



# **Environmental Legislation Amendment Act 2001**

**No. 118, 2001**

**An Act to amend legislation relating to the  
environment, and for related purposes**



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## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
4	Application—orders.....	2
<b>Schedule 1—Hazardous Waste (Regulation of Exports and Imports) Act 1989</b>		<b>3</b>
<b>Schedule 2—Other amendments</b>		<b>7</b>
	<i>Environment Protection (Sea Dumping) Act 1981</i>	7
	<i>Fuel Quality Standards Act 2000</i>	7
	<i>Ozone Protection Act 1989</i>	12





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## An Act to amend legislation relating to the environment, and for related purposes

[Assented to 18 September 2001]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Environmental Legislation  
Amendment Act 2001*.

### 2 Commencement

- (1) Sections 1, 2 and 3 and items 1, 4, 5, 6, 7 and 14 of Schedule 2  
commence on the day on which this Act receives the Royal Assent.

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- (2) Section 4 and Schedule 1 commence on the 28th day after the day on which this Act receives the Royal Assent.
- (3) Items 2, 3 and 8 to 13 of Schedule 2 commence as follows:
- (a) if Parts 4 to 10 of the *Administrative Review Tribunal Act 2001* have not commenced before the day on which this Act receives the Royal Assent:
    - (i) items 2, 8, 10 and 11 of Schedule 2 commence on the day on which this Act receives the Royal Assent; and
    - (ii) items 3, 9, 12 and 13 of Schedule 2 commence immediately after the commencement of Parts 4 to 10 of the *Administrative Review Tribunal Act 2001*;
  - (b) otherwise—items 2, 3 and 8 to 13 of Schedule 2 never commence.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### **4 Application—orders**

The amendment made by item 8 of Schedule 1 applies in relation to orders made after the commencement of that item.

## **Schedule 1—Hazardous Waste (Regulation of Exports and Imports) Act 1989**

### **1 Section 4 (paragraph (b) of the definition of *hazardous waste*)**

Repeal the paragraph, substitute:

- (b) wastes covered by paragraph 1(a) of Article 1 of the Basel Convention; or

### **2 Section 4 (paragraph (d) of the definition of *hazardous waste*)**

Repeal the paragraph, substitute:

- (d) residues arising from the incineration of household waste; but does not include wastes covered by paragraph 4 of Article 1 of the Basel Convention.

### **3 Subsection 13C(2)**

Repeal the subsection, substitute:

- (2) Regulations made for the purposes of this section may be expressed to take effect on the day the arrangement or amendment enters into force, or comes into effect, for Australia (but must not be expressed to take effect before then).
- (2A) As soon as practicable after the arrangement or amendment enters into force, or comes into effect, for Australia, the Minister must publish a notice in the *Gazette* giving details of that fact.

### **4 At the end of section 34**

Add:

- (4) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

### **5 At the end of section 35**

Add:

- (4) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

## **6 At the end of section 35A**

Add:

- (4) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

## **7 At the end of section 38**

Add:

- (5) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

## **8 After section 38**

Insert:

### **38A Persons to be given a reasonable time to comply with orders**

If an order under this Part requires a person to do a thing by a specified time, then that time must be reasonable having regard to the circumstances.

### **38B Contravention of orders under section 34, 35 or 35A**

*Offence: failure to deal with waste*

- (1) A person is guilty of an offence if:
- (a) the person has been given an order under section 34, 35 or 35A requiring the person to deal with waste in a specified way and by a specified time; and
  - (b) the person contravenes that requirement.

Penalty:

- (a) if the offender is an individual—imprisonment for a term not exceeding 2 years; or



- (b) if the offender is a body corporate—a fine not exceeding 2,500 penalty units.

*Offence: failure to give information*

- (2) If:
  - (a) a person has been given an order under this Part requiring the person to give the Minister specified information by a specified time and in a specified manner; and
  - (b) the person contravenes that requirement;the person is guilty of an offence punishable, on conviction, by a fine not exceeding 30 penalty units.

## **9 Part 4 (heading)**

Repeal the heading, substitute:

## **Part 4—Regulation of import, export, transit and sale of hazardous waste**

### **10 After section 40A**

Insert:

#### **40AA Regulation of sale of hazardous waste**

- (1) A person is guilty of an offence if:
  - (a) the person sells hazardous waste to a body corporate incorporated outside Australia (whether the sale occurs within or outside Australia); and
  - (b) the body corporate does not have a registered office or a principal office and at least one executive officer in Australia; and
  - (c) the person sells the waste knowing, or being reckless as to whether, the waste is to be exported by the body corporate; and
  - (d) an export permit authorising the export of the waste is not in force when the sale occurs.

Penalty:

- (a) if the offender is an individual—imprisonment for a term not exceeding 2 years; or

(b) if the offender is a body corporate—a fine not exceeding 2,500 penalty units.

(2) A person is guilty of an offence if:

- (a) the person sells hazardous waste to another person; and
- (b) the person sells hazardous waste knowing, or being reckless as to whether the waste is to be exported; and
- (c) an export permit authorising the export of the waste is not in force when the sale occurs.

Penalty:

- (a) if the offender is an individual—imprisonment for a term not exceeding 2 years; or
- (b) if the offender is a body corporate—a fine not exceeding 2,500 penalty units.

**11 Paragraph 40B(1)(a)**

Omit “40 or 40A”, substitute “40, 40A or 40AA”.

**12 Paragraph 40B(3)(a)**

Omit “40 or 40A”, substitute “40, 40A or 40AA”.

**13 Subsection 41(1)**

Omit “40 or 40A”, substitute “40, 40A or 40AA”.

## **Schedule 2—Other amendments**

### ***Environment Protection (Sea Dumping) Act 1981***

#### **1 Subsection 19(4)**

Omit “subsection (5) or (5A)”, substitute “subsection (7)”.

### ***Fuel Quality Standards Act 2000***

#### **2 Subsection 35(4)**

Omit “Administrative Review Tribunal”, substitute “Administrative Appeals Tribunal”.

#### **3 Subsection 35(4)**

Omit “Administrative Appeals Tribunal”, substitute “Administrative Review Tribunal”.

#### **4 Section 37**

After:

Divisions 3 to 7 deal with the powers and obligations of inspectors and the rights and responsibilities of an occupier of premises when an inspector seeks to exercise powers.

insert:

Division 7A deals with the analysis of samples taken under this Part and the evidentiary value of certificates containing information about the analysis of such samples.

#### **5 At the end of subsection 41(1)**

Add:

Note: See also Division 7A (about the dealing with samples taken by an inspector and the evidentiary value of certificates containing information about the analysis of such samples).

#### **6 At the end of subsection 44(1)**

Add:

Note: See also Division 7A (about the dealing with samples taken by an inspector and the evidentiary value of certificates containing information about the analysis of such samples).

## 7 After Division 7 of Part 3

Insert:

### **Division 7A—Analysing samples taken under this Part etc.**

#### **58A How sample is to be dealt with**

- (1) The regulations may prescribe procedures for dealing with samples of any fuel, fuel additive or evidential material, taken by an inspector under this Part.

*Conducting of tests*

- (2) The regulations may provide for inspectors to arrange for tests to be carried out on such samples by other persons.

*Substantial compliance with some procedures is sufficient*

- (3) The regulations may provide that particular procedures (the ***routine procedures***) prescribed for the purposes of this section need not be strictly complied with and substantial compliance is sufficient.
- (4) However, subsection (3) does not apply to procedures for ensuring that a sample is not interfered with by anyone who is not authorised to do so.

*Effect of non-compliance with the procedures*

- (5) If:
  - (a) the routine procedures are not substantially complied with in relation to a sample; or
  - (b) the other procedures are not strictly complied with in relation to a sample;then any certificate given under section 58B in relation to the sample is of no effect.

*Subsection (1) not limited*

- (6) Subsections (2) and (3) do not limit subsection (1).

**58B Evidentiary certificates in relation to certain matters**

*Proceedings to which section applies*

- (1) This section applies to any proceedings (*offence proceedings*) for an offence against a provision of Part 2.

*Signing of certificate*

- (2) Subject to subsection (4), in any offence proceedings, a certificate signed by any of the following persons:

- (a) an accredited person;
- (b) an authorised person in relation to an accredited laboratory;

stating, in respect of a substance, any one or more of the following:

- (c) that the person who signed the certificate was an accredited person or an authorised person in relation to an accredited laboratory (as the case may be);
- (d) when and from whom the substance was received;
- (e) what, if any, labels or other means of identifying the substance accompanied it when it was received;
- (f) what container or containers the substance was contained in when it was received;
- (g) the state of the seals on the container or containers when the substance was received;
- (h) a description of the substance received;
- (i) when the substance, or a portion of it, was analysed;
- (j) a description of the method of analysis;
- (k) the results of the analysis;

is admissible as prima facie evidence of the matters stated in the certificate and of the correctness of the results of the analysis.

*Document taken to be a certificate under subsection (2) unless contrary intention established*

- (3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) is, unless the contrary

intention is established, taken to be such a certificate and to have been duly given.

*Certificate not to be admitted unless copy given to defendant 14 days before certificate to be admitted in evidence*

- (4) A certificate must not be admitted in evidence under subsection (2) in offence proceedings unless:

- (a) the person charged with the offence; or
- (b) a barrister or solicitor who has appeared for the person in those proceedings;

has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable evidence of the intention to produce the certificate as evidence in the proceedings.

*Person signing the certificate may be called to give evidence*

- (5) Subject to subsection (6), if, under subsection (2), a certificate is admitted in evidence in offence proceedings, the person charged with the offence may require the person who signed the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.

- (6) Subsection (5) does not entitle the person charged to require the person who signed the certificate to be called as a witness for the prosecution unless:

- (a) the prosecutor has been given at least 4 days notice of the person's intention to require the person who signed the certificate to be so called; or
- (b) the Court, by order, allows the person charged to require the person who signed the certificate to be so called.

*Evidence in support of rebuttal of matters in certificate to be considered on its merits*

- (7) Any evidence given in support, or in rebuttal, of a matter stated in a certificate given under subsection (2) must be considered on its merits and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

*Interpretation*

(8) In this section:

***accredited laboratory*** means a laboratory or similar undertaking that, under the regulations, is an accredited laboratory for the purposes of this Act.

***accredited person*** means a person that, under the regulations, is an accredited person for the purposes of this Act.

***authorised person***, in relation to an accredited laboratory, means a person that, under the regulations, is an authorised person in relation to an accredited laboratory for the purposes of this Act.

(9) For the purposes of subsection (8):

(a) regulations made for the purposes of the definition of ***accredited laboratory*** may provide that a laboratory or similar undertaking is an accredited laboratory if it has been accredited or otherwise approved by another person or body; and

(b) regulations made for the purposes of the definition of ***accredited person*** may provide that a person is an accredited person if the person has been accredited or otherwise approved by another person or body; and

(c) regulations made for the purposes of the definition of ***authorised person*** may provide that a person is an authorised person in relation to an accredited laboratory if the person has been accredited or otherwise approved by another person or body.

**8 Subsection 70(1)**

Omit “Administrative Review Tribunal”, substitute “Administrative Appeals Tribunal”.

**9 Subsection 70(1)**

Omit “Administrative Appeals Tribunal”, substitute “Administrative Review Tribunal”.

**10 Subsection 70(2)**

Omit “Administrative Review Tribunal” (first occurring), substitute “Administrative Appeals Tribunal”.

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**11 Subsection 70(2)**

Omit “section 61 of the Act that establishes the Administrative Review Tribunal”, substitute “section 27 of the *Administrative Appeals Tribunal Act 1975*”.

**12 Subsection 70(2)**

Omit “Administrative Appeals Tribunal”, substitute “Administrative Review Tribunal”.

**13 Subsection 70(2)**

Omit “section 27 of the *Administrative Appeals Tribunal Act 1975*”, substitute “section 61 of the *Administrative Review Tribunal Act 2001*”.

***Ozone Protection Act 1989***

**14 Subsections 41(4) and (5)**

Omit “, other than section 43,”.

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[*Minister’s second reading speech made in—  
Senate on 28 June 2001  
House of Representatives on 30 August 2001*]

(39/01)

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