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# Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 1 August 2019 at 15:49)

[Chapter 1](#) ▶ [Section 6](#)

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## 6 Appropriate regulatory authority

### (1) EPA

The EPA is the appropriate regulatory authority for the purposes of this Act, except as provided by this section.

### (2) Local councils and other local authorities

A local authority is the appropriate regulatory authority for non-scheduled activities in its area, except in relation to:

- (a) the exercise of functions under Chapter 3 (Environment protection licences), or
- (b) premises defined in an environment protection licence as the premises to which the licence applies, and all activities carried on at those premises, or
- (c) activities carried on by the State or a public authority, whether at premises occupied by the State or a public authority or otherwise, or
- (c1) activities carried on by an authorised network operator (within the meaning of the *Electricity Network Assets (Authorised Transactions) Act 2015*) whether at premises occupied by the authorised network operator or otherwise, or
- (d) a matter for which a public authority (other than the local authority) is declared under subsection (3) to be the appropriate regulatory authority.

### (3) Public authorities declared by regulation

A public authority is the appropriate regulatory authority for a matter for which it is declared to be the appropriate regulatory authority by the regulations (subject to such conditions or limitations as are specified in the regulations). The regulations under this subsection:

- (a) may declare a local authority to be the appropriate regulatory authority in respect of non-scheduled activities excluded under subsection (2), but
- (b) may not declare any public authority to be the appropriate regulatory authority for activities carried on by that public authority.

### (4) Limitation to local area

A function conferred or imposed by or under this Act on a local authority, in its capacity as the appropriate regulatory authority or otherwise, may be exercised only in or in relation to the local authority's area.

**Note.** The regulations have prescribed the Marine Parks Authority and certain other authorities as the appropriate regulatory authorities for certain non-scheduled activities in certain areas. By virtue of this Act, the marine authority is given jurisdiction in connection with noise control notices and noise abatement directions relating to vessels (see sections 263 and 275).

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:23)

[Chapter 5](#) ▶ [Part 5.1](#) ▶ [Section 114](#)

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### **114 Classification of offences**

- (1) Tier 1 offences are the offences under Part 5.2.
- (2) Tier 2 offences are all other offences under this Act or the regulations.
- (3) Tier 3 offences are tier 2 offences that may be dealt with under Part 8.2 by way of penalty notice.

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:24)

[Chapter 5](#) > [Part 5.2](#) > [Section 116](#)

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### 116 Leaks, spillages and other escapes

- (1) If a person wilfully or negligently causes any substance to leak, spill or otherwise escape (whether or not from a container) in a manner that harms or is likely to harm the environment:
  - (a) the person, and
  - (b) if the person is not the owner of the substance, the owner,are each guilty of an offence.
- (2) If:
  - (a) the person in possession of the substance at the time of the leak, spill or other escape, or
  - (b) the owner of any container from which the substance leaked, spilled or escaped, or
  - (c) the owner of the land on which the substance or any such container was located at the time of the leak, spill or other escape, or
  - (d) the occupier of the land on which the substance or any such container was located at the time of the leak, spill or other escape,wilfully or negligently, in a material respect, caused or contributed to the conditions that gave rise to the commission of the offence under subsection (1), that person, owner or occupier is guilty of an offence.
- (3) A person may be proceeded against and convicted of an offence under subsection (2) whether or not a person has been proceeded against or convicted of an offence under subsection (1) in respect of the leak, spill or other escape.
- (4) It is a defence in any proceedings against a person for an offence under this section if the person establishes that the leak, spill or other escape was caused with lawful authority.
- (5) In this section:

**container** includes anything used for the purpose of storing, transporting or handling the substance concerned.

**owner** of a substance includes, in relation to a substance that has leaked, spilled or otherwise escaped, the person who was the owner of the substance immediately before it leaked, spilled or otherwise escaped.

**Note.** An offence against subsection (1) or (2) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:25)

[Chapter 5](#) > [Part 5.2](#) > [Section 118](#)

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### **118 General defence for tier 1 offences**

It is a defence in any proceedings against a person for an offence under this Part if the person establishes:

- (a) that the commission of the offence was due to causes over which the person had no control, and
- (b) that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:26)

[Chapter 5](#) > [Part 5.3](#) > [Section 120](#)

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### 120 Prohibition of pollution of waters

- (1) A person who pollutes any waters is guilty of an offence.

**Note.** An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

- (2) In this section:

*pollute* waters includes cause or permit any waters to be polluted.

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:27)

[Chapter 5](#) > [Part 5.6](#) > [Division 2](#) > [Section 142A](#)

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### 142A Pollution of land

- (1) A person who pollutes land is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—\$2,000,000 (if the offence involves asbestos waste) or \$1,000,000, and in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$500,000 (if the offence involves asbestos waste) or \$250,000, and in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**Note.** An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

- (2) In this section:

*pollute land* includes cause or permit any land to be polluted.

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:28)

[Chapter 8](#) > [Part 8.2](#) > [Division 1](#) > [Section 214](#)

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### **214 Proceedings for tier 1 offences**

- (1) Proceedings for an offence arising under Part 5.2 may be dealt with:
  - (a) summarily before the Land and Environment Court in its summary jurisdiction, or
  - (b) on indictment before the Supreme Court.
- (2) If any such proceedings are brought in the Land and Environment Court, the maximum period of imprisonment that the Court may impose for the offence is 2 years, despite any other provision of this Act.

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:29)

[Chapter 8](#) > [Part 8.2](#) > [Division 1](#) > [Section 215](#)

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### **215 Proceedings for other offences**

- (1) Proceedings for an offence arising under this Act or the regulations (other than under Part 5.2) may be dealt with:
  - (a) summarily before the Local Court, or
  - (b) summarily before the Land and Environment Court in its summary jurisdiction.
- (2) If any such proceedings are brought in the Local Court, the maximum monetary penalty that the Court may impose for the offence is 1,000 penalty units, despite any other provision of this Act.



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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:30)

[Chapter 8](#) > [Part 8.2](#) > [Division 1](#) > [Section 216](#)

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### 216 Time within which summary proceedings may be commenced

- (1) Proceedings for an offence under this Act or the regulations may be commenced:
  - (a) in the case of a prescribed offence—within but not later than 3 years after the date on which the offence is alleged to have been committed, or
  - (b) in any other case—within but not later than 12 months after that date.
- (2) Proceedings for an offence under this Act or the regulations may also be commenced:
  - (a) in the case of a prescribed offence—within but not later than 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer, or
  - (b) in any other case—within but not later than 12 months after that date.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any relevant authorised officer is the date specified in the court attendance notice or application, unless the contrary is established.
- (4) This section applies only to proceedings that are to be dealt with summarily.
- (5) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (6) In this section:

**authorised officer** means any person who is an authorised officer for the purposes of this Act, whether or not the person has the functions of an authorised officer in connection with the offence concerned.

**evidence** of an offence means evidence of any act or omission constituting the offence.

**prescribed offence** means:

- (a) an offence arising under Part 5.2, or
- (b) an offence arising under Part 3.2, or
- (c) an offence arising under section 143 (Unlawful transporting of waste) or 144 (Use of place as waste facility without lawful authority), or
- (ca) an offence under section 144AAA (Unlawful disposal of asbestos waste) or 144AAB (Re-use and recycling of asbestos waste prohibited), or

- (c1) an offence under section 142A (Pollution of land) or 144AA (False or misleading information about waste), or
- (c2) an offence arising under the *Environmentally Hazardous Chemicals Act 1985* to which this Chapter extends by virtue of section 213, or
- (c3) an offence under section 120 (Prohibition of pollution of waters) but only in relation to underground or artesian water, or
- (c4) an offence under section 144AB (Repeat waste offenders), or
- (c5) an offence arising under section 169A (Liability of directors etc for offences by corporation—offences attracting executive liability generally) that is in respect of an offence against section 47 (1), 48 (2) or 144AA (1) committed by a corporation, or
- (c6) an offence arising under section 169B (Liability of directors etc for offences by corporation—accessory to the commission of the offences) that is in respect of an offence against section 47 (1), 48 (2) or 144AA (1) committed by a corporation, or
- (d) an offence against this Act that is declared by the regulations to be a prescribed offence for the purposes of this section.

***relevant authorised officer*** means:

- (a) in relation to proceedings for an offence instituted by or with the consent of the EPA or a member of the staff of the EPA—any authorised officer who is a member of the staff of the EPA, or
- (b) in relation to proceedings for an offence instituted by or with the consent of a local authority or an officer or employee of such an authority—any authorised officer who is an officer or employee of that authority, or
- (c) in relation to proceedings for an offence instituted by any other person—any authorised officer.

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:31)

[Chapter 8](#) > [Part 8.2](#) > [Division 2](#) > [Section 217](#)

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### **217 EPA or other appropriate regulatory authority may institute proceedings**

**(1) EPA**

Proceedings for an offence against this Act or the regulations may be instituted by the EPA.

**(2) Other appropriate regulatory authority**

Any such proceedings may also be instituted by the appropriate regulatory authority, if it is not the EPA, in connection with a matter for which it is the appropriate regulatory authority.

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:32)

[Chapter 8](#) > [Part 8.2](#) > [Division 2](#) > [Section 218](#)

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### 218 Other authorities who may also institute proceedings

(1) **Local authority—offences other than excluded offences**

A local authority may institute proceedings for any offence against this Act or the regulations (other than an excluded offence).

(2) **Water Supply Authority**

A Water Supply Authority (within the meaning of the *Water Management Act 2000*) may institute proceedings for a water pollution offence (other than an excluded offence).

(3) **Marine authority**

The marine authority may institute proceedings for a noise pollution offence referred to in subsection (6) (d) or (e).

(4) **Police officers**

Police officers may institute proceedings for:

- (a) a noise pollution offence, or
- (b) a littering offence, or
- (c) an offence against the regulations relating to the operation of a motor vehicle (being an offence prescribed for the purposes of this subsection).

(5) **Applicant for noise abatement order**

A person who was the applicant for a noise abatement order may institute proceedings for an offence against section 269 of contravening the order.

(6) **Excluded offences**

For the purposes of this section, an offence is an *excluded* offence if it is an offence (other than a littering offence) committed in relation to:

- (a) scheduled activities, or
- (b) activities or work authorised or controlled by an environment protection licence, or
- (c) activities carried on by the State or a public authority, whether at premises occupied by the State or a public authority or otherwise, or
- (c1) activities carried on by an authorised network operator (within the meaning of the *Electricity Network Assets (Authorised Transactions) Act 2015*) whether at premises occupied by the authorised network operator or otherwise, or
- (d) in the case of a noise pollution offence—a vessel in navigable waters, or
- (e) in the case of a noise pollution offence—premises used in connection with vessels and situated adjacent to, or partly or wholly over, navigable waters,

or it is any other offence prescribed by the regulations as an excluded offence.

**(7) Other definitions**

In this section:

***littering offence*** means an offence arising under Part 5.6A.

***noise pollution offence*** means an offence arising under Part 5.5, 8.6 or any other provision prescribed for the purposes of this definition.

***water pollution offence*** means an offence arising under Part 5.3 or any other provision prescribed for the purposes of this definition.

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:33)

[Chapter 8](#) > [Part 8.2](#) > [Division 2](#) > [Section 219](#)

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### **219 Other persons may institute proceedings with leave of Land and Environment Court**

- (1) Any person may institute proceedings in the Land and Environment Court for an offence against this Act or the regulations if the Court grants the person leave to bring the proceedings.
- (1A) An appropriate regulatory authority (other than the EPA) and any person or authority referred to in section 218 may institute proceedings in the Land and Environment Court for an offence against this Act or the regulations, if the Court grants the authority leave to bring the proceedings.
- (1B) Nothing in section 217 or 218 limits the operation of this section.
- (2) The Land and Environment Court is not to grant leave unless satisfied that:
  - (a) the EPA has decided not to take any relevant action (as defined in subsection (3)) in respect of the act or omission constituting the alleged offence or has not made a decision on whether to take such action within 90 days after the person or authority requested the EPA to institute the proceedings, and
  - (b) the EPA has been notified of the proceedings, and
  - (c) the proceedings are not an abuse of the process of the Court, and
  - (d) the particulars of the offence disclose, without any hearing of the evidence, a prima facie case of the commission of the offence.
- (3) Relevant action for the purposes of subsection (2) is not limited to the institution of criminal proceedings, but includes action under this Act to require the defendant to prevent, control, abate or mitigate any harm to the environment caused by the alleged offence or to prevent the continuance or recurrence of the alleged offence.

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# Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:34)

[Chapter 8](#) > [Part 8.3](#) > [Section 244](#)

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## 244 Orders generally

(1) **Orders may be made**

One or more orders may be made under this Part against the offender.

(2) **Orders are additional**

Orders may be made under this Part in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

(3) **Other action not required**

Orders may be made under this Part regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:34)

[Chapter 8](#) ▶ [Part 8.3](#) ▶ [Section 246](#)

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### 246 Orders for costs, expenses and compensation at time offence proved

- (1) The court may, if it appears to the court that:
  - (a) a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (3) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*. An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.



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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:35)

[Chapter 8](#) > [Part 8.3](#) > [Section 247](#)

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### **247 Recovery of costs, expenses and compensation after offence proved**

- (1) If, after the court finds the offence proved:
- (a) a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,
- the person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.
- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

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## Protection of the Environment Operations Act 1997 No 156

Current version for 5 July 2019 to date (accessed 2 August 2019 at 00:36)

[Chapter 9](#) > [Part 9.7](#) > [Section 315](#)

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### **315 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.