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National Environment Protection Measures (Implementation) Act 1998

(Part 1 Preliminary - Definitions)



National Environment Protection Measures (Implementation) Act 1998

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About this compilation

This compilation

This is a compilation of the *National Environment Protection Measures (Implementation) Act 1998* that shows the text of the law as amended and in force on 10 March 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Part 1—Preliminary

1 Short title This Act may be cited as the *National Environment Protection Measures (Implementation) Act 1998*.

2 Commencement This Act commences on the day on which it receives the Royal Assent.

3 Objects of Act

The objects of this Act are:

- (a) to make provision for the implementation of national environment protection measures in respect of certain activities carried on by or on behalf of the Commonwealth and Commonwealth authorities; and
- (b) to protect, restore and enhance the quality of the environment in Australia, having regard to the need to maintain ecologically sustainable development; and
- (c) to ensure that the community has access to relevant and meaningful information about pollution.

4 Simplified outline of Act

The following is a simplified outline of the operation of this Act:

State and Territory laws implementing national environment protection measures (*NEPMs*) do not apply to the activities of the Commonwealth or Commonwealth authorities, either of their own force or because of the *Commonwealth Places (Application of Laws) Act 1970* (see section 9).

Under this Act, the Environment Minister may (subject to considerations of national interest or administrative efficiency):

- apply those State laws to the activities of the Commonwealth or Commonwealth authorities in Commonwealth places (Part 2); or
- apply those State or Territory laws to the activities of the Commonwealth or Commonwealth authorities in other places (Part 3).

If NEPMs are not implemented in relation to the activities of the Commonwealth or Commonwealth authorities under Part 2 or Part 3, they can be implemented:

- by regulations (Part 4); or
- if there are no regulations under Part 4, through environmental audits and environment management plans (Part 5).

The implementation of NEPMs in relation to the activities of the Commonwealth or Commonwealth authorities may be restricted by the Environment Minister in the national interest.

5 Definitions

In this Act, unless the contrary intention appears:

activity means a physical activity that has a direct effect on, or represents a substantial risk of damage to, an aspect of the environment to which a NEPM applies but, to avoid doubt, does not include:

- (a) the formulation of a policy; or
- (b) the making of a decision by a Minister or by a person to whom a Minister has, under an Act or an instrument made or having effect under an Act, delegated the power to make the decision.

applied provision means:

(a) in relation to an applied State law—a provision of that applied State law that applies as mentioned in section 12; or

(b) in relation to a law of a State or Territory—a provision of that law that applies as mentioned in section 17.

applied State law means a provision of a law of a State that applies in a Commonwealth place under the *Commonwealth Places (Application of Laws) Act 1970*.

carrying on of an activity by the Commonwealth or a Commonwealth authority has a meaning affected by section 7.

coastal waters:

(a) in relation to a State—means that part of the sea that is included in the coastal waters of the State within the meaning of the *Coastal Waters (State Powers) Act 1980* and includes the airspace over, and the sea-bed and subsoil beneath, that part of that sea; and

(b) in relation to the Northern Territory—means that part of the sea that is included in the coastal waters of the Territory within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980* and includes the airspace over, and the sea-bed and subsoil beneath, that part of that sea; and

(c) in relation to an external Territory to which this Act extends—means:

(i) the territorial sea adjacent to the external Territory; and

(ii) the sea on the landward side of the territorial sea adjacent to the external Territory and not within the limits of the external Territory, including the airspace over, and the sea-bed and subsoil beneath, that sea.

Commonwealth authority means:

(a) a body, whether incorporated or not, that is established for a public purpose by or under an Act; or

(b) a body, whether incorporated or not, that is established by the Governor-General or by a Minister; or

(c) a body that is:

(i) an incorporated company over which the Commonwealth or a body referred to in paragraph (a) or (b) is in a position to exercise control; or

(ii) a subsidiary (within the meaning of the *Corporations Act 2001*) of an incorporated company referred to in subparagraph (i).

Commonwealth place means a place (other than the seat of government) with respect to which the Parliament, under section 52 of the Constitution, has, subject to the Constitution, exclusive power to make laws for the peace, order and good government of the Commonwealth.

continental shelf of Australia has the same meaning as in the *Seas and Submerged Lands Act 1973*.

Department means a Department of State of the Commonwealth.

engaging in conduct includes doing, or omitting to do, anything.

enter, in relation to a vessel or aircraft, includes go on board.

environment includes all aspects of the surroundings of human beings, whether affecting them as individuals or in social groupings.

Environment Minister means the Minister who administers this Act.

Environment Secretary means the Secretary of the Department administered by the Environment Minister.

environmental impact statement includes an environment effects statement, an impact assessment study in relation to the environment, and a public environment document, and any similar statement or study.

exclusive economic zone means the exclusive economic zone, within the meaning of the *Seas and Submerged Lands Act 1973*, adjacent to the coast of Australia or the coast of an external Territory to which this Act extends.

external Territory to which this Act extends means an external Territory other than Norfolk Island.

implementation, in relation to a NEPM, includes, but is not limited to:

(a) if the NEPM incorporates a national environment protection standard—requiring and securing compliance with the standard, including monitoring and reporting on observance of the standard; and

(b) if the NEPM incorporates a national environment protection goal—encouraging attainment of the goal; and

(c) if the NEPM incorporates a national environment protection guideline—ensuring that the guideline is taken into account; and

(d) if the NEPM incorporates a national environment protection protocol—securing compliance with the protocol.

law, in relation to a State or Territory, means:

(a) a law in force in the State or Territory other than:

(i) a law made by a local governing authority (other than a local governing authority that has entered into an arrangement with the Commonwealth for the application of this Act to laws made by the authority); or

(ii) a law of the Commonwealth; and

(b) an instrument made or having effect under a law to which paragraph (a) applies.

law, in relation to a local governing authority, has a meaning affected by section 8.

make a decision includes:

(a) make, suspend, revoke or refuse to make an order, award or determination; and

(b) give, suspend, revoke or refuse to give a certificate, direction, approval, consent or permission; and

(c) issue, suspend, revoke or refuse to issue a licence, authority or other instrument; and

(d) impose a condition or restriction; and

(e) make a declaration, demand or requirement; and

(f) retain, or refuse to deliver up, an article; and

(g) do or refuse to do anything else.

matter of national interest means:

(a) a matter concerning:

(i) Australia's relations with another country or Australia's international obligations; or

(ii) national security; or

(iii) national defence; or

(iv) a national emergency; or

(b) a prescribed matter relating to:

(i) a telecommunications activity authorised by Division 2, 3 or 4 of Part 1 of Schedule 3 to the *Telecommunications Act 1997*; or

(ii) the management of aviation airspace or airports, including aircraft emissions, aircraft noise and on-ground airport management, but not including matters specified in subregulation 1.04(2) of the Airports (Environment Protection) Regulations; or

(c) any other matter agreed between the Commonwealth, the States and the Territories.

modification, in relation to a provision of an applied State law referred to in subsection 12(4) or a provision of a law of a State or Territory referred to in subsection 17(3) or 21(8) or (9), includes a modification that involves:

(a) the omission of part of the provision; or

(b) the addition of a provision; or

(c) the omission of the provision or part of the provision and the substitution of a different provision.

national environment protection goal means a goal that:

(a) relates to desired environmental outcomes; and

(b) guides the formulation of strategies for the management of human activities that may affect the environment.

national environment protection guideline means a guideline that gives guidance on possible means for achieving desired environmental outcomes.

national environment protection protocol means a protocol that relates to the process to be followed in measuring environmental characteristics to determine:

(a) whether a particular standard or goal is being met or achieved; or

(b) the extent of the difference between the measured characteristic of the environment and a particular standard or a particular goal.

national environment protection standard means a standard that consists of quantifiable characteristics of the environment against which environmental quality can be assessed.

NEPM means a national environment protection measure in force under subsection 14(1) of the *National Environment Protection Council Act 1994*.

premises includes any place (whether enclosed or built on or not) including a place situated under ground or under water, and, in particular, includes:

- (a) a building, aircraft, vehicle or vessel; and
- (b) any structure, whether fixed or moveable, and whether on land or the bed of any waters or floating on any waters; and
- (c) a part of premises (including a part of any premises of a kind referred to in paragraph (a) or (b)).

relevant Minister, in relation to activities carried on by the Commonwealth or a Commonwealth authority, means the Minister:

(a) who administers the Department that is responsible for the carrying on of the activities; or

(b) who administers the enactment by or under which the Commonwealth authority that is responsible for the carrying on of the activities is established or who is otherwise administratively responsible for the authority's actions;

as the case requires.

responsible officer, in relation to a State or Territory, means the chief executive officer of the Department of the Government of the State or Territory that is responsible for matters relating to the environment.

securing compliance with includes enforcing.

territorial sea means the territorial sea of Australia and includes the airspace over, and the sea-bed and subsoil beneath, that sea.

Territory (except in the expression **external Territory**) means the Australian Capital Territory, the Northern Territory or the Jervis Bay Territory.