2005

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ENVIRONMENT PROTECTION REGULATION 2005

EXPLANATORY STATEMENT

Circulated by the Authority of the Minister for Environment Mr Jon Stanhope MLA

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Overview

These amendments update specific clauses within the *Environment Protection Regulation 1997* that were identified from an operational perspective, during the initial review of the environmental protection legislation as most in need of an overhaul. The main changes are in relation to implementing either the most relevant or up to date standards, particularly in relation to air, noise and water. These amendments also simplify the identification of minor environmental offences and offer appropriate short descriptions for existing minor offences. The regulations are also *Criminal Code 2002* compliant and have been amended in line with the requirements of the *Legislation Act 2001* and the *Human Rights Act 2004*.

Provision of strict liability to a specific element of the offence.

These amendments include a number of offences where strict liability applies to a specific element of the offence or to the offence. Section 23 of the *Criminal Code* 2002 provides that if a law that creates an offence provides for strict liability, there are no fault elements for the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable. However if strict liability applies, the defence of mistake of fact is available where the person considered whether or not the facts existed and was under a mistaken but reasonable belief about the facts.

Provision for Infringement Notices

The issuing of an infringement notice as an enforcement option for a breach of an offence provision, where appropriate, as opposed to prosecution under the *Environment Protection Act 1997* or the *Environment Protection Regulation* (previously in Schedule 5 to the 1997 regulations will now fall within the scope of the *Magistrates Court (Environment Protection) Infringement Notice Regulation 2005*. Both sets of regulations are to be made concurrently.

Part 1 Preliminary

Clause 1 - Name of regulation.

Provides that the regulation is the *Environment Protection Regulation 2005*.

Clause 2 - Commencement.

This clause deals with the commencement date for the regulations - this is the commencement of the *Statute Law Amendment Act 2005* part 3.19.

Clause 3 - Dictionary.

This clause explains that the dictionary is part of this regulation.

Clause 4 - Notes.

This clause explains that the notes are explanatory and not part of this regulation.

Clause 5 - Offences against regulations - application of criminal code etc

This clause inserts a provision into the *Environment Protection Regulation* explaining that other legislation applies in relation to offences under this regulation. It explains that the *Criminal Code 2002* applies to offences under this regulation.

Part 2 Emissions into the Air

Division 2.1 Application of Part 2

The notes explain the exceptions to pollutants emitted in to the air.

Clause 6 - Application of part 2 to tobacco smoking.

This clause explains that this part does not apply to personal tobacco smoking.

Division 2.2 Chimney emissions causing environmental harm

Clause 7 - Meaning of national emission guidelines for div 2.2.

This clause explains the meaning of national emission guidelines. The ACT uses the *National Guidelines for Control of Emission of Air Pollutants From New Stationary Sources 1985* published by the Australian Environment Council and National Health and Medical Research Council. (Note these NHRMC guidelines are not the most recent in use however they are the most relevant for the ACT from a size and resource perspective.)

Clause 8 - Chimney emissions — pollutants taken to cause environmental harm — s 5(a) Act

This clause explains that certain pollutants listed in the national emission guidelines table 1 or 2, if emitted into the air via a chimney, are taken to cause environmental harm if they are emitted in the levels above the stated standard. This table is located at the end of the regulation.

Division 2.3 Open- Air Fires.

Clause 9 - Open-air fires prohibited except in certain circumstances.

This clause explains that a person commits a strict liability offence if the person lights, uses or maintains a fire in the open air. Clause (2) and (3) deal with the exceptions contained in Schedule 1 part 1.2.

Division 2.4 Burning, fires and firewood

Clause 10 - Burning certain substances requires environmental authorisation.

This clause explains the circumstances in which a person commits an offence in relation to the burning of certain substances without an environmental authorisation or in breach of that authorisation. Specific exceptions occur for, destruction of animals and other property, or the destruction of infected stock under the Animal Diseases Act 1993. For the burning of waste on land that is in a rural area (non built up area) and the waste has been generated by a person who is ordinarily resident of that land. Waste burnt must be domestic waste, not industrial or agricultural waste such as tyres or chemicals, (this would require an environmental authorisation).

Clause 11 - Fire bans in bad weather.

This clause sets out the parameters in which the Minister may declare a fire ban and how that declaration must be made. It is a strict liability offence for a person to contravene this declaration without reasonable excuse (such as being in the middle of the bush and being without access to radio or newspaper) The strict liability element of this offence has been carefully considered, in this case lighting a fire in the open air in such weather could lead to ongoing concerns for people with respiratory complaints and they would need to be warned to stay inside.

Clause 12 - Indoor fires prohibited unless harm minimised.

This clause deems that a person commits a strict liability offence if the person lights uses or maintains a fire in a place other than in an the open air, However there are 2 exceptions to this (a) if the person takes all steps that are practicable and reasonable to prevent any environmental harm caused by the emission of the pollutants into the air from the fire. Or, (b) if the prevention is not reasonably practicable the person takes all steps as in exception

Clause 13 - Pollutants emitted from fires –exceptions for certain fires s 143 and 166(5).

This clause deems that a pollutant being emitted into the air from a fire is not taken to cause environmental harm, unless burning the substance burned in the fire, or lighting, using or maintaining of the fire is an offence against any of the sections listed in the provision.

Clause 14 - Conditions of environmental authorisation to sell or supply firewood - Act s 51 (a) (viii).

This clause lists the conditions that a person must comply with, if they have been given an environmental authorisation to supply or sell firewood under the Act.

Division 2.5 Air filtration plants

Clause 15 - Filters in air filtration plants.

This clause explains the circumstances in which the occupier of premises commits differing strict liability offences.

Division 2.6 Balloons

Clause 16 - Release of 20 or more balloons prohibited.

This clause explains that a person who releases 20 or more balloons at or about the same time and they are inflated with a gas that causes them to rise is guilty of a strict liability offence. In this case the prosecution does not have to prove the exact number of balloons released (but evidence that is suggests that it was more than 20) and in the absence of any contrary evidence, evidence that a balloon rose after being released is evidence that the balloon was inflated with a gas that caused it to rise.

Clause 17 - Balloons - exception if balloons not outside.

This clause explains that a person does not commit an offence if the balloons are released in a building or structure (for example, balloons released inside a shopping centre as part of a promotion) and do not make their way into the open air (outside).

Clause 18 - Balloons - exception for hot air balloons.

This clause explains that section 16 does not apply, that is a person does not commit an offence if the balloons are hot air balloons and they are recovered after landing.

Clause 19 - Balloons - exception for science.

This clause explains that a person does not commit an offence if the balloons are released for meteorological purposes or other scientific purposes approved in writing by the Environment Protection Authority. This approval is a notifiable instrument.

Division 2.7 Pollutants emitted from motor vehicles

Clause 20 - Motor vehicle emissions taken not to cause environmental harm.

This clause explains that if the motor vehicle complies with the *Road Transport* (*Vehicle Registration*) *Act 1999* then any pollutant emitted from the vehicle is taken not to cause environmental harm.

Part 3 Noise

Note 1 lists the noise to which the Act does not apply.

Division 3.1 Interpretation

Clause 21 - Definitions for Part 3.

This clause defines the words that are used in this part.

Clause 22 - Meaning of affected place

This clause defines the meaning of affected place, that is noise being emitted from a place in the ACT whether inside or outside of the ACT, where a person is effected by noise. However the test for affected place is two pronged, firstly a parcel of land held under a territory lease is only an affected place for the noise emitted if the lease does not allow use of the land for both residential and commercial purposes (in this case the noise issue needs to be resolved with through the property management company or the relevant body managing the properties) **and** then a further requirement that (b) (i) **either** the noise is emitted from a unit plan and the effected place is another unit on the unit plan **or** (b) (ii) the part of the parcel from which the noise is emitted consists of a sublease of the territory lease in relation to which a person has a right of occupation under a tenancy agreement and the affected place is part of the parcel of land consisting of another sublease of the territory lease. (b) (ii) would include for example tenants in ACT Housing.

A person is must complain about the noise to an authorised officer to be affected by the noise

Clause 23 - Meaning of noise zone.

This clause deals with the noise zone, which is linked with Schedule 2 (Schedule 2 is at the end of the regulation). Schedule 2 contains the definitions for the noise zones as well as the noise zone (for example Zones A, B, C etc) and for a place in the ACT on land mentioned in Schedule 2, table 2.1 Column 3 (for example such as land subject to the Territory plan) –the noise zone mentioned in Column 2 for the land or for a place in New South Wales on land mentioned in Schedule 2 table 2.1 column 4 the land mentioned in column 2 for the land.

Clause 24 - Meaning of noise standard.

This clause is similar to the clause above dealing with noise zones however this clause deals with noise standards and the relevant part of Schedule 2 is part 2.2 column 3 or column 4.

Division 3.2 Noise causing environmental harm.

Clause 25 - Noise taken to cause environmental harm Act s 5(a)

This clause states that for the purposes of section 5(a) of the *Environment Protection Act 1997*. Noise emitted from a place in the ACT is taken to cause environmental harm in an affected place if the noise level is louder than the noise standard for the compliance point for the place where the noise is emitted.

Clause 26 - Noise exception for protecting life or property.

This clause explains that noise is not taken to cause environmental harm in an affected place if the noise is emitted in the course of protecting life or property. For example dealing with a fire or emergency industrial spill, the noise being the sound of pumps and sirens.

Clause 27 - Noise- exception for reducing environmental harm

This clause explains that noise is not taken to cause environmental harm in an affected place, if the noise is emitted in the course of preventing minimising or remedying another environmental harm. Such noise could be the sound of pumps in cleaning up a spill.

Clause 28 - Noise – exception of allowed by approval.

This clause explains that noise is not taken to cause environmental harm in an affected place, if it is emitted in accordance with an approved activity. Such noise could be an amplifier at a concert.

Clause 29 - Noise other exceptions.

This clause explains the circumstances in which noise is not taken to cause environmental harm in an affected place, that is, if the noise mentioned in Schedule 2 table 2.3 Column 2 and the conditions (if any) mentioned in Column 3 for the noise are met

Division 3.3 Measuring Noise

Clause 30 - Measurements to be taken at compliance point.

This clause explains where the noise must be measured at the compliance point for the place for the purpose of measuring noise emitted from a place.

Clause 31 - Taking measurement of noise.

This clause explains that in measuring the noise the noise level must be measured in L_{10T} and all measurements must be taken in accordance with the procedures set out in the noise control manual.

Clause 32 - Compliance point - general rule for leased land.

This clause explains where that the general rule for a parcel of land held under a territory lease is any point as near as practicable to the boundary of the parcel of land. This section is also subject to sub section 2 (a) to (e) which deals with specific exceptions to the rule.

Clause 33 - Compliance point general rule for unleased land.

This clause explains that the compliance point for unleased land is any point as near as practicable to 5m from the source of the noise. This section is subject to subsection 2(a) to (c) which deals with specific exceptions to the rule.

Clause 34 - Compliance point - exception for environmental protection agreement.

This clause explains that if noise is emitted in the course of conducting an activity for which an environmental protection agreement is in force and the agreement states a compliance point then the stated point is the compliance point.

Clause 35 - Compliance point- exception for environmental authorisation.

This clause explains that if the noise is emitted in the course of conducting an activity, for which an environmental authorisation is in force, and the authorisation states a compliance point, then the stated point is the compliance point.

Clause 36 - Compliance point - exception for public land with approval.

This clause explains that if the noise is emitted from public land in the course of conducting an activity for which approval is in force and the approval states a compliance point then the stated point is the compliance point.

Clause 37 - Compliance point exception for leased land with boundary with different noise zone.

This clause explains that if the noise is emitted from leased land with a boundary that is also a noise zone boundary, and the adjoining noise zone has a different noise standard, the compliance point is any point as near as practicable to the boundary with the noise zone with the lowest noise standard for the time when the noise is emitted.

Section 38 - Compliance point - exception for units, common wall properties and subleases.

This clause explains that in relation to a:

Unit:

If noise is emitted from a unit the compliance point is any point in any of the other units in the unit plan or any point as near as practicable to the boundary of the land to which the units plan applies.

Common wall properties:

If noise is emitted from the first premises on a territory lease with a common wall with the second premises on another territory lease the compliance point is any point on the second premises or any point as near as practicable to the boundary of the first premises.

Subleases:

If noise is emitted from a part of a parcel of land held under a territory lease consisting of a sublease of the territory lease the compliance point is any pint in any

other part of the parcel of land consisting of another sublease of the territory lease or (b) any point as near as practicable to the boundary of the parcel of land.

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Division 3.4 Noise Offences

Clause 39 - Offence to make noise louder than noise standard

This clause explains that a person commits an offence if the person makes the noise in the ACT, and the noise causes environmental harm in an affected place. For example, using a power tool that emits a noise, and that noise is higher than the noise permitted at that time. Schedule 2 at end of the regulation lists the noise zones, standards and conditions that are relevant to this provision.

A person also commits an offence under section 39(2) where a person is an occupier of a place in the ACT and the noise is emitted from a thing in the place and the noise causes environmental harm in an affected place. Such as a noisy swimming pool pump, or an old air conditioner.

Clause 40 - Sale and hiring of things.

This clause explains that a person commits a strict liability offence if the person sells a thing and the sale is the first retail sale of the thing and the sale would if took place in NSW be prohibited there. It is also an offence if the thing is hired in the same circumstances.

Part 4 Water

Division 4.1 Environmental Values

Clause 41 - Environmental values of waterways for Pt 4, Sch 3 and Sch 4. This clause explains the environmental values of a waterway to be used.

Clause 42 - Certain pollutants taken to cause environmental harm - Act s 5(b) This clause explains that a pollutant mentioned in a part in schedule 3 is taken to cause environmental harm if it enters the waterway with the environmental value for that part. – that is, it is deemed to have caused environmental harm for the

purposes of section 5 of the *Environmental Protection Act*1997.

Clause 43 - Ambient environmental standards for waterways.

This clause deals with the ambient standards for waterways-these standards are used for example in assessing planning applications and are also levels that if breached can be deemed to have caused environmental harm.

Division 4.2 Protection of waterways

Clause 44 - Substances not to enter waterways.

This clause explains the circumstances in which a person commits differing strict liability offences the first by allowing a prohibited substance to enter a waterway. Prohibited substances are listed in subclause 4 (a) to (h) with (h) being any other pollutant. The list includes (a) paint for example tipping paint down a sink or directly

down a drain where it ends up in a waterway. The second offence being if a person leaves a prohibited substance unattended (for example- degreaser see (4)(d) and the prohibited substance is within 10m of a drain or other entry to a waterway and exposed to rain or run off and not securely contained in a watertight container.

Clause 45 - Building work waste must not enter stormwater system or waterways.

This clause explains the circumstances in which a person would commit this strict liability offence, that is if the person places soil, sand, building material or waste from the building work in (a) the storm water system or a waterway or (b) where it may enter the stormwater system. or a waterway. Building work means building work for which a building approval is required under Division 3.3 of the *Building Act 2004*.

Clause 46 - Areas near building work to be kept clear.

This clause explains that a person who is in charge of building work commits a strict liability offence if the person does not ensure that each footpath, gutter and road adjacent to the building work is clear of soil, sand, building materials and waste. Building work again means building work for which a building approval is required under division 3.3 of the *Building Act 2004*

Clause 47 - Entries to and exits from land to be kept stable.

This clause explains that the owner of land commits a strict liability offence if the owner does not keep the surface of each vehicle entrance to, or exit from, the land stable by applying concrete, gravel or solid material to the surface. If it is not the owner of the land but the person in charge who commits the offence, as is often the case in building work then this is covered by clause (2) (2) a person who is in charge of building work (rather than being the owner) also commits a strict liability offence for failing to keep that surface stable.

Clause 48 - Washing vehicles etc - commercial activity.

This clause explains the circumstances in which a person who washes a vehicle or other thing in the course of, or incidental to, carrying on a commercial activity, commits a strict liability offence if the person allows the run off from the washing to enter the waterway (other thing = such as what horse and cart / commercial dog washing) check here.

Clause 49 - Washing vehicles etc- non- commercial activity.

This clause explains this section applies to a person to who washes a vehicle or other thing on premises where it is ordinarily kept and otherwise than in the course of, or incidental to, carrying on a commercial activity i.e. a non -commercial activity. A person commits a strict liability offence if there is on the premises a grassed or gravelled area where the vehicle or other thing can be washed and run off from the area does not flow directly into a waterway or an area identified as a place where a vehicle or other thing may be washed.

Clause 50 - Discharge of stormwater into receiving waters.

This clause explains that a person commits a strict liability offence of discharging stormwater into receiving waters (that is ground water or a waterway) when they discharge stormwater from a sediment retention dam or footings (explain what these are?) or another storm water retention area and the stormwater flows into receiving

waters and the suspended solids concentration in the stormwater is higher than 60mg/L (how does this fit with water standards see schedule 40?)

Part 5 Poly-Chlorinated Biphenyl's (PCB's)

Clause 51 - *Definitions for Part 6.*

This part deals with definitions of PCBs and PCB material.

Clause 52 PCBs taken to cause environmental harm.

This clause explains that a PCB material and or a thing containing a PCB material entering the environment is taken to cause environmental harm. That is PCB's are deemed to cause environmental harm for the purposes of section 5 (b) of the *Environment Protection Act 1997*. This could cover for example an old transformer or electrical components with PCBs left at the landfill.

Part 6 Agvet Chemical Products.

Clause 53 - Agvet chemical products taken to cause environmental harm. Act s 5(b).

An Agvet chemical product is deemed to cause environmental harm under section 5 (b) of the *Environment Protection Act 1997* subject to certain exceptions under section 54 of these regulations.

Clause 54 - Agvet chemical products- exception for registration or permit.

This clause explains the circumstances in which an agvet chemical product is not taken to cause environmental harm under clause 53(1) that is if the product is registered under part 2, of the agvet Code, and is being used in accordance with the conditions of registration. Clause 54 (2) states that if an active constituent of the product is being used in accordance with a permit under part 7, of the agvet code, then again it is not taken to cause environmental harm, so for example using Roundup in accordance with its labelling.

Clause 55 - Storage and use of certain Agyet chemical products.

This section applies to an agvet chemical product that is registered under the agvet code, part 2; or an agvet chemical product for which a person has a permit under the agvet code, part 7. A person commits a strict liability offence if the person either stores or uses the product other than in a manner authorised by the Australian Pesticides and Veterinary Medicines Authority (APVMA).

Part 7 Controlled Waste

Division 7.1 Interpretation

Section 60 - Definitions for Part 7.

This clause lists all the definitions relevant for the interpretation of this part, (dealing with controlled waste) for example, jurisdiction of origin (of the controlled waste) producer (produces controlled waste), transporter (who transports controlled waste)

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Division 7. 2 - Movement of controlled waste between States.

Section 57 - Application of Division 7.2

This clause explains the circumstances in which this division does not apply. It does not apply to (a) - (g) in relation to (a) the movement of controlled waste only between places within the ACT (Intra -territory waste is covered in the *Environment Protection Act 1997* Schedule 1 1.2 item 11 –an environmental authorisation is required for the movement of regulated waste).

Section 58 - Consignment authorisation for controlled waste.

A producer commits a strict liability offence if the producer moves controlled waste into a jurisdiction of destination, say for example, in NSW and does not have a consignment authorisation from an agency of the jurisdiction (usually the jurisdiction's EPA (environment protection authority)) or a facility designated by the agency to move the controlled waste into the jurisdiction. A producer also commits an offence if the producer consigns controlled waste to a transporter and the transporter (for example, a haulage company) does not hold an environmental authorisation for the consignment.

Section 59 - Information to accompany controlled waste.

A producer commits a strict liability offence if the producer consigns controlled waste to a transporter, and the producer does not give the transporter the information required in the NEPM (national environment protection measure) schedule B part 1 for the controlled waste in written or electronic form. A transporter commits an offence if the transporter moves controlled waste and does not keep the information with the controlled waste, during the movement.

Section 60 - Records of movement of controlled waste.

A producer commits a strict liability offence if the producer does not keep a copy of the information mentioned in section 59 (1) (b) for each consignment of controlled waste, for at least one year, after the date of movement of the controlled waste. A transporter commits a similar offence in relation to information required under section 59(2)(b)(i) and (ii).

Section 61 - Notification of receipt of controlled waste.

A producer commits a strict liability offence if the producer moves controlled waste into a jurisdiction of destination, and does not receive within 14 days after the day when the controlled waste was due to arrive in the facility, the information mentioned in the NEPM (national environment protection measure) from the agency. Or the facility and does not tell the agency (usually the environment protection agency/authority) in writing, that the producer has not received the information.

Division 7.3 Controlled waste taken to cause environmental harm

Section 62 - Controlled waste taken to cause environmental harm – Act s 5 (b). This clause explains that controlled waste entering the environment is taken to cause environmental harm, that is, it is deemed to cause environmental harm for the purposes of section 5 (b) of the *Environment Protection Act 1997*.

Part 8 Sampling and analysis of pollutants

Section 63 - Application of part 8.

This part does not apply to the sampling and analysis of noise.

Section 64 - People who may conduct analysis.

This clause lists the organisations in which an analyst must be employed to analysis a pollutant. The Minister may approve a laboratory. This approval is a disallowable instrument.

Section 65 - Procedures and protocols.

This clause explains the procedures and protocols to be followed in the sampling and analysis of a pollutant.

Section 66 - What is a recognised entity?

This clause lists (a) to (k) certain recognised entities - for example, a recognised entity (b) Environment Protection Authority or (e) CSIRO or (2) an entity as approved by the Minister - such an approval is a disallowable instrument.

Part 9 - Miscellaneous

Section 67 - Displacement of Legislation Act S 47(5) and (6)

This clause explains that section 47(6) of the *Legislation Act 2001* does not apply to the instruments listed in this clause.

Section 68- Inspection of incorporated document

This section applies to an incorporated document or an amendment or replacement of an incorporated document, the chief executive must ensure is made available for inspection free of charge to the public on business days at reasonable times (work hours) at the office of administrative unit administered by chief executive.

Section 69- Notification of incorporated document

The chief executive may prepare a written notice for the incorporated document amendment or replacement that contains certain information. The information required is listed in clauses (2) (a) to (d). The written notice is a notifiable instrument.

Section 70 Repeal

This clause repeals the Environment Protection Regulation 1997 SL 1997-36

Schedule 1 Exceptions – chimney emissions and open air fires

This Schedule lists the exceptions to the relevant provisions.

Part 1.1 Chimney emissions

Part 1. 2 Open air fires

Schedule 2 - Noise zones, noise standards and conditions

This Schedule deals with noise related issues

Part 2.1 Noise zones

Part 2. 2 Noise standards

Part 2. 3 Noise conditions

Schedule 3 - Pollutants entering waterways taken to cause environmental harm

Part 3.1 Domestic water supply quality (DOM 1/2/3)

Part 3.2 Water based recreation swimming or boating (REC/1 or REC/2)

Part 3.3 Waterscape (VIEW)

Part 3.4 Stock water supply (STOCK)

Part 3.5 Irrigation water supply (IRRIG)

Part 3.6 Aquatic habitat

- Mountain streams AQUA/1)
- Lowland streams (AQUA/2)
- Urban Lakes and Ponds (AQUA/3)
- Urban drains and streams (AQUA 4)
- Urban Wetlands (AQUA/5)
- Mountain Reservoirs (AOUA/6)

Schedule 4 Ambient environmental standards

Part 4.1 Domestic water supply - fully treated (TAP)

Part 4.2 Domestic Water Supply (DOM1/2/3)

Part 4.3 Water based recreation-swimming REC/1 or boating REC/2

Part 4.4 Waterscape (VIEW)

Part 4.5 Stock water supply (STOCK)

Part 4.6 Irrigation water supply (IRRIG)

Part 4.7 Aquatic habitat

- Mountain streams AOUA/1
- Lowland streams AQUA/2
- Urban streams and ponds AQUA/3
- Urban drains and streams AQUA/4
- Urban wetlands AOUA/5
- Mountain reservoirs AQUA/6

Part 4.8 Secondary ambient environmental standards

Dictionary