



Australian Capital Territory

Environment Protection Amendment Act 2014

A2014-52

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Australian Capital Territory

Environment Protection Amendment Act 2014

A2014-52

An Act to amend the *Environment Protection Act 1997* and the *Environment Protection Regulation 2005*

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

Part 1 Preliminary

1 Name of Act

This Act is the *Environment Protection Amendment Act 2014*.

2 Commencement

- (1) This Act (other than section 7, sections 9 to 12 and section 33) commences on the day after this Act's notification day.

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

- (2) Section 7, sections 9 to 12 and section 33 commence on a day fixed by the Minister by written notice.

Note 1 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 2 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).

3 Legislation amended

This Act amends the *Environment Protection Act 1997* and the *Environment Protection Regulation 2005*.

Part 2 Environment Protection Act 1997

4 Objects Section 2

omit

5 Offences against Act—application of Criminal Code etc Section 3B, note 1

substitute

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 92 (Fuel sales—provision of information)
- s 92A (Confidential commercial information must not be disclosed)
- s 136K (Contravention of enforceable undertakings)

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*).

Certain provisions of the [Criminal Code](#), ch 2 (the *applied provisions*) apply to all offences against this Act. The applied provisions include geographical application provisions (see Code, s 10).

6 New sections 3C and 3D

insert

3C Objects of Act

- (1) The objects of this Act are to—
 - (a) protect and enhance the quality of the environment; and
 - (b) prevent environmental degradation and risk of harm to human health by promoting the following:
 - (i) pollution prevention;
 - (ii) clean production technology;
 - (iii) reuse and recycling of materials;
 - (iv) waste minimisation programs; and
 - (c) require people engaging in polluting activities to make progressive environmental improvements; and
 - (d) achieve effective integration of environmental, economic and social considerations in decision-making processes; and
 - (e) facilitate the implementation of national environment protection measures under national scheme laws; and
 - (f) provide for the monitoring and reporting of environmental quality on a regular basis; and
 - (g) ensure that contaminated land is managed having regard to human health and the environment; and
 - (h) coordinate activities needed to protect, restore or improve the ACT environment; and

- (i) establish a process for investigating and, where appropriate, remediating land areas where contamination is causing or is likely to cause a significant risk—
 - (i) of harm to human health; or
 - (ii) of material environmental harm or serious environmental harm.
- (2) In this section:
 - national scheme law* means—
 - (a) the *National Environment Protection Council Act 1994* (Cwlth); and
 - (b) the *National Environment Protection Council Act 1994*.

3D Principles applying to Act

- (1) A person administering this Act must have regard to the following principles where relevant:
 - (a) the principle of a shared responsibility for the environment, including through—
 - (i) acknowledging environmental needs in economic and social decision-making; and
 - (ii) public education about and public involvement in decisions about protection, restoration and enhancement of the environment;
 - (b) the precautionary principle;
 - (c) the inter-generational equity principle;
 - (d) the waste minimisation principle;
 - (e) the polluter pays principle.

(2) In this section:

inter-generational equity principle means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

polluter pays principle means that polluters should bear the appropriate share of the costs that arise from their activities.

precautionary principle means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

waste minimisation principle means controlling the generation, storage, collection, transportation, treatment and disposal of waste to reduce, minimise and, where practical, eliminate harm to the environment.

7 Section 10

substitute

10 Criminal liability of the Territory

The Territory is liable for an offence against this Act.

8 Inspection of documents **Section 19 (1) (q)**

substitute

(q) the contaminated sites register;

**9 Register of contaminated sites
Section 21A (2)**

substitute

- (2) The register—
- (a) may be in electronic form; and
 - (b) must contain particulars of land in relation to—
 - (i) an order under section 91C (1) (Order to assess whether land contaminated), section 91D (1) (Order to remediate land) or section 125 (2) or (3) (Environment protection orders); and
 - (ii) a requirement to commission an environmental audit under section 76 (2) (Authority may require environmental audit); and
 - (iii) a notice under section 76A (1) (Requests for auditor's statements) not relating to an order or requirement mentioned in subparagraph (i) or (ii).

10 Section 21A (3)

omit

11 Section 21A (4) (b)

after

125 (2)

insert

or (3)

12 Section 21A (5)

substitute

- (5) The authority must remove an entry from the register—
- (a) for an entry made under subsection (2) (b) (i) in relation to an order under section 91C (1)—within 60 days after receiving an environmental audit of assessment under section 91C in relation to the entry unless the authority has, within that period, made an order under section 91D (1) or section 125 (2) or (3); or
 - (b) for an entry made under subsection (2) (b) (ii) or (iii)—within 60 days after receiving the audit required under section 76 (2) or the site audit statement mentioned in section 76A (2) in relation to the entry unless, within that period—
 - (i) the authority has entered into an environmental protection agreement under section 38 (Entering agreements); or
 - (ii) a condition or annotation has been included on the crown lease or title for the land in relation to the environmental audit; or
 - (c) in any case—if the authority decides, based on advice from an approved auditor under section 75 (Certain auditors to be approved), that ongoing management of the land is no longer required.
- (5A) As soon as practicable after entering particulars of land in the register or removing an entry from the register, the authority must give written notice of the entry or removal to—
- (a) the planning and land authority; and
 - (b) if the land is in a designated area—the national capital authority.

13 Section 38

substitute

38 Entering agreements

- (1) Under section 42 (2) (a) or otherwise giving effect to the objects of this Act, the Authority may enter into an environmental protection agreement in relation to an activity with the person who is conducting, or proposing to conduct, the activity.
- (2) The authority must give the person in subsection (1) a copy of the agreement.

**14 Form and terms of agreements
Section 39 (c) (i) and (ii)**

omit

caused by the activity

substitute

caused or likely to be caused by the activity

**15 Compliance with authorisation
Section 45 (2) (a) (ii)**

omit

environmental harm was caused

substitute

environmental harm was caused or likely to be caused

16 Section 45 (2) (b)

after

caused

insert

, or likely to be caused,

**17 Grant
New section 49 (6A)**

insert

(6A) The authority must give written notice of its decision to anyone who has made a submission in relation to the application under section 48 (1) (c).

Note See s 136 for the requirement to notify other people.

**18 Notification of grant
Section 50 (5)**

omit

19 Section 50 (6)

omit

, and published in a daily newspaper,

**20 Kinds of conditions
Section 51 (a) (vii)**

after

environmental harm

insert

or likely environmental harm

**21 Notice of intention to vary an authorisation
Section 62 (2) (b) (i)**

omit

will cause,

substitute

will cause or is likely to cause,

**22 Suspension and cancellation
Section 63 (1) (a) (ii)**

omit

or is happening

substitute

, is happening or is likely to happen

**23 Requests for auditor's statements
Section 76A (1)**

omit

statement (a *site audit statement*)

substitute

written notice

24 New section 76A (1) (aa)

insert

(aa) reasons for the person making the request; and

25 Section 76A (2), new note

insert

Note If a form is approved under s 165A for this provision, the form must be used.

**26 Claim on or realisation of financial assurance
Section 88 (1) (a)**

after

caused

insert

, or likely to be caused,

**27 Notice before claim on or realisation of a financial
assurance
Section 89 (1) (a)**

after

caused

insert

, or likely to be caused,

28 Section 89 (1) (b)

after

environmental harm

insert

or likely environmental harm

**29 Recovery of extra costs
Section 90 (1)**

after

caused

insert

, or likely to be caused,

**30 Procedure if samples taken
Section 102**

omit

**31 Information discovery orders
Section 133 (1) (a)**

omit

knowledge of

32 Part 14

substitute

**Part 14 Notification and review of
decisions****135 Definitions—pt 14**

In this part:

internally reviewable decision means a decision mentioned in schedule 3, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

reviewable decision means—

- (a) a decision mentioned in schedule 3, column 3 under a provision of this Act mentioned in column 2 in relation to the decision; or
- (b) a decision made on internal review.

136 Internal review and reviewable decision notices

- (1) If the authority makes an internally reviewable decision, the authority must give an internal review notice to each entity mentioned in schedule 3, column 4 in relation to the decision.
- (2) If the authority makes a reviewable decision, the authority must give a reviewable decision notice to each entity mentioned in schedule 3, column 4 in relation to the decision.

Note 1 The authority must also take reasonable steps to give an internal review notice and a reviewable decision notice to anyone whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A and s 67B).

Note 2 The requirements for internal review notices and reviewable decision notices are prescribed under the [ACT Civil and Administrative Tribunal Act 2008](#).

136A Applications for internal review

- (1) The following may apply to the authority for review of an internally reviewable decision:
 - (a) an entity mentioned in schedule 3, column 4 in relation to the decision;
 - (b) any other person whose interests are affected by the decision.
- (2) The application must—
 - (a) be in writing; and
 - (b) state the applicant's name and address; and

- (c) set out the applicant's reasons for making the application.
- (3) The application must be given to the authority within—
 - (a) 14 days after the day the applicant is given the internal review notice for the decision; or
 - (b) any longer period allowed by the authority before or after the end of the 14-day period.

136B Applications not stay internally reviewable decisions

The making of an application for review of an internally reviewable decision does not affect the operation of the decision.

136C Review by authority

- (1) The authority must review the internally reviewable decision.
- (2) The review must happen within 28 days (the *28-day period*) after the day the authority receives the application for review of the internally reviewable decision.
- (3) The authority must—
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and substitute another decision.
- (4) If the decision is not varied or set aside within the 28-day period, the decision is taken to have been confirmed by the authority.

136D Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 3, column 4 in relation to the decision;

(b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

33 New part 14A

insert

Part 14A Enforceable undertakings

136E Definitions—pt 14A

In this part:

enforceable undertaking means an environmental undertaking that has been accepted under section 136G.

environmental undertaking—see section 136F (2).

136F Making of environmental undertakings

- (1) This section applies if the authority alleges that a person has committed an offence against division 15.1 (Environmental offences).
- (2) The person may give the authority a written undertaking (an *environmental undertaking*) in relation to the offence.
- (3) The environmental undertaking must—
 - (a) state that, on acceptance by the authority, it is an enforceable undertaking under this Act; and
 - (b) acknowledge that the authority alleges that the person has committed an offence against a stated provision of this Act; and
 - (c) identify the facts and circumstances of the alleged offence; and

(d) include 1 or more undertakings relating to the alleged offence.

Examples—undertakings

- 1 to stop certain conduct
- 2 to take particular action to compensate people adversely affected by an alleged offence committed against a stated provision of this Act
- 3 to take particular action to rectify a state of affairs that arose as a direct or indirect result of the alleged offence
- 4 to take particular action (including implementing particular systems) to prevent future offences against this Act
- 5 to implement publicity or education programs

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).

136G Acceptance of environmental undertaking

- (1) The authority may accept an environmental undertaking by written notice given to the person who gave the undertaking.
- (2) On acceptance of the undertaking, the undertaking becomes an enforceable undertaking.

136H Withdrawal from or amendment of enforceable undertaking

- (1) The person who gave an enforceable undertaking may withdraw from or amend the undertaking only with the authority's written agreement.
- (2) However, the undertaking may not be amended to provide for a different alleged offence.

136I Ending enforceable undertaking

- (1) The authority may end an enforceable undertaking by written notice to the person who gave the undertaking if satisfied that the undertaking is no longer necessary or desirable.

- (2) The authority may act under subsection (1) on the authority's own initiative or on the application of the person who gave the undertaking.
- (3) The undertaking ends when the person who gave the undertaking receives the authority's notice.

136J Undertaking not admission of fault etc

- (1) This section applies if a person gives the authority an environmental undertaking in relation to an alleged offence, whether or not the undertaking is accepted by the authority.
- (2) Giving the environmental undertaking is not—
 - (a) an express or implied admission of fault or liability by the person in relation to the alleged offence; and
 - (b) relevant to deciding fault or liability in relation to the alleged offence.

136K Contravention of enforceable undertakings

- (1) If the authority believes on reasonable grounds that an enforceable undertaking has been contravened by anyone, the authority may apply to the Magistrates Court for an order under subsection (2).
- (2) If the Magistrates Court is satisfied that the enforceable undertaking has been contravened, the court may make 1 or more of the following orders:
 - (a) an order requiring the person who gave the undertaking to ensure that the undertaking is not contravened;
 - (b) an order requiring the person who gave the undertaking to pay to the Territory the amount assessed by the court as the value of the benefits anyone derived, directly or indirectly, from the contravention of the undertaking;

- (c) an order that the court considers appropriate requiring the person who gave the undertaking to compensate someone who has suffered loss or damage because of the contravention of the undertaking;
 - (d) any other order that the court considers appropriate.
- (3) A person commits an offence if the person fails to take all reasonable steps to comply with an order under subsection (2).

Maximum penalty: 200 penalty units.

136L Effect of enforceable undertaking on other proceedings

A proceeding may not be brought against a person for an alleged offence against division 15.1 (Environmental offences) if—

- (a) an enforceable undertaking is in force in relation to the alleged offence; or
- (b) the person has complied with an enforceable undertaking in relation to the alleged offence.

34 Causing serious environmental harm Section 137

after

environmental harm

insert

or likely serious environmental harm

**35 Causing material environmental harm
Section 138**

after

environmental harm

insert

or likely material environmental harm

**36 Causing environmental harm
Section 139**

after

environmental harm

insert

or likely environmental harm

**37 Liability limited to harm caused by excess pollutants
Section 144**

after

environmental harm

insert

or likely environmental harm

**38 Criminal liability of executive officers
Section 147 (6), definition of *relevant offence*,
paragraphs (f) to (h)**

substitute

(f) section 137 (Causing serious environmental harm or likely serious environmental harm);

- (g) section 138 (Causing material environmental harm or likely material environmental harm);
- (h) section 139 (Causing environmental harm or likely environmental harm);

39 **Due diligence**
Section 153

after

environmental harm

insert

or likely environmental harm

40 **Defence of emergency**
Section 154 (2)

after

environmental harm

insert

or likely environmental harm

41 **Additional court orders**
Section 157

after

environmental harm

insert

or likely environmental harm

**42 Recovery of clean-up costs
Section 160**

after

environmental harm

insert

or likely environmental harm

**43 Regulation-making power
New section 166 (7A)**

insert

(7A) A regulation may make provision in relation to preventing or limiting pollution on development sites, including regulating or prohibiting certain conduct.

**44 Activities requiring environmental authorisation
Schedule 1, section 1.1, new definition of *hazardous component***

insert

hazardous component, of electronic waste, means any component of the electronic waste that has chemical, physical or biological properties with the potential to cause harm to a person, property or the environment.

45 Schedule 1, table 1.2, item 30

substitute

30	the storage of petroleum products in a facility designed to store more than 50m ³ of products
----	----------------------------------------------------------------------------------------------------------

46 Schedule 1, table 1.2, new items 48 and 49*insert*

48	the operation of a waste transfer station receiving 30 000t or more of waste each year
49	the operation of a commercial facility for the treatment of the hazardous components of electronic waste

47 Schedule 1, table 1.3, new item 8*insert*

8	the operation of a commercial facility for the storage and dismantling of electronic waste
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48 Dictionary, definition of *development**substitute****development*** means the following:

- (a) building, altering, repairing or demolishing a building or structure on land;
- (b) disposing of waste materials generated by altering or demolishing a building or structure on land;
- (c) carrying out earthworks or other construction work on or under land;
- (d) carrying out work that would affect the landscape of land.

49 Dictionary, new definitions

insert

electronic equipment means equipment that requires an electric current or electromagnetic field to function.

Examples—electronic equipment

televisions, fridges, computers, mobile phones, drills, remote control cars

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).

electronic waste means waste electronic equipment.

enforceable undertaking, for part 14A (Enforceable undertakings)—see section 136E.

environmental undertaking, for part 14A (Enforceable undertakings)—see section 136F (2).

internally reviewable decision, for part 14 (Notification and review of decisions)—see section 135.

waste transfer station means a facility that sorts, consolidates or temporarily stores solid waste (including municipal waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse.

Part 3 Environment Protection Regulation 2005

50 Section 44

substitute

44 Pollution of waterways

- (1) A person commits an offence if the person pollutes a waterway.
Maximum penalty: 10 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) In this section:

pollutes a waterway—a person *pollutes a waterway* if the person—

- (a) allows, causes, or fails to prevent the discharge, emission, depositing, disturbance or escape of a pollutant into or on a waterway; or
- (b) places a pollutant in a position where it is likely to pollute a waterway by entering a stormwater system or other entry into a waterway.

51 Development waste not to enter stormwater system or waterways Section 45 (3)

omit

**52 Areas near development to be kept clear
Section 46 (3)**

omit

**53 Entries to and exits from land to be kept stable
Section 47 (4)**

omit

**54 Consignment authorisation for controlled waste
Section 58 (1) (b)**

substitute

- (b) does not have a consignment authorisation for the movement of the waste.

55 New section 58 (2A)

insert

- (2A) A person in charge of a facility commits an offence if the person—
- (a) accepts a consignment of controlled waste; and
 - (b) does not have a consignment authorisation for the movement of the waste.

Maximum penalty: 10 penalty units.

56 New part 8A*insert***Part 8A Erosion and sediment control measures for development sites****66A Meaning of *erosion and sediment control measures*—pt 8A**

In this part:

erosion and sediment control measures means measures to prevent or limit pollution on a development site.

Examples—erosion and sediment control measures

- diversion structures
- dust suppression
- geotextile sediment and control barriers
- sediment control ponds
- stabilised access or egress points

Note An example is part of the regulation, 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).

66B Development sites 0.3ha or greater

A person who is in charge of development on a development site commits an offence if—

- (a) the site is 0.3ha or greater; and
- (b) the person does not install and maintain on the site erosion and sediment control measures required under the environmental protection agreement that is in effect in relation to the development.

Maximum penalty: 10 penalty units.

66C Development sites less than 0.3ha

A person who is in charge of development on a development site commits an offence if—

- (a) the site is less than 0.3ha; and
- (b) the person does not install and maintain on the site erosion and sediment control measures approved by a building certifier.

Maximum penalty: 10 penalty units.

57 Noise zones, noise standards and conditions
Schedule 2, table 2.3, new item 21

insert

21	<p>noise emitted in the course of—</p> <ul style="list-style-type: none"> (a) building work that requires a building approval under the <i>Building Act 2004</i>, division 3.3; or (b) development 	<ul style="list-style-type: none"> (a) all of the following: <ul style="list-style-type: none"> (i) the noise is emitted from a place in noise zone A or B; (ii) all relevant noise reduction measures mentioned in AS 2436, as in force from time to time, are implemented; (iii) the noise is emitted between 6 am and 8 pm; or (b) all of the following: <ul style="list-style-type: none"> (i) the noise is emitted from a place other than a place in noise zone A or B; (ii) the building work or development will be finished within 2 weeks after the day it started; (iii) all relevant noise reduction measures mentioned in AS 2436, as in force from time to time, are implemented; (iv) the noise is emitted— <ul style="list-style-type: none"> (A) between 7 am and 8 pm on Monday to Saturday; or
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		<p>(B) between 8 am and 8 pm on Sunday or a public holiday; or</p> <p>(c) all of the following:</p> <p>(i) the noise is emitted from a place other than a place in noise zone A or B;</p> <p>(ii) the building work or development will not be finished within 2 weeks after the day it started;</p> <p>(iii) all relevant noise reduction measures mentioned in AS 2436, as in force from time to time, are implemented;</p> <p>(iv) the noise is emitted between 7 am and 6 pm on Monday to Saturday, excluding public holidays</p>
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58 Dictionary, note 3

insert

- development

59 Dictionary, new definition of *erosion and sediment control measures*

insert

erosion and sediment control measures, for part 8A (Erosion and sediment control measures for development sites)—see section 66A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 18 September 2014.

2 Notification

Notified under the [Legislation Act](#) on 11 November 2014.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Environment Protection Amendment Bill 2014, which was passed by the Legislative Assembly on 30 October 2014.

Clerk of the Legislative Assembly

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