native vegetation in reserved areas**

**60F Clearing causing serious harm**

- (1) A person commits an offence if—
  - (a) the person clears native vegetation in a reserved area; and
  - (b) the clearing causes serious harm to the area; and
  - (c) the person is reckless about whether—
    - (i) the vegetation is native vegetation; and
    - (ii) the area cleared is in a reserved area; and



(iii) the clearing causes serious harm to the reserved area.

Maximum penalty: 2 000 penalty units, imprisonment for 5 years or both.

(2) A person commits an offence if—

(a) the person clears native vegetation in a reserved area; and

(b) the clearing causes serious harm to the area; and

(c) the person is negligent about whether—

(i) the vegetation is native vegetation; and

(ii) the area cleared is in a reserved area; and

(iii) the clearing causes serious harm to the reserved area.

Maximum penalty: 1 500 penalty units, imprisonment for 3 years or both.

(3) A person commits an offence if—

(a) the person clears native vegetation in a reserved area; and

(b) the clearing causes serious harm to the reserved area.

Maximum penalty: 1 000 penalty units.

(4) An offence against subsection (3) is a strict liability offence.

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

## **60G Clearing causing material harm**

(1) A person commits an offence if—

(a) the person clears native vegetation in a reserved area; and

(b) the clearing causes material harm to the area; and

- (c) the person is reckless about whether—
  - (i) the vegetation is native vegetation; and
  - (ii) the area cleared is in a reserved area; and
  - (iii) the clearing causes material harm to the reserved area.

Maximum penalty: 1 000 penalty units, imprisonment for 2 years or both.

- (2) A person commits an offence if—
  - (a) the person clears native vegetation in a reserved area; and
  - (b) the clearing causes material harm to the area; and
  - (c) the person is negligent about whether—
    - (i) the vegetation is native vegetation; and
    - (ii) the area cleared is in a reserved area; and
    - (iii) the clearing causes material harm to the reserved area.

Maximum penalty: 750 penalty units, imprisonment for 1 year or both.

- (3) A person commits an offence if—
  - (a) the person clears native vegetation in a reserved area; and
  - (b) the clearing causes material harm to the area.

Maximum penalty: 500 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

**60H Clearing generally**

- (1) A person commits an offence if the person clears native vegetation in a reserved area.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

**60I Lawful clearing**

Section 60F, section 60G and section 60H do not apply to the clearing of native vegetation—

- (a) in accordance with a licence under this Act; or
- (b) in accordance with an approval for a development under the *Land (Planning and Environment) Act 1991*, part 6; or
- (c) in accordance with a fuel management plan under the *Bushfire Act 1936*, part 6 (Bushfire-prone government land); or
- (d) if it is necessary and appropriate to avoid an imminent risk of—
- (i) serious harm to a person; or
  - (ii) substantial damage to property; or
  - (iii) serious or material harm to the reserved area.

**60J Alternative verdicts for offences against s 60F and s 60G**

- (1) This section applies if, in a prosecution for a relevant offence, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an alternative offence.

(2) The trier of fact may find the defendant guilty of the alternative offence but only if the defendant has been given procedural fairness in relation to that finding of guilt.

(3) In this section:

*alternative offence*, in relation to a relevant offence, means an offence mentioned in table 60J, column 3 for the offence.

*relevant offence* means an offence mentioned in table 60J, column 2.

**Table 60J**

<b>column 1 item</b>	<b>column 2 relevant offence</b>	<b>column 3 alternative offence</b>
1	section 60F (1) (clearing, recklessly causing serious harm)	section 60F (2) (clearing, negligently causing serious harm) section 60F (3) (clearing, causing serious harm)
2	section 60F (2) (clearing, negligently causing serious harm)	section 60F (3) (clearing, causing serious harm)
3	section 60G (1) (clearing, recklessly causing material harm)	section 60G (2) (clearing, negligently causing material harm) section 60G (3) (clearing, causing material harm)
4	section 60G (2) (clearing, negligently causing material harm)	section 60G (3) (clearing, causing material harm)

**60K Order for restoration etc—clearing offences**

(1) This section applies if a court convicts or finds a person guilty of an offence against any of the following sections in relation to the clearing of native vegetation in a reserved area:

- (a) section 60F (Clearing causing serious harm);
- (b) section 60G (Clearing causing material harm);

- (c) section 60H (Clearing generally).
- (2) The court may, in addition to or instead of any other penalty it may impose for the offence, order the person to do any of the following:
- (a) take any action the court considers appropriate, including action—
- (i) to mitigate the effect of the clearing; and
  - (ii) to restore native vegetation in the area cleared;
- (b) pay an amount to the Territory for reasonable costs incurred, or to be incurred, by the Territory in taking action—
- (i) to mitigate the effect of the clearing; or
  - (ii) to restore native vegetation in the area cleared; or
  - (iii) to monitor the outcome of action ordered under paragraph (a) or action mentioned in subparagraph (i) or (ii).
- (3) The court may order the person to provide security for the performance of any obligation under the order.

## **Division 8.3                      Damaging land in reserved areas**

### **Subdivision 8.3.1            Interpretation for div 8.3**

#### **60L                      Definitions for div 8.3**

In this division:

*cause* serious or material harm, means substantially contribute directly or indirectly to the harm.

*damage*, to land, includes the destruction of, or removal from, the land of any of the following:

- (a) clay;

- (b) gravel;
- (c) rock;
- (d) sand;
- (e) soil;
- (f) stone.

**Examples of damage to land**

- 1 crushing rocks
- 2 contaminating soil
- 3 heaping rocks, stones, gravel, sand, clay or soil
- 4 altering the soil profile

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**60M Meaning of damage causing *serious harm* to reserved area**

- (1) Damage to land in a reserved area causes *serious harm* to the area if—
  - (a) it causes the loss of an endangered ecological community or part of an endangered ecological community; or
  - (b) it causes a substantial loss of habitat of native flora or fauna; or
  - (c) the total area damaged is more than 2 hectares; or
  - (d) the cost of action needed to rehabilitate the land damaged is more than the prescribed amount.
- (2) In this section:  
*prescribed amount* means—
  - (a) \$50 000; or

- (b) if a higher amount is prescribed under the regulations—that amount.

**60N Meaning of damage causing *material harm* to a reserved area**

- (1) Damage to land in a reserved area causes *material harm* to the area if the cost of action needed to rehabilitate the area damaged is within the prescribed range.

- (2) In this section:

*prescribed range* means—

- (a) more than \$5 000 but not more than \$50 000; or
- (b) if a higher range is prescribed under the regulations—that range.

**Subdivision 8.3.2 Offences of damaging land in reserved areas**

**60O Damage causing serious harm**

- (1) A person commits an offence if—
  - (a) the person damages land in a reserved area; and
  - (b) the damage causes serious harm to the area; and
  - (c) the person is reckless about whether—
    - (i) the land damaged is in a reserved area; and
    - (ii) the damage causes serious harm to the area.

Maximum penalty: 2 000 penalty units, imprisonment for 5 years or both.

- (2) A person commits an offence if—
  - (a) the person damages land in a reserved area; and

- (b) the damage causes serious harm to the area; and
- (c) the person is negligent about whether—
  - (i) the land damaged is in a reserved area; and
  - (ii) the damage causes serious harm to the area.

Maximum penalty: 1 500 penalty units, imprisonment for 3 years or both.

- (3) A person commits an offence if—
  - (a) the person damages land in a reserved area; and
  - (b) the damage causes serious harm to the area.

Maximum penalty: 1 000 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

## **60P Damage causing material harm**

- (1) A person commits an offence if—
  - (a) the person damages land in a reserved area; and
  - (b) the damage causes material harm to the area; and
  - (c) the person is reckless about whether—
    - (i) the land damaged is in a reserved area; and
    - (ii) the damage causes material harm to the area.

Maximum penalty: 1 000 penalty units, imprisonment for 2 years or both.

- (2) A person commits an offence if—
  - (a) the person damages land in a reserved area; and



- (b) the damage causes material harm to the area; and
- (c) the person is negligent about whether—
  - (i) the land damaged is in a reserved area; and
  - (ii) the damage causes material harm to the area.

Maximum penalty: 750 penalty units, imprisonment for 1 year or both.

- (3) A person commits an offence if—
  - (a) the person damages land in a reserved area; and
  - (b) the damage causes material harm to the area.

Maximum penalty: 500 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

### **60Q Damage causing harm**

- (1) A person commits an offence if—
  - (a) the person damages land in a reserved area; and
  - (b) the damage causes harm to the area.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

**60R Lawful damage**

Section 60O, section 60P and section 60Q do not apply to damage to land—

- (a) in accordance with a licence under this Act; or
- (b) in accordance with an approval for a development under the *Land (Planning and Environment) Act 1991*, part 6; or
- (c) in accordance with a fuel management plan under the *Bushfire Act 1936*, part 6 (Bushfire-prone government land); or
- (d) if it is necessary and appropriate to avoid an imminent risk of—
  - (i) serious harm to a person; or
  - (ii) substantial damage to property; or
  - (iii) serious or material harm to the reserved area.

**60S Alternative verdicts for offences against s 60O and s 60P**

- (1) This section applies if, in a prosecution for a relevant offence, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an alternative offence.
- (2) The trier of fact may find the defendant guilty of the alternative offence but only if the defendant has been given procedural fairness in relation to that finding of guilt.
- (3) In this section:

*alternative offence*, in relation to a relevant offence, means an offence mentioned in table 60S, column 3 for the offence.

*relevant offence* means an offence mentioned in table 60S, column 2.

**Table 60S**

<b>column 1 item</b>	<b>column 2 relevant offence</b>	<b>column 3 alternative offence</b>
1	section 60O (1) (damage, recklessly causing serious harm)	section 60O (2) (damage, negligently causing serious harm) section 60O (3) (damage, causing serious harm)
2	section 60O (2) (damage, negligently causing serious harm)	section 60O (3) (damage, causing serious harm)
3	section 60P (1) (damage, recklessly causing material harm)	section 60P (2) (damage, negligently causing material harm) section 60P (3) (damage, causing material harm)
4	section 60P (2) (damage, negligently causing material harm)	section 60P (3) (damage, causing material harm)

**60T Order for rehabilitation etc—damage offences**

- (1) This section applies if a court convicts or finds a person guilty of an offence against any of the following sections in relation to the damaging of land in a reserved area:
  - (a) section 60O (Damage causing serious harm);
  - (b) section 60P (Damage causing material harm);
  - (c) section 60Q (Damage causing harm).
- (2) The court may, in addition to or instead of any other penalty it may impose for the offence, order the person to do any of the following:
  - (a) take any action the court considers appropriate, including action—
    - (i) to mitigate the effect of the damage; and
    - (ii) to rehabilitate the land damaged as closely as possible to its condition before the damage;

- (b) pay an amount to the Territory for reasonable costs incurred, or to be incurred, by the Territory in taking action—
  - (i) to mitigate the effect of the damage; or
  - (ii) to rehabilitate the land damaged as closely as possible to its condition before the damage; or
  - (iii) to monitor the outcome of action ordered under paragraph (a) or action mentioned in subparagraph (i) or (ii).
- (3) The court may order the person to provide security for the performance of any obligation under the order.

## **Part 8A Injunctive orders**

### **60U Application for order**

- (1) An application for an order under section 60V may be made to the Supreme Court by—
  - (a) the conservator; or
  - (b) someone else with the court's leave.
- (2) The Supreme Court may grant leave under subsection (1) (b) only if satisfied that—
  - (a) the person has asked the conservator to apply for an order under section 60V and the conservator has failed to do so within a reasonable time; and
  - (b) it is in the public interest that the proceeding should be brought.

**60V Making of order**

- (1) This section applies if, on an application under section 60U, the Supreme Court is satisfied that—
  - (a) the respondent has contravened, is contravening or is likely to contravene this Act; and
  - (b) an order under this section is necessary for the protection or conservation of native animals or plants or a reserved area.
- (2) The court may—
  - (a) make an order restraining the respondent from contravening this Act (including an order requiring the respondent to do something); and
  - (b) make any other order the court considers appropriate for giving effect to that order.
- (3) The court may make the order whether or not it appears to the court that—
  - (a) the respondent intends to contravene this Act, contravene this Act again or continue to contravene this Act; or
  - (b) the person has previously contravened this Act; or
  - (c) the contravention affects, or is likely to affect, the health or safety of a person or damage property or the environment.

**60W Interim order**

The Supreme Court may make an interim order under section 60V before deciding an application for an order under that section.

**60X Costs—public interest**

In deciding the amount of costs to be awarded against a party to a proceeding under section 60V or section 60W, the Supreme Court

must take into account the public interest in protecting the environment.

**60Y Security for costs etc**

The Supreme Court may order an applicant for an order under section 60V to give—

- (a) security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed; or
- (b) an undertaking about the payment of any amount that may be awarded against the applicant under section 60Z.

**60Z Compensation in relation to injunctive proceedings**

- (1) This section applies if, on an application for an order under section 60V alleging a contravention of this Act, the Supreme Court is satisfied that—
  - (a) there has not been a contravention by the respondent; and
  - (b) the respondent has suffered loss or damage because of the actions of the applicant in bringing the proceeding; and
  - (c) in the circumstances it is appropriate to make an order under this section.
- (2) The court may, on the application of the respondent, in addition to any order about costs, order the applicant to pay the respondent an amount, decided by the court, to compensate the respondent for the loss or damage suffered by the respondent.

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**8 New section 63 (1A)**

*insert*

- (1A) Without limiting subsection (1), the conditions to which a licence may be granted for clearing native vegetation, or damaging land, in a reserved area, include the following:
- (a) a condition requiring the licensee to tell the conservator before beginning any activity to which the licence relates;
  - (b) a condition requiring the licensee to restore native vegetation in the affected part of the reserved area, as closely as possible, to its condition before being cleared under the licence;
  - (c) a condition requiring the licensee to rehabilitate land in the affected part of the reserved area, as closely as possible, to its condition before being damaged under the licence;
  - (d) a condition requiring that any activity to which the licence relates must be carried out in accordance with a management plan approved under subsection (3).

**9 Section 76**

*substitute*

**76 Provisions not to apply to conservation officers**

The following provisions do not apply to a conservation officer in the exercise of a function under this Act:

- (a) section 24 (Nest of native animals);
- (b) section 25 (Killing native animals);
- (c) section 26 (Taking native animals);
- (d) section 27 (Keeping animals);
- (e) section 39 (Release of animals from captivity);

- (f) section 42 (Taking plants);
- (g) section 43 (Preservation of native timber);
- (h) section 45AB (Possession of prohibited organisms);
- (i) section 45AC (Controlled organisms);
- (j) section 55 (Rubbish and fires in reserved areas);
- (k) section 56 (Activities in reserved areas);
- (l) section 57 (Taking animals and plants into reserved areas);
- (m) section 60F (Clearing causing serious harm);
- (n) section 60G (Clearing causing material harm);
- (o) section 60H (Clearing generally);
- (p) section 60O (Damage causing serious harm);
- (q) section 60P (Damage causing material harm);
- (r) section 60Q (Damage causing harm).

## 10 New section 80AB

*insert*

### 80AB Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
  - (a) the corporation contravenes a provision of this Act; and
  - (b) the contravention is an offence against this Act (a *relevant offence*); and
  - (c) the officer was reckless about whether, the contravention would happen; and
  - (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and



- (e) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
- (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (i) that the corporation arranges regular professional assessments of the corporation's compliance with the contravened provision;
  - (ii) that the corporation implements any appropriate recommendation arising from such an assessment;
  - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
- (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (4) Subsection (3) does not limit the matters to which the court may have regard.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

## 11 Dictionary, new definitions

*insert*

*cause*—

- (a) for division 8.2 (Clearing native vegetation in reserved areas)—see section 60B; and
- (b) for division 8.3 (Damaging land in reserved areas)—see section 60L.

*clearing*, for division 8.2 (Clearing native vegetation in reserved areas)—see section 60C.

*damage*, to land, for division 8.3 (Damaging land in reserved areas)—see section 60L.

*material harm*, to a reserved area—

- (a) for division 8.2 (Clearing native vegetation in reserved areas)—see section 60E; and
- (b) for division 8.3 (Damaging land in reserved areas)—see section 60N.

*native vegetation*, for division 8.2 (Clearing native vegetation in reserved areas)—see section 60B.

*Ramsar wetland*, for division 8.2 (Clearing native vegetation in reserved areas)—see section 60B.

*serious harm*, to a reserved area—

- (a) for division 8.2 (Clearing native vegetation in reserved areas)—see section 60D; and
- (b) for division 8.3 (Damaging land in reserved areas)—see section 60M.

*serious harm*, to a person—see the Criminal Code, dictionary.

**12 Dictionary, definition of *endangered*, paragraph (a)**

*omit*

in relation to a community

*substitute*

in relation to an ecological community

**13 Nature Conservation Act 1980—renumbering**

*renumber provisions when Act next republished under Legislation Act*

## Part 3 Environment Protection Act 1997

### 14 Legislation amended—pt 3

This part amends the *Environment Protection Act 1997*.

### 15 New section 158A (3) (c)

*insert*

- (c) document the effect of the reporter's actions on the environment, including details of the reporter's compliance with relevant environmental laws and standards and any contravention of a particular environmental law or standard; and

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### Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 1 April 2004.

**2 Notification**

Notified under the Legislation Act on 19 May 2004.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Environment Legislation Amendment Bill 2004, which was passed by the Assembly on 13 May 2004.

Clerk of the Legislative Assembly

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