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***Disclaimer***

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## Executive Summary

Environmental obligations affect the conduct of the electricity industry at all levels. They impact on activities as diverse as long-term network planning decisions, through to line construction and maintenance. Modern environmental laws contain potentially severe sanctions in the event of default by the corporation, including large fines, conviction of corporate officers and remedial orders or injunctions that may delay a project or render it commercially unviable. ***This Electricity Association of NSW (EANSW) Environmental Law Manual is designed to provide a general guide to those Commonwealth and State laws that most directly affect the industry.***

Naturally, it cannot be a substitute for legal advice where an issue requires interpretation and application of the law in the context of a particular set of facts.

This manual covers both planning and pollution control laws, but does not try to address occupational health and safety obligations. The Manual is in 5 parts:

- Part A – Overview of Industry Legal Responsibilities;
- Part B – A user friendly guide to Activities, Impacts and Relevant Laws;
- Part C – Summary of Environmental Laws and their Implications;
- Part D – Frequently Asked Questions & Answers; and
- Part E – Appendices.

What does environmental law require of the corporation? Put simply, the corporation through its officers, employees and contractors must:

- conduct proper impact assessment and obtain the requisite planning approvals and pollution licences; and
- avoid harm to the environment in the course of conducting business.

In terms of **planning laws**, there is a range of statutes that govern project planning, line design, construction and maintenance activities. The *Environmental Planning and Assessment Act 1979 (EPA Act)* provides the overall framework under which approvals are obtained for **developments** or **activities** in NSW. This is supplemented by other laws dealing with special approval or assessment regimes for particular environments (e.g., *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth) (EPBC Act)*, *Coastal Protection Act 1979*, *Fisheries Management Act 1994 (FM Act)*, *Forestry Act 1916*, *Heritage Act 1977*, *National Parks and Wildlife Act 1974 (NPW Act)*, *Native Vegetation Conservation Act 1997 (NVC Act)*, *Wilderness Act 1987*).

In terms of **energy laws**, the corporation also has certain obligations and powers under the *Electricity Supply Act 1995*. Further, as of 1 April 2001, the *Renewable Energy (Electricity) Act 2000 (Commonwealth)* requires wholesale purchasers of electricity to obtain renewable energy certificates for a percentage of the electricity they acquire each year, or pay a shortfall charge of \$40 per MWh.

In respect of **pollution control laws**, the main legislative obligations are found in the Protection of the Environment Operations Act 1997 (**POEO Act**) and Contaminated Land Management Act 1997 (**CLM Act**). The purpose of the POEO Act is primarily to prevent or minimise air, water, **noise** and **land pollution** through a system of licensing and regulations. Enforcement mechanisms include

prosecution by the Environment Protection Authority (**EPA**) or the issuing of **environment protection notices** by the EPA. Authorised officers have broad powers to perform a range of actions such as questioning persons, requiring information or records and searching **premises**. The purpose of the CLM Act is primarily to address **land** pollution after the event, in circumstances where the EPA considers that there is a significant risk of harm to human health or to the environment. The EPA can order the investigation and remediation of a site, as well as prosecute breaches of the CLM Act (e.g., failure to report contamination posing a significant risk of **harm**).

### **Penalties for Offences**

Penalties such as fines and even gaol terms are possible for offences under many of the environmental laws affecting the corporation. The heaviest sanctions apply under the *POEO Act*, *EPBC Act*, *Heritage Act* and *NPW Act* (see Section 4.2 to 4.3 below).

The *POEO Act* establishes a 3 tiered hierarchy of environmental offences.

*Tier One offences* carry the most severe penalties and include negligently or wilfully:

- disposing of **waste** in a manner which harms or is likely to harm of **environment**;
- causing any substance to leak, spill or otherwise escape in a manner that harms or is likely to harm the environment; and
- causing any **controlled substance** (under the *Ozone Protection Act 1989*) to be emitted into the atmosphere in contravention of the regulations and in a manner which causes harm, or is likely to cause harm, to the environment.

*Tier Two offences* are all other offences under the *POEO Act*, which cover the areas of air, noise, water and land pollution, in addition to ancillary offences for non-compliance with notices, licence provisions and directions of authorised officers.

Where *Tier Two offences* are dealt with by way of **penalty notice**, they are classified as *Tier Three offences*.

**Penalties for pollution offences can be severe**, extending to \$1,000,000 for a corporate entity found guilty of a *Tier One offence* under the *Operations Act*, and \$250,000 and/or 7 years imprisonment for individuals.

If the corporation commits a *Tier Two offence* in relation to water, air and land pollution it may be fined up to \$250,000, with an additional penalty of \$120,000 per day for a continuing offence.

### **Liability**

**With the exception of Tier One offences under the POEO Act, most offences created by environment protection legislation are strict liability offences.** Consequently, the prosecution is not required to prove that the person committing the offence held an intention or other culpable state of mind. However, a defence of “honest and reasonable mistake” may be available on the facts of some cases.

Both of which deem that where a body corporate commits an offence, each person who is a director, or who is “concerned in the management” is also taken to have committed the offence. Under general corporate law, courts have broadly interpreted when a person will be “concerned in the management”. Those potentially caught by such a term need not be part of the board, nor even executives.

***The corporation will be criminally responsible for the acts of its employees*** that are committed in the course of their employment. This arises even though the employee may have done their job in a way that is not approved by the corporation. The corporation might also be liable for the acts of independent contractors and employees of independent contractors, depending on the level of supervisory control exercised over their activities.

### ***Defences***

The key statutory defences under the *POEO Act* are:

- s118, which provides a defence for both corporations and individuals (but only in respect of Tier One offences) where:
  - the commission of the offence was due to causes over which the defendant had no control; and
  - the defendant took all reasonable precautions and exercised due diligence to prevent the commission of the offence.
- s169(1) which provides a defence to any charge under the *POEO Act* for directors and managers who can show that:
  - the corporation breached the provision without the actual, imputed or constructive knowledge of the person; or
  - the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
  - the person, if in such a position of influence, used all due diligence to prevent the contravention by the corporation.

The burden of satisfying the court as to any of these matters lies on the officer.

### ***Due Diligence***

Due diligence implies effective risk management in the conduct of operations. The cases suggest the following points:

- the requirements of due diligence depend on the circumstances of the case, but involve ***a mind that is concentrated on the likely risks***;
- due diligence is not satisfied by precautions that are merely usual in the industry, unless also designed to prevent the contravention;
- whether the corporation or a director took the precautions that ought to have been taken is a question of fact that will be decided objectively according to the standard of a reasonable person in the circumstances; and
- it is no answer for the corporation or a director to say that they did the 'best' that could be done given the resources available.

***Due diligence means that directors and managers identify all environmental risks and sources of existing or potential environmental harm and introduce measures and procedures to ensure that these risks or sources of harm are adequately addressed.***

This will generally require evidence of some form of environmental management system (**EMS**) aimed at ensuring environmental compliance and the prevention of environmental harm. Case law on this subject demonstrates that it is not enough to merely establish a system, but **to ensure that the system is:**

- **implemented** on site and throughout the company to create a culture of environmental compliance;
- **reinforced through staff training programs**, to ensure staff are aware of the company's environmental programme and understand the environmental risks associated with activities carried out on site;
- **regularly monitored** with a system for reporting non-compliance;
- **regularly reviewed** to ensure that it is operating effectively; and
- **improved** when necessary to address increased standards or to ensure that environmental issues are brought to the attention of the company or its officers.

# Part A – Overview of Industry Legal Responsibilities

## 1. Introduction

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### 1.1 Context

This Environmental Law Manual has been prepared for the Electricity Association of New South Wales (**EANSW**), the peak group for the NSW Electricity Supply Industry (**ESI**), by Allens Arthur Robinson, Lawyers. The **ESI** is the post power-station sector of the electricity industry. The **ESI** includes the **transmission operator** (TransGrid), the distribution network service providers and the retail suppliers.

The information in this manual is supplemented by the Allens Arthur Robinson Environmental Law Database (August 1999) (**Database**). This CD contains information on Federal, State and Territory environmental law categorised under the following titles:

- Air Pollution; Land Contamination; Hazardous Substances; Noise Pollution; Waste Management and Water Pollution.

The Commonwealth Environment Impact Assessment chapter of the Database is cited as “*DB Cth EIA*”. All other references to the Database relate to the NSW Chapter, e.g.:

- “*DB Water 4.3.2*” – refers to section 4.3.2 of the NSW Water Pollution chapter of the Database;
- “*DB Hazardous 4.1.2*” – refers to section 4.1.2 of the NSW Hazardous Substances chapter of the Database.

### 1.2 Structure of the Manual

The manual is arranged in three parts. Each provides a different means of accessing information about the environmental laws that affect **ESI** operations.

**Part A** provides a broad overview describing the basic environmental performance and reporting obligations imposed on **ESI** members under NSW and Commonwealth law.

Part A is structured as follows:

- overview of environmental regulation and its relationship to electricity supply;
- overview of industry specific regulation; and
- discussion of management responsibility, including penalties, defences and the concept of due diligence.

The overview of environmental regulation provides a synopsis of major pollution and planning laws that affect *ESI* activities in respect of waste management, land contamination, air pollution, hazardous substances, water pollution and noise pollution. The outline of relevant industry laws examines specific obligations and powers that arise by virtue of the *Electricity Supply Act 1995* (NSW) (**ESA**) and associated legislation.

**Part B** provides access to the legislative requirements through an activity table. The table allows cross-referencing of major activities undertaken by *ESI* members with specific environmental aspects of those activities and the applicable legislation.

**Part C** details the relevant legislative provisions and their implications for the *ESI* in an accessible table format. The table is designed to provide a list of the major environmental requirements relevant to the *ESI* under the provisions of each Act. The table contains the following information:

- the Act name and section;
- a summary of the obligation or offence imposed;
- identification of the relevant regulator;
- the relevance of the provision to the corporation;
- identification of the parties who may be liable in the event of a breach;
- the maximum penalties which may be imposed for failure to comply with the provision; and
- any defences that may be available to the corporation in the event of a breach of the provision.

**Part D** consists of a series of answers to frequently asked questions.

**Part E** contains appendices listing relevant State environmental planning policies, codes of practice, relevant contacts and a glossary of terms.

## 2. Overview of Environmental Regulation

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### 2.1 Environmental Laws Applicable to the *ESI*

Land use controls in Australia are principally governed by the laws of individual States and Territories.

#### **Federal Law**

Federal laws apply to Commonwealth places and in respect of matters of national environmental significance. The *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth) (**EPBC Act**) came into force on 16 July 2000, replacing five federal environment statutes. Approval will be required to take any **action** that will have, or is likely to have, a significant impact on areas and attributes for which the Commonwealth is responsible. These 'triggers' include world heritage properties, Ramsar wetlands, listed threatened species or endangered communities, listed migratory species and Commonwealth marine areas. See DB Cth EIA 3.1.

In November 2000, the Federal Government released draft regulations entitled *Environment Protection and Biodiversity Conservation Amendment Regulations 2000*.

Under the proposed regulations, the assessment and approval provisions of the *EPBC Act* would be activated by any major new development that is likely to result in greenhouse gas emissions of more than 0.5 million tonnes of carbon dioxide equivalent in any 12 month period.

Under present heritage laws, there may be delay or difficulty in obtaining certain Commonwealth Government approvals if the decision would adversely impact upon a place registered or interim listed as part of the national estate under the *Australian Heritage Commission Act 1975* (Cth).

Proposed new heritage legislation was introduced into the Parliament on 7 December 2000. The reforms are contained in the *Environment and Heritage Amendment Bill (No. 2) 2000*, the *Australian Heritage Council Bill 2000* and the *Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000* (available at <http://www.environment.gov.au/epbc/news/news.html>).

The Bills were referred to the Senate Environment, Communications, Information Technology and the Arts References Committee, which submitted its report on 8 May 2001. The second reading debate concluded in the Senate on 22 August 2001, at which time the Bills were agreed to in principle. They will now be subject to more detailed consideration by both the Senate and the House of Representatives prior to formal passage.

The proposed legislation will establish a mechanism for the identification of heritage places of national significance. These will be entered on a National Heritage List, which will be identified under the *EPBC Act* as matters of national environmental significance, thus becoming subject either to Commonwealth assessment and approval processes or to accredited State Government arrangements.

The *Renewable Energy (Electricity) Act 2000 (RE(E) Act)* (Commonwealth) was assented to on 21 December 2000. The *RE(E) Act* requires electricity retailers and other wholesale buyers to source an additional 2% of their electricity requirements from renewable sources by 2010. The measure will be phased in through a number of enforceable interim targets over the period 2001 to 2010. Wholesale electricity purchasers on all grids of over 100 MW installed capacity are liable on and from 1 April 2001.

A liable entity is a person who, during a year, makes a *relevant acquisition* of electricity. This term encompasses *wholesale acquisitions* and *notional wholesale acquisitions*. A *wholesale acquisition* occurs where electricity is purchased from the National Electricity Market Management Company (*ie*, directly from the pool) or from a party who did not acquire the electricity from another party.

There are 2 situations in which a *notional wholesale acquisition* may occur:

- where the end user of the electricity acquires the electricity from a generator and the end user is not registered under the National Electricity Code. In this situation, the generator will be liable as the *notional wholesaler* who is taken to have acquired the electricity at the time that the end user acquired the electricity.
- where the end user of the electricity generated the electricity and neither of the following conditions are satisfied:
  - the point at which the electricity is generated is less than 1 km from the point at which the electricity is used;
  - the electricity is transmitted or distributed between the point of generation and the point of use and the line on which the electricity is transmitted or distributed is used solely for the transmission or distribution of electricity between those 2 points.

Liabe entities will be required to obtain Renewable Energy Certificates (**RECs**) equivalent to a percentage of the electricity which they acquire each year or pay a renewable energy shortfall charge. The amount of a renewable energy shortfall charge to be paid is determined by multiplying the liable party's certificate shortfall (in MWh) by the rate of charge specified in the *Renewable Energy (Electricity) (Charge) Act 2000*. This rate is specified as \$40 per MWh.

### **State Law**

Obligations and penalties differ substantially between jurisdictions. Where the corporation conducts business or carries out activities in several States or Territories, the statutory requirements of each must be complied with. This manual focuses on the obligations of the corporation under New South Wales.

The main pollution control statute in New South Wales is the *Protection of the Environment Operations Act 1997* (**POEO Act**), which commenced on 1 July 1999.

This Act replaced the *Environmental Offences and Penalties Act 1989*, the *Pollution Control Act 1970* and other media specific legislation (such as the *Clean Air Act 1961*) with a single regime.

The *POEO Act* contains the following key elements:

- an integrated licensing system, under which a single licence can cover emissions in multiple media from a site or activity;
- administrative enforcement through environment protection notices (clean up, prevention, prohibition and compliance cost notices);
- environment protection offences graded into three tiers and covering offences of air, water, noise and land pollution;
- a duty to report any **pollution incident** which threatens **material harm to the environment** where the corporation occupies relevant land or employs relevant persons;
- directors and managers are made personally liable for offences committed by the corporation;
- provision for voluntary and mandatory **environmental audits** of the corporation to be conducted; and
- authority for appropriate officers to perform a range of actions, such as questioning persons, requiring information or records and entering and searching premises.

The *POEO Act* is supplemented by other regulatory instruments that address issues of relevance to the corporation. The following paragraphs provide a brief outline of NSW law as it affects various environmental concerns.

#### (a) Waste Management

The waste licensing provisions that were formerly in the *Waste Minimisation and Management Act 1995* (**WMM Act**) and the *Waste Minimisation and Management Regulation 1996* have now been transferred into the *POEO Act*. Refer to DB Waste 2.1, 4.1, 4.3. A

The Environment Protection Authority (**EPA**) regulates the handling, transportation and disposal of wastes under the *POEO Act*.

Under s48 of the *POEO Act*, a person who is the occupier of any premises at which a **scheduled activity** is carried on must hold a licence that authorises that activity to be carried on at those premises. One of these scheduled activities is the generation or storage of **hazardous, industrial or Group A waste**.

Waste activities that do *not* require a licence include:

- the generating or on site storage of contaminated soil, recyclable oil or stabilised **asbestos waste** in bonded matrix; and
- the generating of not more than 10 tonnes per year, or the on site storage of less than 2 tonnes at any one time, of hazardous waste, industrial waste or Group A waste in the form of oil, paint, lacquer, varnish, resin, ink, dye, pigments, adhesives, hydrocarbons or emulsions.

Some activities must be licensed although they are not based at particular premises. For example, a licence is required under s49 of the *POEO Act* for mobile **waste** processing. This would include the use of mobile plant to recycle oil in transformers.

An **environment protection licence** for a waste facility is therefore *not* required if hazardous, industrial or Group A waste is treated, processed or reprocessed by a mobile plant which is licensed.

The reporting and storage obligations under the *Protection of the Environment (Waste) Regulation 1996 (Waste Reg)* apply only to non-licensed landfill sites, non-licensed waste activities or non-licensed waste transporting. See DB Waste 4.1.14.

A **non-licensed waste activity** means an activity, carried on for business or other commercial purposes, that involves the generating or storage of hazardous, industrial or Group A waste but which is not licensed under the *POEO Act*.

The Appendix to Schedule 1 of the *POEO Act* describes various types of waste as being hazardous, industrial or Group A waste, etc. In some cases the composition of a particular waste may not be known, or the waste does not appear on the list of hazardous or industrial waste. In these cases, the corporation will need to conduct an assessment in accordance with Technical Appendix 1 of the *Environmental Guidelines: Assessment, Classification & Management of Liquid & Non-Liquid Wastes (Waste Guidelines)* to establish whether a licence is required and to determine the appropriate disposal requirements.

Additional licences are required for the storage and disposal of certain **scheduled chemicals** and **chemical** wastes under the *Environmentally Hazardous Chemicals Act 1985 (EHC Act)*.

The **primary responsibility of the corporation** (as the generator and/or storer of waste) is to classify the waste properly (irrespective of whether it is going to be **disposed** of or reprocessed), to use a licensed transporter (where the waste is industrial, hazardous or Group B), and to ensure that the waste is taken to suitable mobile waste processors or waste facilities. If the waste is hazardous, industrial or Group A, the corporation must also obtain a consignment authorisation number from a waste facility for waste that is to be transported from the premises, complete an approved waste data form about the consigned waste, and provide copies to the transporter. Mobile waste processing plant must only receive waste that they are licensed to take.

Liquids that cannot be lawfully discharged directly to sewer may be subject to licensing under the *POEO Act*. Legislation dealing with discharges to sewer includes the *Sydney Water Act 1994*, *Hunter Water Act 1991*, s68 of the *Local Government Act 1993*, clause 55 of the *Protection of the Environment (General) Regulation 1998* and the *Local Government (Water Services) Regulation 1999*.

(b) Land Contamination

The *Contaminated Land Management Act 1997 (CLM Act)* is the principal statute governing the use, occupation and ownership of contaminated land in New South Wales. Whilst the *POEO Act* deals generally with prevention of land contamination by pollution, the *CLM Act* regulates contaminated land after the actual contamination has taken place. Refer to DB Land 3.1, 3.2, 4.1, 4.2 / Waste 2.1, 4.1, 4.3.

The **primary responsibility of the corporation** is to prevent land contamination, and where it is already known to exist, to report it to authorities.

It is a major offence under the *POEO Act* to wilfully or negligently **dispose of waste** in a manner which harms or is likely to harm the **environment**. There are also prohibitions against transporting waste to a place that cannot lawfully be used as a waste facility, or permitting land to be used as a waste facility when it cannot lawfully be used for that purpose.

The *CLM Act* is primarily directed at instances where the EPA believes it needs to intervene due to the significant risk of harm to human health or to the environment from contaminated land. The EPA can order the investigation and remediation of a site. It regulates the management of contaminated land using the *National Guidelines for the Assessment and Management of Contaminated Sites* developed by the Australian and New Zealand Environment Conservation Council and the National Health and Medical Research Council.

The *CLM Act* also imposes a duty to report upon landowners and other persons whose activities have contaminated land. Responsibility for the contaminated land always remains with those persons responsible for contamination. Where, however, the polluter cannot be located, or is insolvent, the owner of the land or the **notional owner** will become responsible for remediation. In general terms, the notional owner is a person (not being the owner of the land or the Crown or a body representing the Crown) who is entitled to a freehold interest in the land.

*State Environmental Planning Policy No. 55 – Remediation of Land* prevents changes to land usage until the relevant consent authority has considered whether the land is contaminated and whether remediation is necessary in order to accommodate the proposed use. **Remediation work** must be performed in accordance with EPA standards and *Planning Guidelines for Contaminated Land*.

(c) Air Pollution

The *POEO Act* incorporates provisions dealing with the general minimisation of **air pollution**, pollution by fires and motor vehicle emissions. **In relation to the ESI, the most relevant provisions of the POEO Act** are the duties to maintain and operate **plant**, and to deal with any **materials**, in a proper and efficient manner so as to avoid causing air pollution. Refer to DB Air 3.3, 4.1, 5.2.

A specific area of potential liability relates to the escape of ozone-depleting substances, which include certain types of halon. Authorisations may be required from the EPA under the *Ozone*

*Protection Act 1989 (OP Act)* and the *Ozone Protection Regulation 1997 (OP Reg)* for restricted activities such as the installation of fixed halon flooding systems. The possession and use of ozone depleting substances is heavily regulated. Furthermore, it is a serious offence under the *POEO Act* to wilfully or negligently cause any controlled substance to be emitted into the atmosphere in contravention of the *OP Reg* in a way that harms or is likely to harm the environment.

(d) Hazardous Substances

The *EHC Act* contains provisions to control the effect of chemicals and chemical waste on the environment. It provides for the declaration of chemical wastes and the creation of **Chemical Control Orders (CCOs)** and **declared chemical wastes**.

There are CCOs for many wastes, the most relevant to the *ESI* being **dioxin-contaminated wastes**, polychlorinated biphenyls (**PCBs**), organotin wastes and **scheduled chemical wastes**. Most CCOs require licences to be held by people engaging in prescribed activities with respect to **environmentally hazardous chemicals**. Prescribed activities are manufacturing, processing, keeping, distributing, **conveying**, using, selling or disposing of the chemical waste, or any act related to those activities. Although a licence is not required to possess items of plant and equipment that contain **PCBs** (such as transformers), the CCO sets out stringent controls. See DB Land 2.2, 3.1, 3.2, 4.1 to 4.4 / DB Hazardous 2.1, 2.4, 4.1, 4.3, 4.5 / DB Waste 4.1, 4.2, 4.4.

The keeping and transportation of **dangerous goods** is regulated by the *Dangerous Goods Act 1975 (DG Act)*, which requires licences and authorisations for dealing with dangerous goods of various classes (e.g., flammable, toxic or corrosive substances). Refer to DB Hazardous 2.5, 3.4, 3.5, 3.7, 4.1, 4.3. The *Road and Rail Transport (Dangerous Goods) Act 1997 (RRT(DG) Act)* prescribes separate licensing obligations for the transport of dangerous goods by road or rail. Refer to DB Hazardous 2.1, 2.7, 3.1, 3.8, 3.9, 4.1 to 4.4 / DB Waste 3.9, 4.1, 4.3.

**Pesticides** are regulated specifically under the *Pesticides Act 1999*, which sets out various offences relating to the misuse of pesticides. Refer to DB Hazardous 4.1 to 4.4.

(e) Water Pollution

The *POEO Act* prohibits any person from causing or permitting **water pollution** except in accordance with the regulations or a licence held by the person. Water pollution is defined very broadly to include anything that produces a change in the physical, chemical or biological condition of any **waters**. The **corporation needs to be aware** that it is a sufficient basis for conviction, that the substance was placed in a position from which it was likely to end up in the receiving waters. Refer to DB Water 3.1, 4.1 to 4.5 / Waste 4.1.

(f) Noise Pollution

The *POEO Act* also regulates noise. Occupiers of premises are required to maintain plant in an efficient condition, operate plant properly and efficiently and to **deal with materials** in a proper and efficient manner so as not to cause excessive noise emissions from the premises. Refer to DB Noise 3.1, 4.1, 4.3.

## 2.2 NSW Planning Legislation Applicable to the ESI

### (a) General Planning Requirements

The *Environmental Planning and Assessment Act 1979 (EPA Act)* provides the primary source of obligations with respect to any **development** or **activity**. It can potentially affect the maintenance of electricity structures as well as their initial construction (see Question 10 of Part D).

Part 4 of the EPA Act applies where a State Environmental Planning Policy (**SEPP**), Regional Environmental Plan (**REP**) or a Local Environmental Plan (**LEP**) requires a consent to be obtained before carrying out a development. Development is defined to include the use of land; subdivision of land; erection of a building; carrying out of a work and the demolition of a building.

*SEPP No. 4 – Development Without Consent (SEPP 4)* recognises exceptions to the broad application of Part 4 of the EPA Act. Specifically, *SEPP 4* provides that the construction of electricity transmission lines by or on behalf of a public authority may be carried out without consent. Public authorities are defined in the EPA Act to include Statutory State owned corporations. Network operators are listed as a statutory State owned corporation in Schedule 5 to the *State Owned Corporations Act 1989 (SOC Act)*.

Where **development consent is not required for a proposal** (such as the construction of **electricity works**), the proposal may still need to be assessed under Part 5 of the EPA Act. The corporation, as the **determining authority**, will be required to consider the potential environmental impacts of any activity proposed to be carried out by it or on its behalf. The corporation must decide whether an environmental impact statement (**EIS**) is necessary. The test laid down in s112 is whether the proposed activity “is likely to significantly affect the environment (including critical habitat) of threatened species, populations or ecological communities, or their habitats”. Furthermore, the corporation must not carry out an activity in respect of land that is critical habitat, or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless a **species impact statement (SIS)** has been prepared in accordance with the *Threatened Species Conservation Act 1995*. Where an EIS has been prepared, the public must be notified and given an opportunity to comment on the proposed activity. An SIS is subject to similar public exhibition requirements.

Where **development by the corporation requires consent**, but falls outside the *SEPP 4* exemption relating to electricity transmission lines, the development will be dealt as Crown development under Part 5A of the EPA Act. Consequently, where the corporation lodges a development application, the local council cannot refuse its consent, or impose a condition on consent, except with the written approval of the corporation or of the Minister for Urban Affairs and Planning. The need to rely on Part 5A may be necessary because of the nature of the development or the area in which it is proposed to be undertaken. For instance, *SEPP 4* would **not** apply to the erection of substations or to development in the following areas:

- certain land at Jamberoo Valley and Homebush Bay;
- land to which *State Environmental Planning Policy No 26 – Littoral Rainforests* applies;
- land which is reserved under an **environmental planning instrument** for use exclusively for a purpose of open space, a public place or public reserve within the meaning of the *Local Government Act 1993*, a national park or other land reserved or dedicated under the

*National Parks and Wildlife Act 1974*, a public cemetery, a public hospital, a public railway, a public school or any other purpose that is prescribed as a public purpose.

The *Heritage Act 1977* provides that where a place is subject to an interim heritage order issued by the Heritage Council or is listed on the State Heritage Register, it is an offence to damage the place, carry out any development on the land or damage or destroy any vegetation on the land without the prior approval of the Heritage Council.

The primary responsibility of the corporation is to maintain any heritage items that it owns (e.g., old substations) and to seek approval from the Heritage Council before doing work in an area that contains heritage items.

(b) Existing Uses

Under the *EPA Act*, the use of a building, work or land may continue despite a new environmental planning instrument which prohibits that use, provided that:

- the building, work or land was used for a lawful purpose immediately before the commencement of the prohibition on the use; or
- the use is pursuant to a development consent that was carried out within 12 months after the date on which the prohibition commenced.

For example, in the *ESI* there may be a number of old substations, switchyards and power generators that predate more stringent planning controls.

The *EPA Act* prevents any alteration, extension and rebuilding of structures protected under existing use provisions. It also provides that there can be no increase in the area of the use made of a building, work or land, from that area “actually physically and lawfully” used immediately before the making of the new planning instrument. However, the *Environmental Planning and Assessment Regulation 1994 (EPA Reg)* permits a work that is used for an existing use to be altered or extended with development consent, but only on the land upon which the work was erected or carried out. Development consent is also required for any enlargement, expansion or intensification of an existing use.

(c) Vegetation Clearance

There are various regulatory instruments that deal with land clearing activities. The core legislative obligations are contained in the *Native Vegetation Conservation Act 1997 (NVC Act)*. Under this statute, **the corporation may be required to obtain development consent** before **clearing native vegetation**. There was a specific exemption for public utilities and emergency work under Schedule 3 to the former *SEPP 46*. It continues to operate, by virtue of *NVC Act* Schedule 4, **unless** the relevant land has been brought under a regional vegetation management plan (*RVMP*).

We understand that the exemption will be retained even after *RVMPs* have been developed and brought into effect around the State. The Department of Land & Water Conservation (*DL&WC*) has indicated that regional committees will be required to have regard to departmental guidelines in formulating *RVMPs*. Amongst other things, these guidelines will stipulate that *RVMPs* must contain an exemption for public utilities to allow for:

*minimal clearing of native vegetation if necessary for the maintenance of public utilities (associated with the provision of power lines, transmission of electricity, water, gas,*

*electronic communications or the like), or in the possible prevention of personal injury or damage to property.*

On the face of the *NVC Act*, there is no exemption from development consent requirements for **new** electricity infrastructure. However, there may be an argument that clause 11 of *SEPP 4* operates to exempt clearing which is ancillary or incidental to the construction of electricity transmission lines. In any case, the corporation should seek specific legal advice before proceeding without consent.

Certain types of land and clearing are excluded from the operation of the *NVC Act*, including: land zoned as 'residential', 'village', 'township', 'industrial' or 'business'; land subject to *State Environmental Planning Policy No. 14 – Coastal Wetlands (SEPP 14)*; land subject to *State Environmental Planning Policy No. 26 – Littoral Rainforests (SEPP 26)*; clearing authorised by the *Rural Fires Act 1997* and clearing authorised by the *Noxious Weeds Act 1993*.

Refer to Part C of this Manual for aspects of *SEPPs 14* and *26* which are relevant to the *ESI*.

Unless a general licence has been obtained under s120 of the *National Parks and Wildlife Act 1974 (NPW Act)* or a Part 6 licence under the *Threatened Species Conservation Act 1995 (TSC Act)* it is an offence under the *NPW Act* to harm any threatened species, population or ecological community. Additionally, the corporation must not, by act or omission, damage any critical habitat. There is also an offence under the *NPW Act* of harming protected fauna.

It is a defence in each of these provisions if the act or omission was essential for the carrying out of development under an *EPA Act* Part 4 development consent or an activity complying with *EPA Act* Part 5. There is provision in the *NPW Act* for the Minister for National Parks and Wildlife to grant an easement or right of way in relation to electricity transmission lines.

In contrast to the above regulatory instruments, the *Noxious Weeds Act 1993 (NW Act)* imposes a positive duty on the corporation to control noxious weeds on land occupied by it, to the extent necessary to prevent the weeds spreading to any adjoining land.

### 3. Overview of Industry Specific Regulation

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The *Electricity Supply Act 1995 (ES Act)* establishes the regime for network operations and electricity supply in New South Wales. The *ES Act* licences network operators for the purpose of establishing a competitive retail electricity market that delivers a safe and reliable supply of power in an efficient and environmentally responsible manner. A network operator was formerly defined under the *ES Act* to mean a transmission operator or *electricity distributor*.

The *Electricity Supply Amendment Act 2000* has altered the *ES Act* by imposing separate licensing obligations on *distribution network service providers (electricity distributors)* and *retail suppliers* of electricity. The principal features of the amended *ES Act* (so far as it relates to environmental licence obligations) are outlined below:

- Section 17 of the *ES Act*, which required *electricity distributors* to hold *retail suppliers'* licences has been repealed. The Minister may now impose a condition on a *distribution network service provider's* licence requiring the provider to transfer its *retail supplier's* licence (Schedule 6, clause 23);

- The key licensing sections are now s14 (for *distribution network service providers*), and s33 (for *retail suppliers*), which provide that the Minister may grant licences for the purposes of the *ES Act*. Schedule 2 of the Act has effect with respect to the granting, variation, transfer and cancellation of licences. It should be noted that the Minister has a broad discretion as to the conditions which may be imposed on a licence (ie, the mandatory conditions are expressed to be “*without limitation*”).
- **Mandatory Conditions of licences** (Schedule 2, Clause 6):
- **Retail supplier's licence conditions** (clause 6(4)) – the Minister must impose the following conditions on each *retail supplier's licence*:
  - a condition requiring the holder of the licence to develop strategies of the kind referred to in clause 6(6);
  - a condition requiring the auditing by the EPA, at intervals of no more than 3 years, of effectiveness of these strategies;
  - a condition requiring the holder of the licence to develop 1, 3 and 5 year plans for:
    - energy efficiency and demand management strategies, and
    - strategies for purchasing energy from sustainable sources, including consideration of cogeneration, purchasing of renewable energy (such as energy from plantation, sawmill and logging waste biomass sources that are sustainably harvested), buy-back schemes from grid-connected solar cells on buildings and remote area power systems.
  - a condition requiring the holder of the licence to prepare and publish annual reports in relation to the following matters:
    - the implementation of its demand management strategies,
    - the carbon dioxide emissions arising from the production of electricity supplied by it, as measured in accordance with a methodology approved by the Minister after consultation with the EPA;
    - its performance in meeting the minimum standards of service required under its standard form customer supply contracts;
    - the sources of the electricity supplied by it and the quantity of electricity supplied from those sources as proportions of the total electricity supplied by it.
- The “*strategies*” referred to in clause 6(4):
  - must be based on the principle of achieving the reduction of greenhouse gas emissions, from electricity supplied to customers in New South Wales, as the electricity sector's contribution to achieving the target of reducing greenhouse gas emissions, as agreed in any national greenhouse policies approved by the Council of Australian Governments, and
  - must be arrived at by negotiation with the Minister, and must include independent verification of emissions and carbon sequestration levels.

- In calculating greenhouse gas emissions from electricity supplied to customers in New South Wales, net reductions in greenhouse gases resulting from sources such as carbon sequestration (within the meaning of s87A of the *Conveyancing Act 1919*) by planted forests may be taken into account in accordance with a methodology approved by the Minister.
- A report on each audit prepared by the EPA:
  - must be made publicly available at the offices of the EPA, and
  - must be sent to the Independent Pricing and Regulatory Tribunal (*Tribunal*), and
  - must be tabled in each House of Parliament.
- The Minister must review the conditions referred to in clause 6(4) (relating to strategies, auditing and 1, 3 and 5 year plans) as soon as practicable after each occasion on which a report is tabled in the Legislative Assembly in order to assess the environmental performances of the holder of the licence and the environmental consequences of its work and activities.
- The Minister must consult with the Minister administering the *Protection of the Environment Administration Act 1991* before imposing conditions on a licence under clause 6.
- ***Distribution network service provider's licence conditions*** (clause 6(5)) – the Minister must impose the following conditions on each *distribution network service provider's licence*:
  - a condition requiring the holder of the licence, before expanding its distribution system or the capacity of its distribution system, to carry out investigations (being investigations to ascertain whether it would be cost-effective to avoid or postpone the expansion by implementing demand management strategies) in circumstances in which it would be reasonable to expect that it would be cost-effective to avoid or postpone the expansion by implementing such strategies;
  - a condition requiring the holder of the licence to prepare and publish annual reports in relation to the investigations carried out by it.

The corporation should also be aware of the new enforcement provisions. The main features are as follows:

- Enforcement of licences by the Minister (Schedule 2, Clause 8A):
  - The Minister may do either or both of the following:
    - impose a monetary penalty not exceeding \$100,000 on the holder of a licence,
    - cancel a licence.
  - A *retail supplier's licence* held by a distribution network service provider must not be cancelled unless the distribution network service provider's licence held by the distribution network service provider is also cancelled.
  - Action may be taken under this clause only if the holder of the licence has knowingly contravened:

- the requirements of the ES Act or the regulations, or
  - the conditions of the licence.
- Enforcement of licences by the Independent Pricing and Regulatory Tribunal (Schedule 2, Clause 8A):
    - The Tribunal may impose a monetary penalty on the holder of a licence or require the holder of the licence to take such action as the Tribunal considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.
    - Action may be taken under this clause only if the holder of the licence as knowingly contravened the conditions of the licence.
    - The monetary penalty that the Tribunal may impose under this clause must not exceed \$10,000 for the first day on which the contravention occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.
    - The Tribunal must not take action if the Minister has already taken action under in respect of the contravention.

Under s45 of the *ES Act*, the corporation is exempt from the requirement to obtain an approval under the *Local Government Act 1993 (LG Act)* in relation to work connected with the erection, installation, extension, alteration, maintenance and removal of electricity works, except in so far as the works relate to buildings. Electricity works are defined to mean any electricity power lines or associated equipment or **electricity structures** that form part of a transmission or distribution system. The **corporation must give prior notice** to the relevant local council and due consideration to any council submissions prior to commencing work (apart from routine repairs or maintenance).

The corporation is empowered under s44 of the *ES Act* to acquire land (including an interest in land such as an easement) for the purpose of exercising its statutory functions. The acquisition may be by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (LA(JTC) Act)*. However, the corporation must not issue a proposed acquisition notice under the *LA(JTC) Act* without the approval of the Minister for Energy. The *Native Title (New South Wales) Act 1994 (NT(NSW) Act)* sets out certain other procedural obligations in respect of the compulsory acquisition of native title rights and interests.

The *ES Act* grants to network operators such powers as are necessary to enable them to operate, repair and maintain their electricity works. The corporation may serve a written notice on the owner or occupier of premises, requiring the removal or trimming of a **tree**, where there is a reasonable belief that the tree could damage electricity works or make those works a potential cause of bush fire or a risk to public safety (s48). The corporation is not required to pay the cost of carrying out the work if:

- the owner or occupier planted the tree after installation of the electricity works and ought reasonably to have known that damage or interference to the works would result; or
- the land on which the tree is located was the subject of an easement in favour of the corporation when the tree was planted.

Where, in these circumstances, the corporation is forced to trim or remove a tree due to non-compliance with a written notice, it may recover the cost from the owner or occupier of the land.

This power overrides any tree preservation order or planning instrument other than a *SEPP*, but does not apply to protected areas (such as a national park) or where certain orders under the *Heritage Act* or the *NPW Act* are in force. Vegetation clearance and the effect of tree preservation orders are dealt with in more detail in Frequently Asked Questions (Part D, Appendix 1).

Part 11 of the *Electricity Supply (General) Regulation 2001* now regulates the removal and trimming of trees so as to minimise damage to or destruction of trees growing under or near powerlines. It is important to note that it applies only to the extent to which a service provider may lawfully remove or trim trees and **does not itself authorise** the removal or trimming of trees.

*Tree* is defined to mean a tree taller than 3 metres, or having a canopy more than 3 metres in maximum diameter or having a trunk with a circumference at a height of 1 metre from the ground of more than 0.3 metres.

Clause 102 prevents a service provider from removing any tree, or trimming any tree in a way that substantially damages the tree, **unless**:

- it is of the opinion that it is **necessary** to do so **to protect** its **powerlines** or the **safety of persons** or **property** under or near its powerlines, **and**
- it has considered **alternative methods** and is of the opinion that none of those methods are feasible in the circumstances (including economically feasible), **and**
- the service provider is acting in accordance with a tree management plan.

*Alternative methods* include, but are not limited to, the use of aerial bundled cables, the controlled trimming of trees and the appropriate location or relocation of powerlines (including placing them underground).

The corporation also has the power under s49 of the *ES Act* to serve a written notice on any person having control of a thing that is reasonably believed to be destroying, damaging or interfering with electricity works. In this case, however, the cost of modifying or removing the thing, and of repairing any damage done to the electricity works, is borne exclusively by the person. If the person fails to comply with a written notice, the corporation may recover the costs of undertaking the work as a debt owed to it by the person.

Under the *Electricity Safety Act 1945*, the Director of the Department of Energy may, for the purposes of traffic safety, direct the corporation to remove or relocate an electricity structure that is on or adjacent to a public road.

*State Environmental Planning Policy No. 69 – Major Electricity Supply Projects (SEPP 69)* was gazetted on 27 July 2001. It contains provisions designed to facilitate the carrying out of the Picnic Point to Haymarket and Haymarket to Surry Hills electricity supply projects. As a result of *SEPP 69*, the projects will largely be assessed under Part 5 of the *EPA Act*. However, there are some important exceptions where Part 4 development consent may be required (e.g., erection, modification or maintenance of electricity substations, and development specified in Schedule 2 to *SEPP 69*). *SEPP 69* also requires the referral of certain development applications to TransGrid or EnergyAustralia where these are likely to affect the projects.

## 4. Management Responsibility

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### 4.1 Offences under the *POEO Act*

The *POEO Act* establishes a three-tiered hierarchy of environmental offences. Refer to DB Air 4.1 to 4.6 / DB Land 4.1 to 4.4 / DB Hazardous 4.1 to 4.5 / DB Noise 4.1 to 4.6 / DB Waste 4.1 to 4.4 / DB Water 4.1 to 4.6.

**Tier One** offences carry the most severe penalties and include negligently or wilfully:

- disposing of waste in a manner which harms or is likely to harm the environment;
- causing any substance to leak, spill or otherwise escape in a manner that harms or is likely to harm the environment; and
- causing any controlled substance (under the *OP Act*) to be emitted into the atmosphere in contravention of the regulations and in a manner which causes harm, or is likely to cause harm, to the environment.

**Tier Two** offences are all other offences under the *POEO Act*, which cover the areas of air, noise, water and land pollution, in addition to ancillary offences for non-compliance with notices, licence provisions and directions of authorised officers.

**Tier Three** offences result where Tier Two offences are dealt with by way of penalty notice.

With the exception of Tier One offences, most offences created by environment protection legislation are strict liability offences. Consequently, the prosecution is not required to prove that the person committing the offence had an intention or other culpable state of mind. However, a defence of **honest and reasonable mistake** may be available on the facts of some cases.

**The corporation will be criminally responsible** for the acts of its employees where these acts are committed in the course of their employment. This arises even though the employee may have done their job in a way that is not approved by the corporation.

The corporation may also be liable for the acts of independent contractors and employees of independent contractors where the corporation exercises control over their activities.

### 4.2 Sentencing and Penalties

Penalties for pollution offences can be substantial, extending to \$1,000,000 for a corporate entity found guilty of a Tier One offence under the *POEO Act*, and \$250,000 and/or 7 years imprisonment for individuals.

If the corporation commits a Tier Two offence in relation to water, air and land pollution it may be fined up to \$250,000, with an additional penalty of \$120,000 per day for a continuing offence. The maximum for individuals is \$120,000 and \$60,000 per day for a continuing offence. The penalties for **noise pollution** are lower, with the maximum corporate penalty set at \$60,000 (and \$6,000 per day for a continuing offence). An individual found guilty of noise pollution would be liable to a maximum fine of \$30,000 and \$600 per day, respectively.

The corporation and its officers, employees, contractors and agents may be fined for failing to report a pollution incident (e.g., a spill) which causes or threatens material harm to the environment. The maximum penalty in the case of the corporation is \$250,000 and \$120,000 per

day if the offence continues. In the case of an individual the penalty can be up to \$120,000, and a further \$60,000 for each day the offence continues.

The corporation will also be guilty of an offence if it does not comply with a prevention notice or a prohibition notice. The maximum corporate penalty is \$250,000, and a further \$120,000 for each day the offence continues. In the case of an individual (*e.g.*, where a director is held to be liable for the failure to comply) the maximum penalty is \$120,000 and a further penalty of \$60,000 for each day the offence continues.

As noted above, Tier Three offences are Tier Two offences that can be dealt with by way of penalty notices. This category is intended for relatively minor infringements and the maximum fine is limited to \$1,500.

In imposing a penalty for an offence against the *POEO Act*, the Court is required to take certain matters into account (so far as they are relevant). These are:

- the extent of the harm caused or likely to be caused by the offence;
- the practical measures that may be taken to mitigate the harm;
- the extent to which the harm caused or likely to be caused was reasonably foreseeable;
- the extent to which the person committing the offence had control over the causes giving rise to the offence; and
- whether, in committing the offence, the person was complying with orders from an employer or supervising employee.

#### **4.3 Offences and Penalties in Other Environmental Legislation**

It is not feasible in this section to survey every penal law that may apply to the corporation and its representatives. Instead, the following examples are designed to give some appreciation of the range of penalties that could possibly be imposed.

- Under the Commonwealth *EPBC Act*, the unlawful taking of an action that has a significant impact on a matter of national environmental significance will potentially attract a civil penalty for the corporation of up to \$5.5 million or a criminal penalty of up to 7 years imprisonment.
- A person guilty of an offence against the *Heritage Act* (*e.g.*, carrying out development on heritage listed land without approval) may be liable to a penalty of \$1,100,000 or imprisonment for 6 months, or both).
- The EPA Act has been amended to also provide for a maximum fine of:
  - \$1,100,000 for a breach of the Act, and \$110,000 per day for a continuing offence; and
  - \$110,000 for a breach of the regulations.
- It is an offence under the *NPW Act* to:
  - knowingly destroy, deface or damage, or knowingly cause or permit the destruction or defacement of or damage to, a relic or Aboriginal place without the consent of

the Director-General (maximum penalty for an individual \$5,500 or imprisonment for 6 months, or both, and for a corporation \$22,000);

- harm any threatened animal species, population or ecological community;
- pick any threatened plant species, population or ecological community;
- damage critical habitat; or
- damage habitat of a threatened species, population or ecological community.
- Prohibitions on harm and damage also apply under the *FM Act 1994*.
- The following maximum penalties apply under the *NPW Act* and *FM Act*:
  - for critical habitat, endangered species, population or ecological community – \$220,000 or imprisonment for 2 years, or both;
  - for vulnerable species – \$55,000 or imprisonment for 1 year or both; and
  - for habitat of threatened species, population or ecological community – \$110,000 or imprisonment for 1 year or both.

#### 4.4 Due Diligence and Defences

Directors and persons concerned in the management of the corporation may be held to be individually liable for particular offences committed by the corporation under environmental legislation. Refer to DB Air 4.4 / DB Land 4.4 / DB Hazardous 4.5 / DB Noise 4.4 / DB Waste 4.4 / DB Water 4.4. A prosecution may generally be launched against a director or person concerned in the management of a corporation irrespective of whether or not proceedings have been commenced or a conviction obtained against the corporate entity.

The *POEO Act* contains two defences relating to due diligence:

- s118, which provides a defence for both corporations and individuals (but only in respect of Tier One offences) where:
  - the commission of the offence was due to causes over which the defendant had no control; and
  - the defendant took all reasonable precautions and exercised due diligence to prevent the commission of the offence.
- s169(1), which provides a defence to any charge under the *POEO Act* where:
  - the corporation breached the provision without the actual, imputed or constructive knowledge of the person; or
  - the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
  - the person, if in such a position of influence, used all due diligence to prevent the contravention by the corporation.

The *CLM Act*, *DG Act*, *EHC Act*, *NVC Act* and *Heritage Act* contain similar provisions to s169(1). The burden of satisfying the court as to any of these matters lies on the director or officer. Conversely, some statutes (such as the *NPW Act* and the *OP Act*) require the prosecution to

establish that the person “*knowingly authorised or permitted the contravention*” in order to prove individual criminal responsibility.

What will constitute effective due diligence depends on the circumstances of the case.

Management must be attentive to the likely risks associated with the activities of the corporation.

A court will not be satisfied by the standard industry precautions, unless these are also designed to prevent the breach in question. Whether the corporation or a director took the precautions that ought to have been taken is a question of fact that will be decided objectively according to the standard of a reasonable person in the circumstances.

It is not sufficient merely to establish an EMS on paper. The system must be reinforced at all levels of the corporation through proper staff training, as well as being regularly reviewed for compliance.

## Part B – Activities, Impacts and Relevant Laws

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<i>Retail</i>		
<b>Retail Purchase and Sale of Energy</b>	<ul style="list-style-type: none"> <li>• Greenhouse gas emissions will be affected by the choice of supply (e.g., whether the customer elects to purchase from a 'green source'), transaction volume and conservation methods</li> <li>• Liability will be incurred from 1 April 2001 in relation to wholesale purchases of electricity from non-renewable sources (the liability must be discharged either by acquisition of renewable energy certificates or payment of the shortfall charge (at \$40 per MWh))</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Electricity Supply Act 1995</i></li> <li>• <i>Renewable Energy (Electricity) Act 2000</i></li> <li>• <i>Renewable Energy (Electricity) (Charge) Act 2000</i></li> <li>• <i>Renewable Energy (Electricity) Regulations 2001</i></li> </ul>

<i><b>Network &amp; Transmission</b></i>		
Network Extension and Operation of New Infrastructure		
<p><b>Preliminary planning for network extension</b> (operational objectives, hazard planning, demand management strategies, load control, line losses, safety issues regarding new &amp; existing infrastructure)</p>	<ul style="list-style-type: none"> <li>• Greenhouse gas emissions will be affected by the decision to expand the network or to increase efficiency</li> <li>• Safety issues arising from electricity supply</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Electricity Supply Act 1995</i></li> <li>• <i>Energy Services Corporations Act 1995</i></li> <li>• <i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i></li> <li>• <i>Environment Protection and Biodiversity Conservation Regulations 2000 (Cth)</i></li> <li>• <i>Electricity Safety Act 1945</i></li> <li>• <i>Electricity Supply (Safety Plans) Regulation 1997</i></li> <li>• <i>Occupational Health and Safety Act 2000</i></li> <li>• <i>Occupational Health and Safety Regulation 2001</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
New Infrastructure – Site / Route Selection and Design		
<b>Project Assessment (site / route selection)</b>	<ul style="list-style-type: none"> <li>• general planning considerations relating to the selection of new transmission or service line routes (visual, noise, oil leak risk, adjacent land values)</li> <li>• siting of other new infrastructure, such as substations and depots (visual, noise, oil leak risk, adjacent land values)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i> (DB Cth EIA 3.1)</li> <li>• <i>Environment Protection and Biodiversity Conservation Regulations 2000 (Cth)</i></li> <li>• <i>Environmental Planning and Assessment Act 1979</i></li> <li>• <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>• <i>Environmental Planning and Assessment Model Provisions 1980</i></li> <li>• <i>State Environmental Planning Policy No. 4 – Development Without Consent</i></li> <li>• <i>State Environmental Planning Policy No. 69 – Major Electricity Supply Projects</i></li> <li>• <i>Land Acquisition (Just Terms Compensation) Act 1991</i></li> <li>• <i>Native Title (New South Wales) Act 1994</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Line Design (flora and fauna)</b></p>	<ul style="list-style-type: none"> <li>• Permissibility of clearing vegetation along the proposed route and for the purpose of access tracks</li> <li>• Impact on threatened species and critical habitat</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i> (DB Cth EIA 3.1)</li> <li>• <i>Environment Protection and Biodiversity Conservation Regulations 2000 (Cth)</i></li> <li>• <i>Environmental Planning and Assessment Act 1979</i></li> <li>• <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>• <i>Electricity Supply (General) Regulation 2001</i></li> <li>• <i>Fisheries Management Act 1994</i></li> <li>• <i>Forestry Act 1916, Forestry Regulation 1999</i></li> <li>• <i>Heritage Act 1977</i></li> <li>• <i>Heritage Regulation 1999</i></li> <li>• <i>National Parks and Wildlife Act 1974</i></li> <li>• <i>National Parks and Wildlife (Land Management) Regulation 1995</i></li> <li>• <i>Native Vegetation Conservation Act 1997</i></li> <li>• Specific subordinate legislation dealing with particular environments (e.g., <i>State Environmental Planning Policy No. 14 – Coastal Wetlands</i>, <i>State Environmental Planning Policy No. 26 – Littoral Rainforest</i>, <i>State Environmental Planning Policy No. 44 – Koala Habitat Protection</i>)</li> <li>• <i>Threatened Species Conservation Act 1995</i></li> <li>• <i>Wilderness Act 1987</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<b>Line Design (heritage / archaeological)</b>	<ul style="list-style-type: none"> <li>• Potential impact of proposed line on heritage and/or archaeological sites and items</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Environmental Planning and Assessment Act 1979</i></li> <li>• <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>• <i>Heritage Act 1977</i></li> <li>• <i>Heritage Regulation 1999</i></li> <li>• <i>National Parks and Wildlife Act 1974</i></li> <li>• <i>National Parks and Wildlife (Land Management) Regulation 1995</i></li> </ul>
<b>Line Design (soil, water and visual amenity)</b>	<ul style="list-style-type: none"> <li>• Potential impact of proposed line on soil, water and visual amenity</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i> (DB Cth EIA 3.1)</li> <li>• <i>Environment Protection and Biodiversity Conservation Regulations 2000 (Cth)</i></li> <li>• <i>Environmental Planning and Assessment Act 1979</i></li> <li>• <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>• <i>Protection of the Environment Operations Act 1997</i></li> <li>• <i>Fisheries Management Act 1994</i></li> <li>• <i>Rivers and Foreshores Improvement Act 1948</i> (relevant provisions to be replaced by Water Management Act 2000)</li> <li>• <i>Soil Conservation Act 1938</i></li> </ul>
<b>Line Design (EMF)</b>	<ul style="list-style-type: none"> <li>• Electric and magnetic fields arising from proposed infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Environmental Planning and Assessment Act 1979</i></li> <li>• <i>Environmental Planning and Assessment Regulation 1994</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Line Design (coastal and wetlands)</b></p>	<ul style="list-style-type: none"> <li>Potential impact on coastal and wetland environments</li> </ul>	<ul style="list-style-type: none"> <li><i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i> (DB Cth EIA 3.1)</li> <li><i>Environment Protection and Biodiversity Conservation Regulations 2000 (Cth)</i></li> <li><i>Environmental Planning and Assessment Act 1979</i></li> <li><i>Environmental Planning and Assessment Regulation 2000</i></li> <li><i>Coastal Protection Act 1979</i></li> <li><i>Coastal Protection (Non-local Government Areas) Regulation 1994</i></li> <li><i>State Environmental Planning Policy No. 14 – Coastal Wetlands</i></li> </ul>
<p>New Infrastructure – Construction (<i>n.b.</i>, there may be consent conditions applying to this work)</p>		
<p><b>Line Construction (access)</b></p>	<ul style="list-style-type: none"> <li>Access of workers, vehicles and plant for the purposes of construction activities (including surveying and preparatory clearing)</li> </ul>	<ul style="list-style-type: none"> <li><i>Electricity Supply Act 1995</i></li> <li><i>Environmental Planning and Assessment Act 1979</i></li> <li><i>Environmental Planning and Assessment Regulation 2000</i></li> <li><i>Environmental Planning and Assessment Model Provisions 1980</i></li> <li><i>Heritage Act 1977</i></li> <li><i>State Environmental Planning Policy No. 4 – Development Without Consent</i></li> <li><i>State Environmental Planning Policy No. 69 – Major Electricity Supply Projects</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<b>Line Construction (noise)</b>	<ul style="list-style-type: none"> <li>Noise pollution arising from construction activities (e.g., land clearance, grading, use of power tools and compressors)</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Noise 3.1, 4.1.10, 4.1.11, 4.3)</li> <li><i>Local Government Act 1993</i> (DB Noise 3.4, 4.1.25)</li> <li><i>Local Government (General) Regulation 1999</i></li> </ul>
<b>Line Construction (soil)</b>	<ul style="list-style-type: none"> <li>Impacts upon soil arising from construction activities (e.g., erosion or <b>contamination of land</b>, sediment control or the disturbance of <b>acid sulphate soils</b>)</li> <li>Effects from underground cable installation (e.g., erosion, regeneration of grass, damage to tree roots, generation of waste rubble)</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 3.1, 3.2, 4.1 / DB Waste 4.1, 4.3)</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li><i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li><i>Contaminated Land Management Regulation 1998</i> (DB Land 9.1.2)</li> <li><i>Soil Conservation Act 1938</i></li> </ul>
<b>Line Construction (water)</b>	<ul style="list-style-type: none"> <li>Impact of construction on any water resources (e.g., siltation)</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Water 2.1, 2.3, 3.1, 4.1 to 4.5)</li> <li><i>Fisheries Management Act 1994</i></li> <li><i>Rivers and Foreshores Improvement Act 1948</i> (relevant provisions to be replaced by Water Management Act 2000)</li> <li><i>Local Government Act 1993</i> (DB Water 2.2, 4.1.19)</li> <li><i>Local Government (General) Regulation 1999</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
Line Maintenance – Line/Pole Inspection, Repair, Replacement and Alteration		
Line Maintenance (assessment of environmental effects)	<ul style="list-style-type: none"> <li>Possible need for development consent or Part 5 assessment depending on the methods used and impacts generated (large scale, non-routine maintenance works would typically be subject to project assessment in the same way as new development (see the project assessment, line design and line construction categories above)</li> </ul>	<ul style="list-style-type: none"> <li><i>Environmental Planning and Assessment Act 1979</i></li> <li><i>Environmental Planning and Assessment Regulation 2000</i></li> <li><i>Environmental Planning and Assessment Model Provisions 1980</i></li> <li><i>State Environmental Planning Policy No. 4 – Development Without Consent</i></li> <li><i>State Environmental Planning Policy No. 69 – Major Electricity Supply Projects</i></li> </ul>
Line Maintenance (pesticides and preservatives)	<ul style="list-style-type: none"> <li>Possible harmful effect of <b>pesticides</b> used to preserve poles and cross arms</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 3.1, 4.1 4.2)</li> <li><i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 4.1, 4.2, 4.4)</li> <li><i>Pesticides Act 1999</i> (DB Hazardous 4.1 to 4.4)</li> <li><i>Scheduled Chemical Wastes Chemical Control Order 1994</i> (DB Waste 3.2)</li> <li><i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 4.1, 4.3)</li> <li><i>Dangerous Goods (General) Regulation 1999</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<b>Line Maintenance (transporting poles)</b>	<ul style="list-style-type: none"> <li>Environmental effects of transporting power line infrastructure (e.g., poles, butts, cross arms and wires)</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Waste 2.1, 4.1 to 4.3)</li> <li><i>Road Transport (Safety and Traffic Management) Act 1999</i></li> </ul>
<b>Line Maintenance (noise)</b>	<ul style="list-style-type: none"> <li><b>Noise pollution</b> arising from the replacement, repair or alteration of power line infrastructure</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Noise 3.1, 4.1.10, 4.1.11, 4.3)</li> <li><i>Local Government Act 1993</i> (DB Noise 3.4, 4.1.25)</li> <li><i>Local Government (General) Regulation 1999</i></li> </ul>
<b>Line Maintenance (soil)</b>	<ul style="list-style-type: none"> <li>Erosion of access tracks, soil contamination, spoil disposal, disturbance of <b>acid sulphate soils</b> resulting from replacement, repair or alteration of power line infrastructure</li> <li>Effects from underground cable maintenance (e.g., erosion, regeneration of grass, damage to tree roots, generation of waste rubble)</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 3.1, 3.2, 4.1 / DB Waste 4.3)</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i></li> <li><i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li><i>Contaminated Land Management Regulation 1998</i> (DB Land 9.1.2)</li> <li><i>Soil Conservation Act 1938</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<b>Line Maintenance (water)</b>	<ul style="list-style-type: none"><li>• <b>Water pollution</b>, siltation, acid sulphate run off resulting from replacement, repair or alteration of power line infrastructure</li></ul>	<ul style="list-style-type: none"><li>• <i>Protection of the Environment Operations Act 1997</i> (DB Waste 4.1 / DB Water 3.1, 4.1 to 4.5)</li><li>• <i>Fisheries Management Act 1994</i></li><li>• <i>Rivers and Foreshores Improvement Act 1948</i> (relevant provisions to be replaced by Water Management Act 2000)</li><li>• <i>Local Government Act 1993</i> (DB Water 2.2, 4.1.19)</li><li>• <i>Local Government (General) Regulation 1999</i></li></ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Line Maintenance (disposal / re-use of poles)</b></p>	<ul style="list-style-type: none"> <li>Safety precautions regarding transport and disposal of contaminated wooden poles, cross arms and butts</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 2.1, 2.4, 4.1 / DB Waste 2.1, 4.1, 4.3)</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li><i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 4.1, 4.2, 4.4)</li> <li><i>Scheduled Chemical Wastes Chemical Control Order 1994</i> <i>Scheduled Chemical Wastes Chemical Control Order 1994</i> (DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 3.2)</li> <li><i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 3.4, 3.5, 3.7, 4.1, 4.3)</li> <li><i>Dangerous Goods (General) Regulation 1999</i></li> <li><i>Road and Rail Transport (Dangerous Goods) Act 1997</i> (DB Hazardous 2.1, 2.7, 3.1, 3.8, 3.9, 4.1 to 4.4 / DB Waste 3.9, 4.1, 4.3)</li> <li><i>Road and Rail Transport (Dangerous Goods) (Rail) Regulation 1999</i></li> <li><i>Road and Rail Transport (Dangerous Goods) (Road) Regulation 1998</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
Line Maintenance – Specific Vegetation Management Issues		
Vegetation Management (trees)	<ul style="list-style-type: none"> <li>• Controlling encroachment of trees and other vegetation</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Electricity Supply Act 1995</i></li> <li>• <i>Electricity Supply (General) Regulation 2001</i></li> <li>• <i>Native Vegetation Conservation Act 1997</i></li> <li>• <i>Heritage Act 1977</i></li> <li>• <i>Protection of the Environment Operations Act 1997</i></li> <li>• <i>Rural Fires Act 1997</i></li> <li>• <i>Rural Fires Regulation 1997</i></li> </ul>
Vegetation Management (use of herbicides)	<ul style="list-style-type: none"> <li>• Storage</li> <li>• Risk of escape during transportation, due diligence required in applying herbicide (e.g., Tordon TCH, Access)</li> <li>• Disposal of containers</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protection of the Environment Operations Act 1997</i> (DB Land 3.1, 4.1 4.2)</li> <li>• <i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 3.3, 4.1, 4.2, 4.4)</li> <li>• <i>Pesticides Act 1999</i> (DB Hazardous 4.1 to 4.4)</li> <li>• <i>Scheduled Chemical Wastes Chemical Control Order 1994</i> (DB Waste 3.2)</li> <li>• <i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 4.1, 4.3)</li> <li>• <i>Dangerous Goods (General) Regulation 1999</i></li> </ul>
Vegetation Management (noxious weeds)	<ul style="list-style-type: none"> <li>• Managing noxious weed growth in areas containing electricity power lines</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Noxious Weeds Act 1993</i></li> <li>• <i>Noxious Weeds Regulation 1993</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<b>Vegetation Management (endangered species)</b>	<ul style="list-style-type: none"> <li>Effect of physical clearing methods and herbicide use on endangered species / critical habitat</li> </ul>	<ul style="list-style-type: none"> <li><i>National Parks and Wildlife Act 1974</i></li> <li><i>National Parks and Wildlife (Land Management) Regulation 1995</i></li> <li><i>Fisheries Management Act 1994</i></li> <li><i>Threatened Species Conservation Act 1995</i></li> </ul>
<b>Vegetation Management (soil)</b>	<ul style="list-style-type: none"> <li>Soil erosion arising from clearing of vegetation</li> </ul>	<ul style="list-style-type: none"> <li><i>Soil Conservation Act 1938</i></li> </ul>
<b>Operations Management (e.g., oil-filled equipment, depots, substations, equipment and vehicles)</b>		
<b>Oil Storage (PCB less than 2 mg/kg)</b> e.g., equipment such as transformers, capacitors, circuit breakers and underground cables	<ul style="list-style-type: none"> <li>Possible leaks and spills of oil containing less than 2 mg/kg of PCB due to inadequate storage</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 3.1, 3.2, 4.1.1.2, 4.2 / DB Waste 4.1, 4.3.1 /DB Water 3.1, 4.3.2)</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li><i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li><i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 4.1, 4.3)</li> <li><i>Dangerous Goods (General) Regulation 1999</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Oil Storage (PCB at 2 mg/kg or greater)</b> e.g., equipment such as transformers, capacitors, circuit breakers and underground cables</p>	<ul style="list-style-type: none"> <li>Possible leaks and spills due to defective storage practices for oil filled equipment</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 3.1, 3.2, 4.1.1.2, 4.2 / DB Waste 4.1, 4.3.1 / DB Water 3.1, 4.3.2)</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li><i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li><i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 4.1, 4.3)</li> <li><i>Dangerous Goods (General) Regulation 1999</i></li> <li><i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 3.3, 4.1, 4.2, 4.4)</li> <li><i>Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997</i> (DB Waste 3.2)</li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Oil Storage (PCB greater than 50 mg/kg)</b>  <i>i.e., <b>scheduled PCB waste</b></i> in used oil, as well as oil-filled equipment such as transformers, capacitors, circuit breakers and underground cables</p>	<ul style="list-style-type: none"> <li>• Possible leaks and spills due to defective storage practices for oil-filled equipment</li> <li>• Special obligations with respect to high <b>PCB material</b> and <b>waste</b> (e.g., licence required if more than 1 tonne kept on premises, risk management program and phase-out, written notification to the EPA of receipt, detailed design requirements for storage facility, containers and labelling)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protection of the Environment Operations Act 1997</i> (DB Land 2.1, 2.4, 4.1, DB Waste 2.1, 4.1, 4.3)</li> <li>• <i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li>• <i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li>• <i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 4.1, 4.2, 4.4)</li> <li>• <i>Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997</i> (DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 3.2)</li> <li>• <i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 3.4, 3.5, 3.7, 4.1, 4.3)</li> <li>• <i>Dangerous Goods (General) Regulation 1999</i></li> </ul>
<p><b>Recycling and Processing of non-PCB oil</b></p>	<ul style="list-style-type: none"> <li>• Recycling of oil on site by mobile plant</li> <li>• Processing of oil (e.g., use of filters to dry or degas oil)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protection of the Environment Operations Act 1997</i> (DB Waste 2.1, 4.1.5, 4.1.6)</li> <li>• <i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li>• <i>Local Government Act 1993</i> (DB Waste 4.1.10)</li> <li>• <i>Local Government (General) Regulation 1999</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Oil Spills (PCB less than 2 mg/kg)</b></p>	<ul style="list-style-type: none"> <li>Leaks, spills or other escape of oil (containing less than 2 mg/kg of PCB)</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 3.1, 3.2, 4.1.1.2, 4.2 / DB Waste 4.1, 4.3.1 / DB Water 3.1, 4.3.2)</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li><i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li><i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 4.1, 4.3)</li> <li><i>Dangerous Goods (General) Regulation 1999</i></li> </ul>
<p><b>Oil Spills (PCB equal to or greater than 2 mg/kg)</b></p>	<ul style="list-style-type: none"> <li>Response to oil spillage from transformers, capacitors, etc, where PCB concentration greater than or equal to 2 mg/kg</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 3.1, 3.2, 4.1.1.2, 4.2 / DB Waste 4.1, 4.3.1 / DB Water 3.1, 4.3.2)</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li><i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li><i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 4.1, 4.3)</li> <li><i>Dangerous Goods (General) Regulation 1999</i></li> <li><i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 3.3, 4.1, 4.2, 4.4)</li> <li><i>Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997</i> (DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 3.2)</li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Transport of Oil (PCB less than 2 mg/kg)</b> e.g., used oil, oil-filled equipment such as transformers, capacitors, circuit breakers and underground cables</p>	<ul style="list-style-type: none"> <li>Leaks and spills due to unsafe or inadequate transportation of non-PCB oil and oil-filled equipment</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 2.1, 2.4, 3.1, 3.2, 4.1.1.2, 4.2 / DB Waste 2.1, 4.1, 4.3.1 / DB Water 3.1, 4.3.2, )</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li><i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li><i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 3.4, 3.5, 3.7, 4.1, 4.3)</li> <li><i>Dangerous Goods (General) Regulation 1999</i></li> <li><i>Road and Rail Transport (Dangerous Goods) Act 1997</i> (DB Hazardous 2.1, 2.7, 3.1, 3.8, 3.9, 4.1 to 4.4 / DB Waste 3.9, 4.1, 4.3)</li> <li><i>Road and Rail Transport (Dangerous Goods) (Rail) Regulation 1999</i></li> <li><i>Road and Rail Transport (Dangerous Goods) (Road) Regulation 1998</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Transport of Oil (PCB at 2 mg/kg but less than or equal to 50 mg/kg)</b>  <i>i.e., non-scheduled PCB waste</i> in used oil, as well as transport of oil-filled equipment such as transformers, capacitors, circuit breakers and underground cables</p>	<ul style="list-style-type: none"> <li>• Leaks and spills due to inadequate or unsafe transportation of oil and oil-filled equipment</li> <li>• use of containers, labelling, loading and packing</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protection of the Environment Operations Act 1997</i> (DB Land 2.1, 2.4, 4.1 / DB Waste 2.1, 4.1, 4.3)</li> <li>• <i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li>• <i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li>• <i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 4.1, 4.2, 4.4)</li> <li>• <i>Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997</i> (DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 3.2)</li> <li>• <i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 3.4, 3.5, 3.7, 4.1, 4.3)</li> <li>• <i>Dangerous Goods (General) Regulation 1999</i></li> <li>• <i>Road and Rail Transport (Dangerous Goods) Act 1997</i> (DB Hazardous 2.1, 2.7, 3.1, 3.8, 3.9, 4.1 to 4.4 / DB Waste 3.9, 4.1, 4.3)</li> <li>• <i>Road and Rail Transport (Dangerous Goods) (Rail) Regulation 1999</i></li> <li>• <i>Road and Rail Transport (Dangerous Goods) (Road) Regulation 1998</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Transport of Oil (PCB greater than 50 mg/kg)</b>  <i>i.e., <b>scheduled PCB waste</b></i> in used oil, as well as oil-filled equipment such as transformers, capacitors, circuit breakers and underground cables</p>	<ul style="list-style-type: none"> <li>• Leaks and spills due to inadequate or unsafe transportation of oil and oil-filled equipment</li> <li>• Special obligations with respect to high PCB (e.g., containers, labelling, loading and packing precautions, vehicles to carry personnel trained in spill containment and appropriate protective /clean up equipment, notification to EPA of dispatch/receipt)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protection of the Environment Operations Act 1997</i> (DB Land 2.1, 2.4, 4.1 / DB Waste 2.1, 4.1, 4.3)</li> <li>• <i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li>• <i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li>• <i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 4.1, 4.2, 4.4)</li> <li>• <i>Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997</i> (DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 3.2)</li> <li>• <i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 3.4, 3.5, 3.7, 4.1, 4.3)</li> <li>• <i>Dangerous Goods (General) Regulation 1999</i></li> <li>• <i>Road and Rail Transport (Dangerous Goods) Act 1997</i> (DB Hazardous 2.1, 2.7, 3.1, 3.8, 3.9, 4.1 to 4.4 / DB Waste 3.9, 4.1, 4.3)</li> <li>• <i>Road and Rail Transport (Dangerous Goods) (Rail) Regulation 1999</i></li> <li>• <i>Road and Rail Transport (Dangerous Goods) (Road) Regulation 1998</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Hazardous Waste (disposal)</b> e.g., contaminated soil, some pole butts, oil filled equipment, circuit boards, batteries, mercury switches, bund liquids</p>	<ul style="list-style-type: none"> <li>Harm arising from improper disposal of hazardous waste (e.g., flammable substances, oxidising cleaning agents, coatings and solvents classified as dangerous goods, oil or any liquid with PCB above 2 mg/kg, solids with PCB above 50 mg/kg)</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 3.1, 3.2, 4.1.1.2, 4.2 / DB Waste 4.1, 4.3.1 / DB Water 3.1, 4.3.2,)</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li><i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li><i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 4.1, 4.2, 4.4)</li> <li><i>Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997</i> (DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 3.2)</li> <li><i>Scheduled Chemical Wastes Chemical Control Order 1994</i> (DB Waste Executive Summary, 3.2)</li> <li><i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 3.4, 3.5, 3.7, 4.1, 4.3)</li> <li><i>Dangerous Goods (General) Regulation 1999</i></li> <li><i>Road and Rail Transport (Dangerous Goods) Act 1997</i> (DB Hazardous 2.1, 2.7, 3.1, 3.8, 3.9, 4.1 to 4.4 / DB Waste 3.9, 4.1, 4.3)</li> <li><i>Road and Rail Transport (Dangerous Goods) (Rail) Regulation 1999; Road and Rail Transport (Dangerous Goods) (Road) Regulation 1998</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Hazardous Waste (storage)</b> e.g., contaminated soil, some pole butts, oil filled equipment, circuit boards, batteries, mercury switches, bund liquids</p>	<ul style="list-style-type: none"> <li>Leaks and spills arising from improper storage of hazardous waste (e.g., flammable substances, oxidising cleaning agents, coatings and solvents classified as <b>dangerous goods</b>, oil or any liquid with PCB above 2 mg/kg, solids with PCB above 50 mg/kg)</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 2.1, 2.4, 4.1 / DB Waste 2.1, 4.1, 4.3)</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li><i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li><i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 4.1, 4.2, 4.4)</li> <li><i>Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997</i> (DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 3.2)</li> <li><i>Scheduled Chemical Wastes Chemical Control Order 1994</i> (DB Waste Executive Summary, 3.2)</li> <li><i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 3.4, 3.5, 3.7, 4.1, 4.3)</li> <li><i>Dangerous Goods (General) Regulation 1999</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<p><b>Hazardous Waste (PCP poles)</b></p>	<ul style="list-style-type: none"> <li>Special measures relating to poles treated with PCP</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Land 2.1, 2.4, 4.1 / DB Waste 2.1, 4.1, 4.3)</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li><i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li><i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 4.1, 4.2, 4.4)</li> <li><i>Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997</i> (DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 3.2)</li> <li><i>Scheduled Chemical Wastes Chemical Control Order 1994</i> (DB Waste Executive Summary, 3.2)</li> </ul>
<p><b>Uncontrolled Waste</b></p>	<ul style="list-style-type: none"> <li>Disposal of uncontrolled <b>waste</b> to approved landfill (e.g., vegetative waste, virgin excavated natural material, non-contaminated fill material, steel, concrete, untreated timber, asphalt)</li> </ul>	<ul style="list-style-type: none"> <li><i>Protection of the Environment Operations Act 1997</i> (DB Waste 2.1, 4.1.6, 4.3)</li> <li><i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li><i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li><i>Local Government Act 1993</i> (DB Waste 4.1.10)</li> <li><i>Local Government (General) Regulation 1999</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
Substations Management (noise)	<ul style="list-style-type: none"> <li>• <b>Noise</b> emissions associated with operation of substations</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protection of the Environment Operations Act 1997</i> (DB Noise 4.1.10, 4.1.11)</li> <li>• <i>Local Government Act 1993</i> (DB Noise 3.4, 4.1.25)</li> <li>• <i>Local Government (General) Regulation 1999</i></li> </ul>
Substations Management (air)	<ul style="list-style-type: none"> <li>• Maintenance and use of fire protection systems so as to avoid escape of SF6 or halons</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protection of the Environment Operations Act 1997</i> (DB Air 4.1.16)</li> <li>• <i>Ozone Protection Act 1989</i> (DB Air 2.2, 3.5, 4.4, 5.2)</li> <li>• <i>Ozone Protection Regulation 1997</i> (DB Air 2.2, 3.5, 4.1, 5.2)</li> </ul>
Buildings and Depots (heritage)	<ul style="list-style-type: none"> <li>• Need to consider possible heritage significance of the corporation's buildings (e.g., substations) with respect to maintenance and alteration work</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Heritage Act 1977</i></li> <li>• <i>Heritage Regulation 1999</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<b>Buildings and Depots (stores)</b>	<ul style="list-style-type: none"> <li>• Stores operation</li> <li>• Containment and transport of <b>chemicals</b></li> <li>• Use of machinery</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protection of the Environment Operations Act 1997</i> (DB Air 3.3, 4.1, 5.2 / DB Land 3.1, 3.2, 4.1 / DB Noise 4.1.10, 4.1.11 / DB Waste 2.1, 4.1.6, 4.3)</li> <li>• <i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li>• <i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li>• <i>Environmentally Hazardous Chemicals Act 1985</i> (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 4.1, 4.2, 4.4)</li> <li>• <i>Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997</i> (DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 3.2)</li> <li>• <i>Scheduled Chemical Wastes Chemical Control Order 1994</i> (DB Waste Executive Summary, 3.2)</li> <li>• <i>Dangerous Goods Act 1975</i> (DB Hazardous 2.5, 3.4, 3.5, 3.7, 4.1, 4.3)</li> <li>• <i>Dangerous Goods (General) Regulation 1999</i></li> <li>• <i>Pesticides Act 1999</i></li> <li>• <i>Local Government Act 1993</i> (DB Waste 4.1.10)</li> <li>• <i>Local Government (General) Regulation 1999</i></li> </ul>

Activities of the Corporation	Environmental Aspects	Relevant Legislation or Regulations
<b>Vehicle and Plant Maintenance (noise)</b>	<ul style="list-style-type: none"> <li>• <b>Noise</b> impacts arising from improper or inefficient operation / maintenance practices</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protection of the Environment Operations Act 1997</i> (DB Noise 4.1.10, 4.1.11)</li> <li>• <i>Local Government Act 1993</i> (DB Noise 3.4, 4.1.25)</li> <li>• <i>Local Government (General) Regulation 1999</i></li> </ul>
<b>Vehicle and Plant Maintenance (air)</b>	<ul style="list-style-type: none"> <li>• Operation, cleaning and maintenance of items such as electrical plant, trucks, graders, compressors, cranes, etc, that cause smoke, dust or odours to be discharged into the air</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protection of the Environment Operations Act 1997</i> (DB Air 3.3, 4.1, 5.2)</li> <li>• <i>Clean Air (Motor Vehicles and Motor Vehicle Fuels) Regulation 1997</i> (DB Air 3.4)</li> </ul>
<b>Vehicle and Plant Maintenance (waste disposal)</b>	<ul style="list-style-type: none"> <li>• Disposal of <b>waste</b> (oil, fuel, filters, tyres, etc)</li> <li>• Potential for environmental harm from improper disposal methods</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protection of the Environment Operations Act 1997</i> (DB Waste 2.1, 4.1.6, 4.3)</li> <li>• <i>Protection of the Environment (Waste) Regulation 1996</i> (DB Waste 4.1.14)</li> <li>• <i>Contaminated Land Management Act 1997</i> (DB Land 3.2, 4.2)</li> <li>• <i>Local Government Act 1993</i> (DB Waste 4.1.10)</li> <li>• <i>Local Government (General) Regulation 1999</i></li> </ul>

## Part C – Summary of Environmental Laws and their Implications

Law	Implications
<i>Clean Air (Motor Vehicles and Motor Vehicle Fuels) Regulation 1997</i>	
<p><b>Details pollution control requirements for vehicles (DB Air 3.3)</b></p> <ul style="list-style-type: none"> <li>• The definition of excessive air impurities is provided in clause 6 (for visible emissions from diesel and spark-ignition vehicles), clause 7 (exhaust emissions from spark-ignition vehicles) and clause 8 (evaporative emissions from spark-ignition vehicles).</li> <li>• clause 27 – the owner of a motor vehicle that emits excessive air impurities is guilty of an offence.</li> <li>• Prescribed anti-pollution devices are set out in clause 9(2).</li> <li>• clauses 10, 28 – the owner of vehicles of a certain class (e.g., diesel engine with manufacturer’s gross vehicle mass of more than 4.5 tonnes) must not use such a vehicle, or allow it to be used, unless it is fitted with prescribed anti-pollution devices (e.g., in the case of heavy vehicles an exhaust of a particular type).</li> <li>• clause 13 – restricts the operation of spark-ignition motor vehicles using leaded petrol.</li> <li>• clause 29 – prohibits the owner of a motor vehicle from using, or causing or allowing it to be used, if the vehicle has not been serviced, maintained or adjusted in accordance with any manner specified for vehicles of that class by this Regulation.</li> </ul>	<ul style="list-style-type: none"> <li>• clause 31 – certain motor vehicles to use only unleaded petrol.</li> </ul> <p><b>Regulator</b> – NSW Environment Protection Authority.</p> <p><b>Responsibility</b></p> <p>The corporation must ensure that motor vehicles owned by it do not emit excessive air impurities, are fitted with prescribed anti-pollution devices, and are serviced, maintained or adjusted in the manner specified in the Regulation.</p> <p>Defence to clause 27 (emit excessive air impurities) where the corporation took all reasonable and practicable steps to prevent the commission of the offence <b>and</b> that no visible air impurities were emitted. Defence to clause 28 (use of vehicle without prescribed anti-pollution devices) if the corporation had reasonable grounds to believe, and did believe, that every prescribed device was fitted <b>and</b> took all reasonable steps to ensure that every such device was maintained in accordance with this Regulation. Defence to clause 29 if the corporation took all reasonable steps to ensure that the vehicle was properly serviced, maintained or adjusted as required.</p> <p><b>Consequences</b></p> <p>Penalties up to \$44,000 may be imposed for breach of this Regulation.</p>

### *Coastal Protection Act 1979*

#### ***Development in the coastal zone***

- s38 – the corporation must not, without the concurrence of the Minister for Land and Water Conservation carry out any development in the coastal zone if, in the opinion of the Minister, the development may, in any way adversely affect (or be adversely affected by) the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, **or** adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.
- s39 – the Governor may require (by order in the Government Gazette) that certain coastal developments not proceed unless approved by the Minister.
- s43 – sets out the circumstances in which concurrence may be assumed.
- s57 – breach of the requirements under the Act or regulations is an offence.

***Regulator*** – Department of Land and Water Conservation.

The coastal zone means (a) the area within the coastal waters of the State as defined in Part 10 of the *Interpretation Act 1987* (including any land within those waters) **and** (b) the area of land and the waters that lie between the western boundary of the coastal zone (as shown on the maps outlining the coastal zone) and the landward boundary of the coastal waters of the State, **and** the seabed (if any) and the subsoil beneath, and the airspace above these, the areas referred to in (a) and (b).

The coastal waters of the State extend, generally, to 3 nautical miles from the coastline of the State.

#### ***Responsibility***

The corporation should ascertain whether a proposed development is within the coastal zone and determine whether Ministerial concurrence is necessary in the circumstances.

#### ***Consequences***

The corporation may be liable to a fine of \$1,100 for a breach of the *CP Act*, or \$220 for a breach of any regulation made under the *CP Act*.

*Coastal Protection (Non-Local Government Areas) Regulation 1994*

- clause 5 – states that the regulation applies to land within the coastal zone that is (1) not within a local government area, and (2) is not subject to an **environmental planning instrument** other than a State environmental planning policy.
- clause 6 – a person (including a public authority) must not, without the concurrence of the Minister for Land and Water Conservation, carry out a development on land to which the regulation applies.

**Regulator** – Department of Land and Water Conservation.

This Regulation sets out concurrence procedures that must be followed before undertaking developments on particular areas of land within the coastal zone.

**Responsibility**

The corporation must seek Ministerial concurrence if the proposed development may have an adverse effect.

**Consequences**

Fine of \$220.

### *Contaminated Land Management Act 1997*

#### ***Liability for investigating and cleaning up contaminated land (DB Land 3.2, 4.2)***

- The corporation may be served with an investigation order (s17) or a remediation order (s23) and is under a duty to comply.
- s28 – duty to maintain remediation where EPA serves notice.
- s30 – the corporation may be ordered to carry out the requirements of an order where the person specified fails to act.
- s35 – the corporation may recover its substantive costs in carrying out an order from an appropriate person.
- s36 – costs may be recovered from the corporation if it is responsible for contamination.
- s37 – the corporation has priority over secured creditors in recovering costs from an insolvent landowner.
- s60 – duty to notify EPA as soon as practicable where the corporation owns **land** and becomes aware that the land is contaminated in a manner that presents a significant risk of **harm, or** becomes aware that its activities in, on or under land have contaminated the land in such a way as to present a significant risk of harm. Clause 7 of the *Contaminated Land Management Regulation 1998* specifies the form which a notification is required to take.

The *CLM Act* deals with the attribution of liability for site contamination. It may affect the corporation in terms of ownership of contaminated land or where the corporation has caused contamination through its activities (such as allowing the escape of hazardous substances).

**Regulator** – NSW Environment Protection Authority.

#### ***Responsibility***

The corporation must notify the EPA in the circumstances of s60, and must follow investigation/remediation orders.

Each person who is a director of the corporation or who is concerned in the management of the corporation must ensure that these matters are attended to. There is a defence to proceedings for breach of the Act where the person satisfies the court that (1) the corporation contravened the provision without the knowledge of the person, (2) the person was not in a position to influence the conduct of the corporation, or (3) the person used all due diligence to prevent the contravention (s98).

Employees and contractors who become aware that their activities in, on or under land have contaminated the land are under a duty to personally notify the EPA. They should, in the first instance, contact management of the corporation.

#### ***Consequences***

Breach of the *CLM Act* attracts a corporate fine of \$137,500, individual penalty of \$66,000. Cost notices may be registered as a charge on land

### *Dangerous Goods Act 1975*

#### **General obligations with respect to dangerous goods (DB Hazardous 2.5, 3.4, 3.5, 3.7, 4.1, 4.3)**

The *DG Act* regulates the keeping, handling and storage of **dangerous goods** such as toxic substances, LPG and other fuels, certain packing materials, flammable liquids and gases (e.g., oxygen and acetylene), and solvents.

- s9 – the corporation must not keep dangerous goods except in or on premises licensed under s8 for the keeping of the dangerous goods, or in such quantities and in such manner as may be prescribed for the purposes of this section. The corporation would not be liable for a breach of s8 if it could satisfy the court that the goods were kept without the knowledge of the corporation.
- s11 – a licence under s10 is required to carry dangerous goods in significant quantities in a container that is in, on or forms part of, a vehicle. There is a general duty under s12 to take precautions when transporting dangerous goods. Note, however, that the *DG Act* does not apply to the transport of dangerous goods by road or rail, or any associated activity **to the extent to which** it is regulated by the *RRT(DG) Act* or *Reg*.
- s14 – offence of negligent or careless use (\$27,500 or 12 months imprisonment, or both)

**Regulator** – WorkCover Authority (with provision under s7A to delegate powers to the NSW Environment Protection Authority).

#### **Responsibility**

The corporation, as owner of the goods or occupier of the place where they are kept, must hold a current licence. Goods are to be kept in such quantities and in such manner as prescribed.

The corporation must also ensure that the goods are transported in vehicles that are properly licensed to carry them.

Under s36, the corporation as the employer of any person who breaches the *DG Act* or *Reg*, would also be guilty of an offence unless the corporation can satisfy the court that (1) it did not authorise or permit the contravention **and** (2) it used all due diligence to prevent the contravention.

#### **Consequences**

Breach of the licensing, safe keeping and transport provisions entail a penalty of \$55,000 for the corporation (plus \$11,000 per day for a continuing offence). Individuals are liable to a \$27,500 fine (s9). Forfeiture of the goods may also be ordered.

Under s34 a person who is a director or employee of the corporation would be individually liable for any breach of the *DG Act* or *Reg* unless the person satisfies the court that (1) the offence was committed without the knowledge of that person, (2) that person was not in a position to influence the corporation in respect of the offence, or (3) that person, being in such a position of influence, used all due diligence to prevent the commission of the offence.

### *Dangerous Goods (General) Regulation 1999*

#### **Specific Duties relating to dangerous goods (DB Hazardous 2.5, 3.4, 3.5, 3.7, 4.1, 4.3)**

- clause 13 – prescribes certain goods as dangerous (e.g., combustible liquids, mixtures of chlorate with an ammonium salt, flammable mixtures, goods mentioned in Appendix 5 to the *Australian Dangerous Goods Code*).
- clause 17 – precautions to be observed in relation to premises.
- clause 20 – general duty with respect to the **conveying** or keeping of **dangerous goods**.
- clause 80 – obligations of licensees and occupiers.
- clause 81 – dangerous goods not to be kept except in licensed depots.
- clause 92 – requirements for fire-fighting equipment.
- Part 6, Division 1 – conveying dangerous goods generally. Specific duties under the *RRT(DG) Act* and *Reg* may also apply.
- Part 8 – packaging of, and containers for, dangerous goods.
- Part 10 – special requirements for class 2, class 3 and class 4 dangerous goods.

**Regulator** – WorkCover Authority (with provision under s7A of the *DG Act* to delegate powers to the NSW Environment Protection Authority).

The Regulation sets out detailed requirements in relation to handling and storage of dangerous goods.

#### **Responsibility**

The corporation, as owner of the goods or occupier of the place where they are kept, must ensure that the goods are held and conveyed safely in the prescribed manner (e.g., in accordance with the licence, taking reasonable precautions to prevent accidents or the escape of dangerous goods, observing proper containment, maintaining separation distances, and immediately cleaning up any spills).

Under *DG Act* s36, the corporation as the employer of any person who breaches the Regulation would also be guilty of an offence unless the corporation can show that it did not permit the breach and exercised all due diligence.

Under *DG Act* s34 a person who is a director or employee of the corporation would be individually liable for a breach of the prescribed obligations unless the person satisfies the court that: (1) the offence was committed without his or her knowledge, (2) they were not in a position to influence the corporation, **or** (3) they used all due diligence.

#### **Consequences**

Clause 340 – contravention of the Regulation, or of a licence condition, is an offence punishable by a fine not exceeding \$11,000 for the corporation, or \$5,500 in the case of an individual who contravenes the provision, term or condition otherwise than in his or her capacity as an employee, or \$2,750 where the breach was committed by an employee.

<i>Electricity Safety Act 1945</i>	
<p><b>Placement of electricity structures</b></p> <ul style="list-style-type: none"> <li>s19G – the Director of the Department of Energy may direct an <b>distribution network service provider</b> to remove or relocate an <b>electricity structure</b> erected on or adjacent to a public road where such a direction is necessary for traffic safety.</li> </ul> <p><b>Regulator</b> – Ministry of Energy and Utilities.</p>	<p><b>Responsibility</b></p> <p>The corporation is responsible for complying with a departmental safety direction.</p>
<i>Electricity Supply Act 1995 (licensing)</i>	
<p><b>Licensing conditions relevant to the provision of electricity</b></p> <ul style="list-style-type: none"> <li>s33 and clause 6(4) of Schedule 2 – A retail supplier’s licence contains mandatory conditions requiring the development of strategies for reducing greenhouse gas emissions, EPA auditing of strategies, independent verification of emissions, development of 1, 3 and 5 year plans in relation to energy efficiency / demand management / sustainable sourcing of energy and the publication of annual performance reports.</li> <li>Clause 6(5) of Schedule 2 – it is a mandatory condition of an electricity distributor’s licence that an investigation be carried out, and an annual report published, regarding the cost-effectiveness of any proposed expansion of the <b>distribution system</b>.</li> </ul> <p><b>Regulator</b> – Ministry of Energy and Utilities.</p>	<p>The <i>ES Act</i> sets out the licensing regime for network operation, and in particular, imposes mandatory licence conditions relating to sustainable electricity supply.</p> <p><b>Responsibility</b></p> <p>The corporation is responsible for complying with licence conditions.</p> <p><b>Consequences</b></p> <p>If management of the corporation knowingly contravene the <i>ES Act</i> or the regulations made under it, or the condition of a licence, the Minister may impose a fine of \$100,000 on the corporation and/or cancel the licence. In the alternative, the Independent Pricing and Regulatory Tribunal may impose a penalty of \$10,000 for the first day of a breach and a further \$1,000 for each subsequent day on which it occurs (Schedule 2, Clause 8A).</p> <p>Penalties may also be imposed on individual directors or persons concerned in the management of the corporation.</p>

*Electricity Supply Act 1995 (powers)*

**Special powers in respect of development and maintenance of electricity infrastructure**

- s44 – power to compulsorily acquire land (including easements).
- s45 – exempts the corporation from the need to obtain approval under the *Local Government Act 1993* in relation to work connected with the erection, installation, extension, alteration, maintenance and removal or **electricity works**, except where the works relate to buildings. Other than for routine repairs or in cases of emergency, the corporation must (1) notify the council; (2) give at least 40 days for the council to respond; and (3) give due consideration to any council submissions. The s45 exemption would apply to structures such as overhead lines and street lighting, but not to switchyard buildings.
- s48 – the corporation may require the owner or occupier of premises to remove or trim a tree where the **tree** could damage electricity works or create a safety hazard.
- s49 – the corporation may require a person to remove an obstruction to electricity works.
- s54 – sets out the corporation's power to enter any premises.

**Regulator** – Ministry of Energy and Utilities.

**Responsibility**

The corporation must exercise these powers in accordance with the statutory requirements set out in the *ES Act*.

*Electricity Supply (General) Regulation 2001*

**Specific controls on the power of an electricity distributor to remove trees**

- **tree** means a tree taller than 3 metres, or having a canopy more than 3 metres in maximum diameter or having a trunk with a circumference at a height of 1 metre from the ground of more than 0.3 metres.
- clause 102 – a service provider must not remove any tree, or trim any tree in a way that substantially damages the tree, unless:
  - (a) it is of the opinion that it is necessary to do so to protect its powerlines or the safety of persons or property under or near its powerlines; and
  - (b) it has considered alternative methods and is of the opinion that none of those methods are feasible in the circumstances (including economically feasible); and
  - (c) the service provider is acting in accordance with a tree management plan.

Alternative methods include the use of aerial bundled cables, the controlled trimming of trees and the appropriate location or relocation of powerlines (e.g., underground).

- clause 103 – deals with the contents of tree management plans.

**Regulator** – Ministry of Energy and Utilities.

**Responsibility**

The corporation is responsible for removing and trimming trees in accordance with the obligations summarised in the left column.

**Consequences**

If management of the corporation knowingly contravene the *ES Act* or the regulations made under it, or the condition of a licence, the Minister may impose a fine of \$100,000 on the corporation and/or cancel the licence. In the alternative, the Independent Pricing and Regulatory Tribunal may impose a penalty of \$10,000 for the first day of a breach and a further \$1,000 for each subsequent day on which it occurs (Schedule 2, Clause 8A).

If the corporation contravenes a provision of the *ES Act* or *ES(G) Reg*, each person who (a) is a director of the corporation, or (b) is concerned in the management of the corporation, is to be treated as having contravened that provision if the person knowingly authorised or permitted the contravention (*ES Act*, s101).

*Electricity Supply (Safety Plans) Regulation 1997*

**Safety and operating plans**

- lodgment and implementation by the corporation of safety and operating plans, customer installation safety plans and public electrical safety awareness plans (clauses 5, 6, 7 and 8 and Schedule 1).
- clause 6 – content of safety and operating plans to include analysis of hazardous events and emergency procedures.
- requirement for auditing of safety and operating plans (clause 9 to clause 11).
- availability of safety and operating plans, customer installation safety plans and public electrical safety awareness plans (clause 12). Plans to be made available to persons likely to be involved in their implementation.
- exemption of network operators from requirements that are inappropriate having regard to the size or complexity of the transmission or **distribution system** (clause 14).

**Regulator** – Ministry of Energy and Utilities.

**Responsibility**

The corporation must lodge, implement and audit safety plans in respect of its operations.

The corporation must measure its public, employee and contractor safety performance annually against any relevant Australian statistics as required by the Director-General after consultation, and must publish the results (with the previous 5 year trend) in an annual report (clause 15).

The corporation must not allow a person to carry out work on or near its transmission or distribution system unless:

- (a) the person is qualified, under the relevant requirements of the corporation's safety and operating plan, to carry out the work, and
- (b) the work is carried out in accordance with the relevant requirements of that plan (clause 16).

An individual employee or contractor must not carry out work on or near the transmission or distribution system unless qualified under, and acting in accordance with, the safety plan.

**Consequences**

A penalty of \$11,000 may be imposed on the corporation, and \$2,750 on an individual.

*Energy Services Corporations Act 1995***Prescribes environmentally safe conduct as objective of the corporation**

- s6B – protection of the environment is one of the principal objectives of an **energy transmission operator**. In this regard, **transmission operators** are bound by all relevant laws (such as those concerning native vegetation, soil conservation and easement management).
- s8 – environmental protection is one of the principal objectives of an **energy distributor**.

**Regulator** – Ministry of Energy and Utilities.

**Responsibility**

The corporation should conduct its operations in accordance with the objectives specified in the *ESC Act*.

### *Environmentally Hazardous Chemicals Act 1985*

#### **Hazardous chemicals licensing (DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.5 / DB Waste 4.1, 4.2, 4.4)**

- s26 – the corporation must observe the provisions of any **chemical control order (CCO)**. It is an offence to carry on a **prescribed activity** in contravention of a CCO (e.g., to keep, distribute, **convey**, use, sell or dispose of an **environmentally hazardous chemical** or **declared chemical waste**).
- s28 – the corporation may apply to the EPA for a licence to carry on a prescribed activity.
- The EPA has issued CCOs in relation to **dioxin-contaminated wastes**, aluminium smelter wastes, materials or waste containing polychlorinated biphenyl, organotin wastes and **scheduled chemical wastes**.

**Regulator** – NSW Environment Protection Authority.

#### **Responsibility**

The corporation is responsible for holding a licence to carry on a prescribed activity in relation to **chemicals** for which a licence is required under a CCO.

Each person who is a director of the corporation or who is concerned in the management of the corporation must take steps to ensure that the licence obligations under the *EHC Act* are complied with. Such a person is taken to have contravened the same provision unless the court is satisfied that (1) the corporation committed the breach without the person's knowledge, (2) the person was not in a position to influence the conduct of the corporation, (3) the person, if in such a position, used all due diligence to prevent the contravention, or (4) a defence would be available to the corporation (s53).

#### **Consequences**

The *EHC Act* affects the corporation's activities in relation to transporting, storing and disposing of hazardous chemicals such as PCBs (found in some oil-filled transformers, circuit breakers and capacitors) as well as contaminated soil, PCP poles, batteries, mercury switches and bund liquids.

In the event of a breach of the *EHC Act*, the corporation may be fined \$137,500 and individuals \$66,000 (s54). There is also power under s48 for a court to order the retention and disposal of seized property.

### *Environmental Planning and Assessment Act 1979*

#### **Project assessment – controls on whether and how to proceed**

- A project will be assessed under Part 5 where the relevant **environmental planning instrument** says that development consent is not required, **or** the proposed **activity** falls within clause 11 of *SEPP 4*, **or** the planning instrument adopts the *Model Provisions* and the proposed activity is listed in Schedule 1 of the *Model Provisions*.
- Where development consent **is** required, the project will be assessed under Part 4. If the **development** is “designated” (e.g., electricity generating stations) an *EIS* will be required. If it does not constitute designated development, but is likely to significantly effect threatened species, populations or ecological communities, or their habitats, an *SIS* will be required. Significant effect is assessed in light of the ‘eight part’ test in s5A.
- However, if Part 4 applies, the development will be regarded as *development by the Crown* under Part 5A. A council cannot refuse consent to the DA or impose any condition of consent except with the written approval of the Minister.
- s107 – allows for the continuance of existing uses despite a prohibition in a new **environmental planning instrument**, provided they are not enlarged, expanded or intensified.
- If the project is an activity under Part 5, the corporation is required to consider the potential environmental impacts (s111).

- The corporation must not carry out an activity before preparing an *EIS* where the activity is likely to significantly affect the environment (s112). An *SIS* must be prepared, or included as part of the *EIS*, where the activity is in respect of land that is critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats s112(1B)).
- s113 – sets out procedural duties in relation to public exhibition and comment on the *EIS* or *SIS*.

Environmental assessment is relevant to route selection, line design, construction and maintenance issues.

**Regulator** – Department of Urban Affairs and Planning.

#### **Responsibility**

The corporation must decide whether a project is to be assessed as a development under Part 4 or as an activity under Part 5. The corporation must also consider whether a formal environmental impact assessment is necessary and, if so, comply with procedural requirements.

#### **Consequences**

There are wide powers under s124 to restrain a breach of the *EPA Act* and to restore land to its earlier conditions. Fines may be imposed for breaches of the Act (\$1,100,000 plus \$110,000 per day for a continuing offence). Where a person is guilty of an offence involving damage to a tree or vegetation, the court may also order revegetation.

### *Environmental Planning and Assessment Regulation 2000*

#### **Particular requirements in relation to project control**

The *Environmental Planning and Assessment Regulation 2000 (EPA Reg)* provides further details in relation to environmental assessment procedures. In particular, it elaborates EIS obligations under the *EPA Act*.

- clause 226 prescribes the corporation to be the Crown for the purposes of both development by the Crown (EPA Act s116C) and Crown building work (s116G).
- Part 5 – details consent requirements for changes in respect of an existing use.
- Part 9 – fire safety regulations.
- clause 228 – specifies the for the purposes of Part 5 of the *EPA Act* those factors which must be taken into account by the corporation when assessing the impact of a proposed activity on the environment.
- clause 72 (in relation to Part 4 of the *EPA Act*) and 230 (Part 5 of the *EPA Act*) detail the contents required of an *EIS*. Refer also to Schedule 2 to the *EPA Reg*.
- clause 73 (for Part 4) and 231 (for Part 5) allow the Director to impose further criteria relating to the form and content of an *EIS*.
- clause 77 (for Part 4) and 233 (for Part 5) requires public notice regarding exhibition of an *EIS*.

**Regulator** – Department of Urban Affairs and Planning.

#### **Responsibility**

The corporation must comply with the regulatory details in the *EPA Reg* (which may affect planning and assessment issues in relation to activities such as line design and construction).

#### **Consequences**

A court may make remedial orders under s124 (eg, to restrain the unlawful use, demolish or remove a building/work, or reinstate the land to its former condition). Fines may also be imposed up to **\$110,000**.

The principal differences between the *EPA Reg 2000* and the *EPA Reg 1994* relate to the following areas:

- the making of local environmental plans;
- the making and review of contributions plans;
- some procedural changes to development applications and public participation in development assessment;
- the types of development that are designated under Schedule 3 (updated so that the categories are very similar to the types of activities licensed by the EPA under the *POEO Act*); and
- acceptable standards of building construction.

*Environmental Planning and Assessment Model Provisions 1980*

**Special exemptions from the need for development consent**

- Where the *Model Provisions* have been incorporated in an LEP they prevent council from imposing development consent requirements for the types of development listed.
- Clause 35 states that nothing in an LEP shall be construed as restricting or prohibiting **or** as enabling the council to restrict or prohibit (e.g., by requiring a DA) the carrying out by the corporation of the following types of development, being development required for the purpose of electricity undertakings:
  - development of any description at or below the surface of the ground;
  - the installation of any plant inside a building or the installation or erection within the premises of a substation established before 1 September 1980 of any plant required in connection with the substation;
  - the installation of any plant by way of addition, replacement or extension, **including** the installation in an electrical transmission line of substations, feeder-pillars or transformer housing, but **not including** the erection of **overhead lines** for the supply of electricity power, **or** the installation of **substations, feeder-pillars or transformer housings of stone, concrete or brickworks**;

- (development covered by clause 35 continued)

- the provision of overhead service lines in pursuance of any statutory power to provide a supply of electricity;
- any other development **except**:
  - the erection of buildings, the installation or erection of plant or other structures and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings; or
  - the formation or alteration of any means of access to a road (Schedule 1).

**Responsibility**

The corporation must correctly determine whether the *Model Provisions* apply, and whether the proposed activity falls within Schedule 1.

**Consequences**

If, in fact, development consent **was** required under *EPA Act* Part 4, the project may have been carried out contrary to procedural requirements, inviting the possibility of a s124 remedial order.

**Regulator** – Department of Urban Affairs and Planning.

### *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

#### **Assessment and approval regime for activities which may affect national environmental interests (DB Cth EIA 3.1)**

- The *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth) (**EPBC Act**) took effect from 16 July 2000. Subject to a limited number of exceptions, Commonwealth approval is required to take any **action** that has or will have a significant impact, or is likely to have a significant impact, on areas and environmental assets for which the Commonwealth is responsible. The *EPBC Act* allows an action to be taken in accordance with a Ministerial declaration, or with approval from a State in accordance with a management plan accredited by the Commonwealth Environment Minister for the purposes of a bilateral agreement (under Chapter 3, Division 2).
- Relevant 'triggers' include World Heritage properties (s12), Ramsar wetlands (s16), listed threatened species or endangered communities (s18), listed migratory species (s20), Commonwealth marine areas (s23) and Commonwealth land (s26). The Federal government is also considering the possible application of a greenhouse trigger. This would impose environmental impact procedures on new projects which involve major greenhouse emissions. The obligations under the *EPBC Act* may operate in addition to obligations under State law (subject to bilateral agreement between State and Federal Governments).
- **Regulator** – Environment Australia.

- Among other things, the *EPBC Act* makes it an offence to knowingly damage critical habitat, to kill, take or injure listed threatened species or to kill, take or injure listed migratory species.
- An action does not require approval if it is a lawful continuation of a use of land that was occurring before the commencement of the *EPBC Act*. However, an enlargement, expansion or intensification of a use is **not** a continuation of that use. An action does not require assessment or approval under the Act if the Commonwealth or a State has approved it before 16 July 2000, and no further approvals are required in order for the action to be lawfully taken.

#### **Responsibility**

The corporation must ensure, where necessary, that the assessment is conducted and Commonwealth approval obtained prior to commencing work. Executive officers may be liable for breaches by the corporation (s495). Employees and contractors of the corporation who engage in prohibited activity would be individually liable.

#### **Consequences**

The unlawful taking of an action that has a significant impact on a matter of national environmental significance may attract a civil penalty of up to \$5.5 million for the corporation (\$550,000 for an individual) or an individual criminal penalty of up to 7 years. The *EPBC Act* also provides for remediation and stop work orders.

*Environment Protection and Biodiversity Conservation Regulations 2000 (Cth)*

**Gives effect to the provisions of the EPBC Act dealing with environmental assessment and approvals**

- Part 4 describes the minimum content of a referral of a proposal to take an action (details are contained in Schedule 2 of the regulations).
- Part 5 relates to assessment of the impact of controlled actions. Division 5.1 details the minimum content of preliminary information for assessment of an action and how that information is to be given (see also Schedule 3 of the regulations). The person proposing to take the action or the designated proponent must submit preliminary information before a decision can be made about the assessment approach (s86 of the *EPBC Act*). Division 5.2 sets out matters to be addressed by draft public environment reports and environment impact statements (see also Schedule 4 of the regulations).

**Regulator** – Environment Australia.

- Division 14.1 sets out the powers of wardens, rangers and inspectors. Division 14.2 sets out provisions relating to infringement notices in regulations promulgated under s497(1) of the *EPBC Act*. Division 14.3 provides for the review of administrative decisions relating to the issue of permits under Part 17 of the regulations (ie, permits for actions affecting listed species, species in commonwealth areas and commonwealth reserves).

### *Fisheries Management Act 1994*

#### **May restrict works that involve dredging, reclamation or mangrove clearance**

- s199 – Minister for Fisheries must be notified prior to carrying out any dredging or reclamation work, and consideration must be given to any matters raised by the Minister. The *FM Act* provides for dispute resolution at a ministerial level if work is proposed to be carried out contrary to comments made by the Minister for Fisheries.
- s205 – prohibition against harming any mangroves in “*protected areas*”<sup>1</sup> except under the authority of a permit issued by the Minister for Fisheries under Part 7 of the *FM Act*. Such a permit can only be obtained for scientific purposes, for the welfare of fish or marine vegetation, or if there is a threat to life or property. *Harm* is defined to mean gather, cut, pull up, destroy, poison, dig up, remove, injure or otherwise harm any part of the mangroves, but does not include harm by changing the surrounding habitat of the mangroves.

**Regulator** – NSW Fisheries.

#### **Consequences**

- The maximum penalty for harming marine vegetation is \$110,000 in the case of a corporation, or \$22,000 in any other case (s205).
- Harming an endangered species, population or ecological community, can result in a fine of \$220,000 or imprisonment for 2 years, or both, and in the case of any vulnerable species \$55,000 or imprisonment for 1 year, or both (s220ZA).
- A person who does anything that causes damage to any critical habitat can be liable to a maximum penalty of \$220,000 or imprisonment for 2 years (s220ZC). If a court convicts a person of an offence against s220ZC, the court may, in addition to or in substitution for any penalty, order that action be taken to mitigate the damage or to restore the critical habitat (s220ZG).
- Damaging the habitat of a threatened species, population or ecological community can result in the imposition of a \$110,000 fine or imprisonment for 1 year, or both (s220ZD).

<sup>1</sup> **Protected area** includes any **public water land** (ie, land submerged by water (whether permanently or intermittently), being Crown land or land vested in a public authority).

### *Forestry Act 1916*

#### **Special development controls applicable to State forestry areas**

- Part 2 contains provisions relating to the dedication of State forests, timber reserves and flora reserves.
- s27 – any person who removes or damages any timber on “Crown-timber lands” (or causes or knowingly allows this to occur) is guilty of an offence. Various defences are provided, including where the relevant act was done in pursuance of a clearing licence or other authority granted by the Forestry Commission of NSW **or** in accordance with the *Native Vegetation Conservation Act 1997 (NVC Act)*.
- the definition of “Crown timber lands” includes State Forests, flora reserves and certain Crown lands (s4).
- s27G – relates to the issue of clearing licences.
- s27H – restricts the issue of clearing licences in certain circumstances (e.g., with regard to **native vegetation** or **protected land** under the *NVC Act*).

**Regulator** – Forestry Commission of NSW.

#### **Responsibility**

The corporation should ensure that it has proper authority to carry out construction or maintenance work upon land to which the *Forestry Act* applies.

Employees and contractors may be liable in a personal capacity for having directly carried out the offending act. Managers may also be liable for causing or allowing the unauthorised conduct to occur.

#### **Consequences**

The Forestry Commission may cause a structure erected without lawful authority in a State forest, timber reserve or flora reserve to be removed (s35A).

A penalty of up to \$5,500 and/or 6 months imprisonment may be imposed for unauthorised removal of timber under s27. A further penalty of up to \$10 may be imposed for each tree that is destroyed or damaged.

### *Forestry Regulation 1999*

#### **Miscellaneous obligations in forestry areas**

- forestry area means a State forest, timber reserve or flora reserve (clause 3).
- clause 16 establishes various offences in relation to acts committed in forestry areas such as:
  - causing damage to, interfering with or destroying vegetation (other than timber); **or**
  - damaging, obstructing or interfering with a drainage feature such as a watercourse or drainage line; **or**
  - interferes with material (e.g., soil, sand or gravel) that is not part of a way in a manner that does not involve committing an offence under s27(1)(b) of the *Act*.

However, **no** offence is committed if the act in question:

- is done with the prior written consent of the Commission, **or**
- is authorised by a licence, permit, forest lease or other authority issued or granted under the *Forestry Act* or *Forestry Regulation* or under some other law.

**Regulator** – Forestry Commission of New South Wales.

- clause 24 – no machine must be driven or used in a forestry area unless it is in safe working order, a spark arrester is fixed, and the machine is free of surplus oil, dust impregnated with oil and vegetable matter. *Machine* for the purposes of clause 24 does **not** include a motor vehicle.
- clause 25 – the storage of liquid fuel in a forestry area (apart from in the fuel tank of a machine) must be in accordance with any conditions of a licence, permit or authority.
- clause 26 – machines must be refuelled at least 1.5 metres clear of vegetation.
- clause 31 – a person who holds a licence or permit must take all reasonable precautions to prevent unauthorised damage by fire, must ensure that any outbreak is reported to the Commission, and must attempt to extinguish the fire or prevent it from spreading.

#### **Responsibility**

The corporation must ensure that any activities conducted in a forestry area comply with a consent or lawful authority. Individuals may be personally liable.

#### **Consequences**

A penalty of up to \$2,200 may be imposed for an offence under the *Reg*.

### *Heritage Act 1977*

#### **Heritage considerations for lines and buildings**

- s57 – when a place, building, work, relic, moveable object, precinct, or land is listed on the State Heritage Register (**SHR**), the approval of the Heritage Council is required before carrying out various acts (e.g., damaging any tree or vegetation, developing land, altering the building etc). Note, however, that an *interim heritage order (IHO)* made by a local council does **not** bind the corporation in respect of development, or demolition of a building or work (see *Heritage Act* s57(1A)(b) and the *Crown development* provisions in Part 5A of the *EPA Act*).
- s119 – owner to maintain heritage-listed building, work or relic to a minimum standard specified in the regulations.
- s139 – the corporation must not disturb or excavate any land except in accordance with an excavation permit where it knows or has reasonable cause to suspect that a **relic** (i.e., non-Aboriginal and more than 50 years old) is likely to be damaged or exposed.
- s170 – the corporation must keep and review a ‘Heritage and Conservation Register’ containing details of items owned or occupied by the corporation and which are subject to an *IHO* or listing on the **SHR**, **or** listed in an **environmental planning instrument** under the *EPA Act* as an item of environmental heritage, **or** could be subject (under Heritage Council guidelines) to an *IHO* or listing on the **SHR**.

- s170A – the corporation must give the Heritage Council at least 14 days written notice before removing, transferring ownership, ceasing to occupy or demolishing any place, building or work entered in its s170 register.

#### **Responsibility**

The corporation is responsible for complying with consent requirements, maintaining heritage items, keeping a register and notifying the Heritage Council of actions in respect of heritage as appropriate.

Individual directors or employees of the corporation should also be aware of these obligations as they may be personally liable for a breach of the Act unless the court is satisfied that (1) the offence was committed without the person’s knowledge, (2) the person was not in a position to influence the conduct of the corporation in relation to the commission of the offence, and (3) the person, being in such a position, used all due diligence to prevent the commission of the offence (s159).

#### **Consequences**

The *Heritage Act* provides for penalties of \$1.1 million or imprisonment for 6 months, or both (s157). It also allows for a wide range of orders to remedy or restrain a breach (e.g., rebuilding a structure or restoring land).

**Regulator** – Department of Urban Affairs and Planning (in consultation with the Heritage Council).

### *Heritage Regulation 1999*

#### **Particular heritage obligations**

- clause 10 – imposes minimum maintenance standards for heritage-listed building, work or relic.
- clause 11 – duty to inspect.
- clause 12 – duty to maintain weather protection.
- clause 13 – duty to provide fire protection.
- clause 14 – additional fire protection for unoccupied buildings.
- clause 15 – duty to install and maintain minimum security.
- clause 16 – additional security for unoccupied buildings.
- clause 17 – duty to carry out essential maintenance and repair work.

**Regulator** – Department of Urban Affairs and Planning (in consultation with the Heritage Council).

The *Heritage Reg* will affect buildings owned by the corporation that are of heritage significance.

#### **Responsibility**

The corporation as the owner of a heritage-listed building, work or relic is required to observe stipulated maintenance standards.

#### **Consequences**

Orders requiring work to be undertaken or ceased. There are also offence provisions, e.g., *Heritage Act* s157(2) - \$5,500 for a breach of the regulation. A director or employee of the corporation is liable for a contravention unless he or she satisfies the court that (1) the offence was committed without his or her knowledge, (2) the person was not in a position to influence the conduct of the corporation in relation to the commission of the offence, and (3) the person, being in such a position, used all due diligence to prevent the commission of the offence (s159).

### *Local Government Act 1993*

***Ancillary council orders in relation to land use and pollution (DB Air 4.1 / DB Land 3.9, 4.1, 4.3, 5.1 / DB Noise 4.1 / DB Waste 4.1, 4.2, 5.1, 6.4 / DB Water 4.1, 4.3, 5.1)***

- s124 – a local council can issue orders to repair, alter or demolish a building erected in a catchment district that is causing or is likely to cause pollution to the water supply; to fence land for public safety reasons; to remove or screen materials where they are being stored in a manner that is likely to create unsightly conditions; to do or refrain from doing work that is likely to cause environmental damage and which does not arise from premises, works or equipment the subject of any *POEO Act environment protection licence*; and to store, treat, process, collect or **dispose of waste** that is not being dealt with satisfactorily and which is not regulated under any *POEO Act environment protection licence*.
- s640 – offence to contravene a notice erected in a catchment district (\$2,200 fine).
- s639 – offence to wilfully or negligently to do any act that damages or pollutes a public water supply (\$2,200 fine).
- s638 – offence to discharge prohibited matter into sewer or drain (\$2,200 fine).

**Regulator** – The *LG Act* is administered by the Department of Local Government. Individual local councils are responsible for day-to-day enforcement

The *LG Act* gives local government authorities the power to order the corporation to do or refrain from doing certain activities that are not regulated under the *POEO Act*.

**Responsibility**

The corporation as owner or occupier of the land. Individuals may also be personally liable to prosecution for certain offences, *e.g.*, water pollution.

**Consequences**

An order under s124 may restrain certain activities that are important to the overall running of the corporation's business. Failure to comply with an order is an offence under s628. The maximum corporate fine is \$11,000 or \$5,500 for an individual.

### *Local Government (General) Regulation 1999*

#### **Non-compliance with council orders (DB Land 4.1 / DB Waste 4.2)**

- Schedule 1 of the *LG(G) Reg* sets out offences that may be dealt with by way of penalty notice. These include:
  - failure to comply with an order given in terms of order 21 in the table to *LG Act* s124, *i.e.*, to do or refrain from doing such things to ensure that the premises are kept in a safe or healthy condition (\$330);
  - failure to comply with an order given in terms of order 22 in the table to *LG Act* s124, *i.e.*, to store, treat, process, collect, remove, dispose of or destroy waste which is on land or premises (\$330).

**Regulator** – The *LG Act* is administered by the Department of Local Government. Individual local councils are responsible for day-to-day enforcement.

The *LG(G) Reg* gives local government authorities the ability to issue infringement notices for minor offences relating to non-compliance with *LG Act* s124 orders.

#### **Responsibility**

The corporation through its employees or agents must observe the requirements of a s124 order.

#### **Consequences**

The maximum fine is \$330.

### *National Parks and Wildlife Act 1974*

#### **Impacts on flora, fauna and Aboriginal heritage**

- s90 – offence to knowingly destroy, deface or damage a relic or an Aboriginal place without consent.
- s98 – offence to harm protected fauna.
- s118A – offence to pick any plant or harm any animal that is a threatened species, population or ecological community.
- offence of damaging critical habitat (s118C) or habitat of a threatened species, population or ecological community (s118D).
- no offence is committed in relation to fauna and flora if the act was essential for the carrying out of a **development** or **activity** authorised under Part 4 or 5 of the *EPA Act*, was in accordance with a licence issued under the *NPW Act* or *TSC Act*, or was authorised under the *RF Act*.
- s153 – Minister may grant easements or rights of way through a national park, historic site, State recreation area, regional park, nature reserve, State game reserve or karst conservation area for the erection of posts, wires and appliances for the conveyance or transmission of electricity.

**Regulator** – National Parks and Wildlife Service.

The *NPW Act* chiefly affects route planning and line construction aspects, although network maintenance may impact on wildlife and Aboriginal relics.

#### **Responsibility**

The corporation must avoid causing damage to threatened species and Aboriginal sites.

The corporation will be liable if a person contravenes any provision of the *NPW Act* or the regulations whilst acting in the capacity of a director, a person concerned in the management, or as an employee or an agent of the corporation; or at the direction or with the consent of any director, person, employee or agent.

If a corporation contravenes any provision of the *NPW Act* or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation shall be liable if the person knowingly authorised or permitted the contravention.

#### **Consequences**

The corporation may be ordered to stop work and penalties may be imposed, ranging up to \$220,000 and/or 2 years imprisonment for harming or picking an endangered species, or damaging critical habitat.

Damaging an Aboriginal relic or place can attract a fine of \$5,500 or 6 months imprisonment for an individual (or \$22,000 in the case of a corporation).

### *National Parks and Wildlife (Land Management) Regulation 1995*

#### **Particular obligations**

- clause 6 – offence to operate any heavy or noisy machinery in a park administered under the *NPW Act* without authority.
- clause 9 – offence of littering, digging up soil, leaving waste in a park unless authorised.
- clause 10 – offence of interfering with animals in a park unless authorised.
- clause 13 – offence of touching or interfering with a relic unless authorised.
- clause 14 – offence of erecting or using structures, engineering work or plant in a park, unless authorised.
- clause 90 – offence to cut, fell, remove, damage or destroy any vegetation in a park unless authorised.

**Regulator** – National Parks and Wildlife Service.

This Regulation provides for minor fines in relation to acts that are taken without a prior consent or approval. It may impact on the corporation by affecting ancillary activities (such as labour, transport and storage of equipment).

#### **Responsibility**

The corporation must ensure that it has proper authority under the *NPW Act* to conduct certain activities.

The corporation will be liable where a person fails to comply with a provision of the Regulations while acting in the capacity of a director, a person concerned in the management, or as an employee or an agent of the corporation; or at the direction or with the consent of any director, person, employee or agent (*NPW Act* s175A).

If a corporation contravenes any provision of the Regulations, each person who is a director of the corporation or who is concerned in the management of the corporation shall be liable if the person knowingly authorised or permitted the contravention (*NPW Act* s175B).

#### **Consequences**

Stop work orders and fines up to \$1,100.

### *Native Title Act 1993 (Cth)*

- The obligations in the *Native Title Act* are directed to the Commonwealth, State and Territory governments. The Act may, however, indirectly affect the corporation where acquisition of an interest in land is delayed as a result of a native title claim.
- The *Native Title Act* validates certain 'past acts' as having extinguished native title, sets up a compensation regime, and structures the way in which 'future acts' affecting native title may be carried out.
- Registered native title holders and registered claimants have the right to negotiate before the government does certain 'future acts' over native title land. One such act is the compulsory acquisition of native title rights and interests with a view to conferring rights over the land in favour of non-government parties.

#### **Responsibility**

When planning for new network infrastructure and before selecting routes, the corporation should search the Register of Native Title Claims (for claims lodged) and the National Native Title Register (for determinations made).

These public registers may be inspected at any Registry of the National Native Title Tribunal.

### *Native Title (New South Wales) Act 1994*

- The *NT(NSW) Act* implements the main features of the *Native Title Act 1993 (Cth)* in respect of land in New South Wales.
- s97 – allows for compulsory acquisition of native title rights and interests.
- s103 – sets out requirements to notify native title holders of acts that may extinguish their rights and interests.

- s104 – the Crown may recover from the corporation any compensation paid by the Crown to a native title holder in relation to the acquisition of native title rights.

#### **Responsibility**

As noted above, the corporation should search the Register of Native Title Claims (for claims lodged) and the National Native Title Register (for determinations) when route selection is in issue.

### *Native Vegetation Conservation Act 1997*

#### **Restrictions on the ability to clear land**

- s18 – prohibits **clearing of native vegetation** on land to which a regional vegetation management plan (**RVMP**) applies, except in accordance with the terms of that plan.
- s21 – prohibits clearing of native vegetation on land which is not subject to a regional vegetation management plan and which is not **State protected land**, except in accordance with a native vegetation code of practice or a development consent issued by the Minister for Land and Water Conservation.
- The *NVC Act* does not apply to certain land (including land zoned residential and land designated under *State Environmental Planning Policy No. 14 – Coastal Wetlands* or *State Environmental Planning Policy No. 26 – Littoral Rainforests*). Wetlands and rainforests require special ministerial concurrence before proceeding to clear.
- No consent required where the land is not subject to a **RVMP** and the clearing is to a minimum extent for the maintenance of public utilities associated with the provision of powerlines and the transmission of electricity.

**Regulator** – Department of Land and Water Conservation.

- The *NVC Act* may require the corporation to obtain consent from the Minister for Land and Water Conservation before clearing land, subject to exemptions contained in s9, s12 and the Schedules. Schedule 4 preserves various exemptions that were contained in *State Environmental Planning Policy No. 46 – Protection and Management of Native Vegetation*, notably the exemption in respect of minimal clearing to maintain lines.

#### **Responsibility**

The corporation must ensure that it holds a permit to clear **native vegetation** (on land to which the Act applies) where the proposed clearing does not fall within the line maintenance exemption.

Directors and each person concerned in the management of the corporation may be liable unless the person satisfies the court that (1) the corporation contravened the provision without the actual, imputed or constructive knowledge of the person, or (2) the person was not in a position to influence the conduct of the corporation or (3) the person, if in such a position, used all due diligence to prevent the breach (s65(1)).

Any employee or contractor who actually clears the land may also be liable to a penalty.

#### **Consequences**

Unlawful clearing activities may be restrained and the Land and Environment Court may impose a fine of \$110,000, together with a further daily penalty of \$11,000 for a continuing offence.

### *Noxious Weeds Act 1993*

#### **Obligations to control noxious weeds**

- s9 – noxious weeds fall into different control categories:
  - for W1 noxious weeds, the presence of the weed must be notified to the local control authority and the weed must be fully and continuously suppressed and destroyed.
  - for W2 noxious weeds, the weed must be fully and continuously suppressed and destroyed.
  - for W3 noxious weeds, the weed must be prevented from spreading and its numbers and distribution reduced.
  - For a W4 noxious weed, the action specified in a Ministerial declaration must be taken in respect of the weed.
- s30(1) – a person must not scatter or cause to be scattered on any land or water any notifiable weed material or other noxious weed material prescribed by the *NW Reg*, **knowing** it to be such weed material. Noxious weed material means noxious weeds or any seed or other part of a noxious weed (maximum penalty is \$5,500).
- *public authority* is defined in the *NW Act* to include a public or local authority constituted by or under an Act (other than a local control authority) and a member of staff or other person who exercises functions on behalf of a public authority.

- There is an arguable case that the corporation should be treated as a public authority for the purposes of the *NW Act*, although this has yet to be judicially determined.
- A public authority that occupies land must control noxious weeds on the land, but only *to the extent necessary to prevent the weeds from spreading to adjoining land* (s13).
- This limitation does not apply to private occupiers, who are under a general duty to control noxious weeds on the land, as required under the control category specified in relation to the weeds. Private occupiers are subject to a fine of up to \$4,400 if they fail to fulfil this duty.
- Private occupiers must comply with weed control notices issued by a local control authority (maximum penalty \$11,000) (s19).
- **Both** public authorities which occupy land, as well as private occupiers, must comply with the terms of any weed control notice issued by the Minister for Agriculture. In the case of private occupiers, failure to comply carries a maximum penalty of \$11,000. No fine is imposed on a public authority.

**Regulator** – NSW Agriculture.

#### **Responsibility**

The corporation must control weeds and comply with Ministerial notices requiring such action in respect of land occupied by it.

### *Ozone Protection Act 1989*

#### **Control of ozone depleting substances (DB Air 3.5, 4.1.16, 4.4)**

- Part 2 of the *OP Act* sets out the type of regulations that may be made in relation to a **controlled substance** or article.
- s14 – the EPA may require a business that uses ozone depleting substance to provide information.
- s21 – imposes criminal liability on the employer for a breach committed by an employee.
- s22 – makes executive management potentially liable for corporate breaches.
- Schedule 1 specifies various controlled substances: trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), trichlorotrifluoroethane (CFC-113), dichlorotetrafluoroethane (CFC-114), (mono)chloropentafluoroethane (CFC-115), bromochlorodifluoromethane (halon-1211), bromotrifluoromethane (halon-1301), dibromotetrafluoroethane (halon-2402).

**Regulator** – NSW Environment Protection Authority.

The *OP Act* provide the framework for restricting the possession and use of ozone depleting substances. The regulatory detail is contained in the *OP Reg*.

#### **Responsibility**

The corporation must ensure that halons are possessed and used in accordance with the statutory requirements contained under the *OP Reg*.

If an employee contravenes any provision of the *OP Act* or the regulations, the employer will be taken to have contravened the same provision whether or not the employee acted without authority or contrary to instructions. The only exception is where the corporation has no knowledge of the breach and could not, by the exercise of due diligence, have prevented it (s21).

Each person who is a director or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention (s22).

Any person, such as an employee or contractor of the corporation is potentially liable on an individual basis.

#### **Consequences**

The main penalty provisions are in the *OP Reg*.

### *Ozone Protection Regulation 1997*

**Specific duties in relation to ozone depleting substances (DB Air 3.5, 4.1, 4.4)**

- clause 11 – authorisation required to obtain possession of a CFC, HCFC or halon.
- clause 12 – duty of authorised purchasers to keep records.
- clause 14 – authorisation required to install, service or decommission any air conditioning equipment, fire protection system or portable fire extinguisher that uses CFC, HCFC or halon.
- clauses 27, 28 – restrict the use and testing of fixed HCFC systems and portable HCFC fire extinguishers.
- clauses 29, 31 – approval is required to install and possess a fixed halon system or to possess a portable halon fire extinguisher.
- clauses 30, 31 – restrict use and testing of fixed halon systems and require discharges of halon to be notified.
- Part 5, Division 1 of the *OP Reg* prescribes safe keeping and disposal requirements.
- clause 41 – restricts the possession of halons.

Schedule 1 of the *OP Reg* prescribes **controlled substances** in addition to those specified in the *OP Act*.

**Regulator** – NSW Environment Protection Authority.

The *OP Reg* sets out particular requirements and offences in relation to the possession and use of ozone depleting substances such as halons. These controls may affect the management of substations and other structures where fire protection systems utilise substances controlled under the *OP Act* and *OP Reg*.

**Responsibility**

The corporation must ensure that authorisation has been obtained to possess certain ozone depleting substances (such as halon-based fire protection equipment) and that these systems are properly used. The corporation may be liable for an employee's breach of the *OP Act* or *OP Reg* (*OP Act* s21).

Directors and persons concerned in the management of the corporation may also be liable for a contravention of the *OP Act* or *OP Reg* unless the person knowingly authorised or permitted the contravention (*OP Act* s22).

Any person, such as an employee or contractor of the corporation is potentially liable on an individual basis.

**Consequences**

The corporation may be fined up to \$22,000 for a breach and an individual up to \$11,000.

### *Pesticides Act 1999*

#### **Obligations regarding use of pesticides (DB Hazardous 4.1 to 4.4)**

- offences of wilfully or negligently using **pesticides** in a manner that:
  - injures persons or damages property (or is likely to have either of these effects) (s7);
  - harms any non-target plant or animal (s8);
  - materially harms an animal that is threatened species or protected fauna (s9).
- strict liability offence of using pesticides in a manner that:
  - injures persons or damages property (or is likely to have either of these effects) (s10);
  - harms any non-target plant or animal (s11).
- the corporation must not possess (s12) or use (s13) an unregistered pesticide unless it holds a permit to do so and is complying with that permit.
- s39 – person must not contravene a pesticide control order.

**Regulator** – NSW Environment Protection Authority.

#### **Responsibility**

The corporation must ensure that employees follow proper procedures in storing, transporting and using pesticides (e.g., for the treatment of power poles or vegetation clearance) so as to avoid environmental harm.

Any person who causes or permits an offence (whether by act or omission) is also guilty of the offence (s111). Thus employees or contractors may be individually liable.

Each person who is a director of the corporation or who is concerned in the management of the corporation would be liable unless the person can satisfy the court that (1) the person was not in a position to influence the conduct of the corporation, (2) the person, if in such a position, used all due diligence to prevent the contravention (s112).

Defence in relation to s10 and s11 where the offence was due to causes over which the person had no control and the person took all reasonable precautions **and** exercised all due diligence.

#### **Consequences**

For offences involving wilfulness or negligence (ss7 to 9) the corporation would be liable to a fine of \$250,000 and individuals, \$120,000. For other offences, penalties are \$120,000 and \$60,000 respectively.

*Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997*

**Management of equipment and waste oils containing PCB (DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 4.1, 4.2, 4.4)**

- clause 6.3 – obligations where **PCB material** or **PCB waste** is kept on premises:
  - provide an adequate supply of personal protective equipment and train personnel in safe handling practices;
  - ensure that any **PCB contaminated soils** are kept in a manner approved by the EPA;
  - notify EPA of the identity, amount and location of **scheduled PCB material**;
  - comply with licence conditions where one tonne or more in aggregate of **scheduled PCB waste** is kept;
  - maintain proper storage areas where there is more than 50 kg but less than one tonne of scheduled PCB waste;
  - observe requirements relating to the phase-out of equipment, and the **conveying** of PCB (clause 6.4) and disposal of PCB waste (clause 6.5).

**Regulator** – NSW Environment Protection Authority.

**Responsibility**

The corporation, as the occupier of premises on which PCB material or PCB waste is kept, must apply safe storage and decommissioning practices.

There is an obligation to hold a licence under the *EHC Act* where one tonne or more of scheduled PCB waste is kept on any premises. Failure to comply with a CCO is an offence under *EHC Act* s26.

Under s53 of the *EHC Act*, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the person can satisfy the court that (1) the corporation committed the breach without the person's knowledge, (2) the person was not in a position to influence the conduct of the corporation, (3) the person, if in such a position, used all due diligence to prevent the contravention, or (4) a defence would be available to the corporation.

**Consequences**

In the event of a breach, fines up to \$137,500 may be imposed on the corporation or \$66,000 for individuals.

*Protection of the Environment Operations Act 1997 (licence requirements)*

**Licensing (DB Air 2.1 / DB Land 2.4 / DB Noise 2.1 / DB Waste 2.1 / DB Water 2.1)**

- s48 – the occupier of **premises** at which a **scheduled activity** is carried on must hold an **environment protection licence** that authorises the activity at those premises. A scheduled activity is any one of the activities listed in Schedule 1 to the *POEO Act*. These include the generating of more than 10 tonnes per year, or the on site storage of 2 tonnes or more at any one time, of **hazardous waste, industrial waste** or **Group A waste** in the form of oil, paint, lacquer, varnish, resin, ink, dye, pigments, adhesives, hydrocarbons or emulsions.
- s49 – a licence is required for certain activities that are not premises based (such as mobile **waste** processing). This will apply to the use of mobile oil recycling plant. A licence is also required for the transport of hazardous waste, industrial waste, Group A waste, **Group B** or **Group C** in loads exceeding 200 kg, except where it consists only of stabilised **asbestos waste** in bonded matrix.
- s64 – failure to comply with a licence condition is an offence.
- Chapter 3, Part 3.5 describes possible licence conditions (e.g., monitoring, certification of compliance with licence, mandatory **environmental audits** (pursuant to s174 and s175), special **waste** management provisions and post-closure requirements).

**Regulator** – NSW Environment Protection Authority.

**Responsibility**

The corporation is required to obtain, and comply with the terms of, an environment protection licence where required by Part 3.2 of the Act.

The corporation must hold a licence in respect of mobile oil recycling plant under s49 of the *POEO Act* as these plants carry out a scheduled activity of treating, processing or reprocessing a Group A waste.

Oil insider transformers will constitute waste if it would be otherwise unwanted or abandoned **unless** put through recycling, reprocessing or purification.

Each director or person who is concerned in the management of the corporation must personally satisfy themselves that a current licence, where necessary, has been obtained. Such directors or persons may be individually liable for the corporation's failure to hold a licence or to comply with its terms. It is a defence if the person can show that they had no knowledge of the breach, or were not in a position to influence the corporation in relation to the breach, or (if in such a position) used all due diligence to prevent the breach.

**Consequences**

Potential shutdown of the unlicensed activity and the imposition of fines (Corporation – \$250,000, and a further \$120,000 per day for a continuing offence. Individual – \$120,000, and a further \$60,000 per day for a continuing offence).

*Protection of the Environment Operations Act 1997 (Tier One offences)*

**Tier One offences (DB Land 4.1.1.1, 4.1.1.2 / DB Air 4.1.16)**

Tier One offences arise where any person wilfully or negligently:

- s115 – **disposes of waste** in a manner that harms, or is likely to harm, the **environment**. Both the person and the owner of the **waste** are each guilty of the offence.
- s116 – causes any substance to leak, spill or escape in a manner that harms or is likely to harm the environment. The person who caused the incident and the owner of the substance are both liable. The person in possession of the substance, the owner of the container, the owner of the land on which the substance was located at the time of the incident and the occupier of such land may also be liable.
- s117 – causes any **controlled substance** to be emitted into the atmosphere contrary to the *OP Act* and in a manner that harms or is likely to harm the environment.
- Defence to Tier One where the incident occurred with lawful authority **or** the person had no control of the causes **and** the person took reasonable precautions and exercised due diligence.

**Regulator** – NSW Environment Protection Authority.

Tier One offences involve the highest degree of culpability on the part of the polluter (*i.e.*, a deliberate or negligent action). The relevant circumstances could occur in the course of erecting or maintaining infrastructure, transporting materials or equipment or managing stores.

**Responsibility**

The corporation must ensure that its activities do not result in pollution due to deliberate or negligent acts or omissions.

Under s169, evidence that an officer, employee or agent of the corporation (while acting in his or her capacity as such) had a particular intention at any particular time will be taken as evidence that the corporation had that intention.

Each person who is a director of the corporation or who is concerned in the management of the corporation may also be individually liable. It is a defence if the person can show that they had no knowledge of the breach, or were not in a position to influence the corporation in relation to the breach, or (if in such a position) used all due diligence to prevent the breach. The employee or contractor will be personally liable.

**Consequences**

Fines may be imposed on the corporation up to \$1,000,000. An individual offender would be liable to \$250,000 fine or 7 years imprisonment, or both. Conviction upon a Tier One charge may also have adverse licensing implications that affect the future conduct of the business.

*Protection of the Environment Operations Act 1997 (Tier Two land)*

**Land pollution offences (DB Land 4.1.2 / DB Waste 4.3.2)**

- s143 – offence to transport **waste** to a place that cannot lawfully be used as a waste facility for that waste. The transporter and the owner of the waste are both liable. Defence where the corporation did not transport the waste, and can establish that it had no control over the commission of the offence **and** that it exercised due diligence.
- s144 – offence where an owner or occupier of land permits the land to be unlawfully used as a waste facility.
- s145 – offence of depositing any litter in a public place or on an “*open private place*”.<sup>2</sup>
- s145A – offence of “*aggravated littering*” where the litter caused or contributed to appreciable harm or danger to any persons, animals or property (or was reasonably likely to do so).
- If litter is dropped from a vehicle, the owner or driver of the vehicle is deemed to have littered, unless they make a statutory declaration disclosing the name and address of the person responsible (s146).

**Regulator** – NSW Environment Protection Authority.

**Responsibility**

The corporation must ensure that it properly **disposes of waste** to a facility that is authorised to receive that type of waste.

Each person who is a director of the corporation or who is concerned in the management of the corporation may also be individually liable. It is a defence if the person can show that they had no knowledge of the breach, or were not in a position to influence the corporation in relation to the breach, or (if in such a position) used all due diligence to prevent the breach.

Any employee or agent who transports waste or deposits litter would be personally liable.

**Consequences**

Under s144, the corporation would be liable to a \$250,000 fine, and a further \$120,000 per day for a continuing offence. An individual could be liable to a penalty of \$120,000, and a further \$60,000 per day for a continuing offence. There is no continuing offence penalty under s143. Littering under s145 would attract a maximum fine of \$1,100. The maximum penalty for “*aggravated littering*” is \$5,500.

<sup>2</sup> **Open private place** means a place that is situated in or on land that is not within a building on the land.

*Protection of the Environment Operations Act 1997 (Tier Two water)*

**Water pollution (DB Water 4.3.2.1)**

Section 120 provides that a person must not *pollute* any **waters**, *cause* any waters to be polluted, or permit any waters to be polluted. The corporation through its agents must not introduce into waters (whether through an act or omission) any matter, whether solid, liquid or gaseous that changes the physical, chemical or biological condition of the waters. This prohibition extends to placing any matter in a position where it is likely to fall, descend, be washed, blown or percolate, into any waters or into any drain, channel or gutter used or designed to receive or pass water. It is a defence if the pollution resulted from an activity carried out in accordance with the regulations (s121), **or** the pollution was regulated by an **environment protection licence** and the conditions of that licence were not contravened (s122).

Clause 55 of the *Protection of the Environment Operations (General) Regulation 1998* provides that s120 does not apply to the discharge of pollutants into a sewer. Such discharges must be approved by a sewage authority (e.g., Sydney Water).

**Regulator** – NSW Environment Protection Authority.

**Water pollution** is defined very broadly and there is no wilfulness or negligence required. Activities of the corporation such as line construction and maintenance and materials handling could all potentially trigger liability.

**Responsibility**

The corporation must ensure that it exercises due diligence in preventing any matter from escaping to waters (except in accordance with the regulations or, for example, a trade waste agreement).

Each person who is a director of the corporation or who is concerned in the management of the corporation may also be individually liable. It is a defence if the person can show that they had no knowledge of the breach, or were not in a position to influence the corporation in relation to the breach, or (if in such a position) used all due diligence to prevent the breach.

Any employee or agent who polluted any waters, or caused or permitted any waters to be polluted, would be personally liable.

**Consequences**

The corporation may be liable to a \$250,000 fine, and a further \$120,000 per day for a continuing offence. Individuals can be fined up to \$120,000, and a further \$60,000 per day for a continuing offence.

*Protection of the Environment Operations Act 1997 (Tier Two air)*

**Air pollution (DB Air 3.2)**

- s124 – causing **air pollution** from **premises** by operating **plant** improperly or inefficiently, or failing to maintain the plant.
- s125 – causing air pollution by carrying out maintenance work on plant in an improper or inefficient way.
- s126 – causing air pollution by dealing with **materials** in an improper or inefficient manner.
- s128 – carrying out any activity or operating any plant in a way that causes or permits the emission of air impurities greater than (1) the standard of concentration *and* the rate, **or** (2) the standard of concentration *or* the rate, prescribed by the *Clean Air (Plant and Equipment) Regulation 1997*. If no standard or rate is prescribed, the occupier must use such practicable means as necessary to prevent or minimise pollution. The *Clean Air (Plant and Equipment) Regulation 1997* prescribes standards for sulphur, halogens, oxides of nitrogen, hazardous substances, solid particles, smoke emission, soot emission, and volatile organic liquids.
- s129 – causing or permitting the emission of **offensive odours** from premises licensed for scheduled activities.
- s167 – offence of failing to maintain and operate **control equipment** in a proper and efficient manner.

**Regulator** – NSW Environment Protection Authority.

**Responsibility**

These provisions affect procedures for the use and maintenance of any machinery that generates fumes, particles *etc*, as well as the handling of materials.

The corporation, as the occupier of any premises in or on which the plant or materials are located, must operate and maintain plant and handle materials properly and efficiently.

The occupier of premises at or from which pollution occurs is presumed to have caused it (s257).

Each person who is a director of the corporation or who is concerned in the management of the corporation may also be individually liable. It is a defence if the person can show that they had no knowledge of the breach, or were not in a position to influence the corporation in relation to the breach, or (if in such a position) used all due diligence to prevent the breach.

**Consequences**

The corporation may be liable to a \$250,000 fine, and a further \$120,000 per day for a continuing offence. Individuals can be fined up to \$120,000, and a further \$60,000 per day for a continuing offence.

*Protection of the Environment Operations Act 1997 (Tier Two noise)*

**Noise emissions (DB Noise 4.1)**

- s139 – an occupier who operates **plant** in such a way as to cause the emission of **noise** from the **premises** is guilty of an offence if the noise was a result of failing either to maintain the plant in an efficient condition, or to operate the plant in a proper and efficient manner.
- s140 – an occupier who deals with **materials** in a way that causes the emission of noise from the premises is guilty of an offence if the noise is caused by failing to deal with those materials in a proper and efficient manner.
- Plant includes any equipment, apparatus, device, machine or mechanism (*POEO Act Dictionary*) and would thus encompass transformers, capacitors, etc.

**Regulator** – NSW Environment Protection Authority.

**Responsibility**

The corporation, as the occupier of any premises in or upon which plant is located, must maintain and operate the plant efficiently so as not to cause **noise pollution**. The corporation must also handle, store and transport materials in a proper manner. The occupier of premises at or from which pollution occurs is presumed to have caused it (s257). Each person who is a director of the corporation or who is concerned in the management of the corporation may also be individually liable. It is a defence if the person can show that they had no knowledge of the breach, or were not in a position to influence the corporation in relation to the breach, or (if in such a position) used all due diligence to prevent the breach.

**Consequences**

The corporation may be fined up to \$60,000 for a breach, and a further \$6,000 per day for a continuing offence. Individual are liable to a penalty of up to \$30,000, and a further \$600 per day for a continuing offence (s141).

*Protection of the Environment Operations Act 1997 (duty to notify)*

**Duty to notify pollution incidents (DB Land 3.1.1)**

- Chapter 5, Part 5.7 – imposes a duty on the corporation, its employees and contractors to notify certain persons (and ultimately the EPA) where a **pollution incident** occurs in the course of an activity such that **material harm to the environment** is caused or threatened. Under s148, as soon as practicable after becoming aware of such an incident:
  - the person carrying on the activity must notify the EPA;
  - an employee engaged in carrying on the activity must notify their employer or the EPA (if the employer is not contactable);
  - the occupier of the **premises** where the incident occurs must notify the EPA.

The corporation as employer or occupier must have procedures in place to ensure that such notification is received by it.

- s149 – notification is to take a specific manner and form.
- s150 – all relevant information is to be given.

**Regulator** – NSW Environment Protection Authority.

**Responsibility**

The corporation must pass on information to the EPA about pollution incidents that cause or threaten material harm. It must also implement policies that enable such information to be promptly communicated by employees and agents to line managers.

This affects the corporation as an occupier and/or employer.

Each person who is a director of the corporation or who is concerned in the management of the corporation may also be individually liable. It is a defence if the person can show that they had no knowledge of the breach, or were not in a position to influence the corporation in relation to the breach, or (if in such a position) used all due diligence to prevent the breach.

Employees, contractors and other agents would also be individually liable where they fail to discharge their duty to notify.

**Consequences**

The corporation may be liable to a \$250,000 fine, and a further \$120,000 per day for a continuing offence. Individuals can be fined up to \$120,000, and a further \$60,000 per day for a continuing offence (s152).

*Protection of the Environment Operations (Waste) Regulation 1996*

**Obligations relating to waste generation, storage and disposal (DB Waste 4.1.14)**

Clause 16 sets out requirements that must be met where any person carries on a **non-licensed waste activity**. These obligations include:

- storing the **waste** in an environmentally safe manner and so as not to contact any incompatible waste;
- supplying information to the EPA about the waste;
- ensuring that a transporter of the waste is appropriately licensed;
- ensuring that any waste transported from the **premises** is sent to a facility licensed under the *POEO Act* or that can otherwise be lawfully used as a waste facility;
- accurately identifying any waste that is transported in accordance with the relevant description set out in Technical Appendix 4 to the *Waste Guidelines* and inform the transporter; **and**
- informing the EPA of any suspected breach.

Clause 29 prescribes special obligations in respect of **asbestos waste**.

**Regulator** – NSW Environment Protection Authority.

**Responsibility**

The corporation must, in respect of activities for which it does not hold an **environment protection licence**, handle and **dispose of waste** generated or stored by it in accordance with the requirements of clause 16.

Executive officers of the corporation may also be personally liable for the breach (see *POEO Act* s169(1)).

**Consequences**

A breach of the *Waste Reg* may lead to orders restraining the conduct which has given rise to the breach or to the imposition of a penalty (up to \$22,000 for the corporation and \$11,000 for individuals).

### *Renewable Energy (Electricity) Act 2000*

#### ***Imposes liability to purchase renewable energy certificates (RECs) or pay shortfall charge in relation to electricity purchases***

- The corporation is liable under the Act in respect of **relevant acquisitions** of electricity. There are 2 types of relevant acquisition: **wholesale acquisitions** (s32), and **notional wholesale acquisitions** (s33).
- s32 – a **wholesale acquisition** is an acquisition of electricity from NEMMCO; or a person who did not acquire it from another person.
- s33 – a **notional wholesale acquisition** of electricity occurs in 2 situations: (1) where the end user of the electricity acquires the electricity from the generator and the end user is not registered under the NEC. In this situation, the generator is liable as the **notional wholesaler** (the Act applies as if the notional wholesaler acquired the electricity from the notional generator at the time that the end user acquired the electricity). This does not apply if the person who generated the electricity has previously sold it to another person (including NEMMCO). (2) The second situation is where the end user of the electricity generated the electricity and **neither** of the following conditions are satisfied: (a) the point of generation is < 1 km from the point at which the electricity is used; (b) the electricity is transmitted or distributed between the point of generation and the point of use and the line on a line solely dedicated for that purpose. In scenario 2, the generator is again taken to be the **notional wholesaler**.

**Regulator** – Renewable Energy Regulator.

#### ***Responsibility***

- A liable entity who acquired electricity under a relevant acquisition during a year must lodge an energy acquisition statement for the year on or before 14 February in the following year (s44), and an annual renewable energy shortfall statement if a shortfall exists for the year (s46).
- The corporation must surrender RECs equivalent to the amount of electricity acquired under relevant acquisitions during the year, or pay a renewable energy shortfall charge.

#### ***Consequences***

- s70 – imposes a penalty for unpaid renewable energy shortfall charge. If any amount of a **renewable energy shortfall charge** remains unpaid after the time by which it is due to be paid, the corporation would be liable pay **additional renewable energy shortfall charge** on the unpaid amount. The amount of the additional renewable energy shortfall interest charge for each day is worked out by multiplying the unpaid amount by the general interest charge rate for the day.

### *Renewable Energy (Electricity) (Charge) Act 2000*

#### **Sets the rate of charge**

- s6 – simply provides that the rate of charge for the purposes of the renewable energy shortfall charge is \$40 per MWh.

#### **Calculating the renewable energy certificate shortfall**

See s39 of the *Renewable Energy (Electricity) Act 2000*:

**Step 1:** Work out the total amount, in MWh, of electricity acquired by the corporation during the year under relevant acquisitions.

**Step 2:** Multiply the total electricity acquired by the renewable power percentage for the year and round the result to the nearest MWh (rounding 0.5 upwards). Add to the result any carried forward shortfall from the previous year or subtract any carried forward surplus for the previous year. The result is the corporation's required renewable energy for the year.

**Step 3:** Subtract the total value, in MWh, of renewable energy certificates surrendered to the Regulator for that year by the liable person from the required renewable energy for the year.

**Result:** If the result is > zero, the corporation has a **renewable energy certificate shortfall** for the year equal to the result. If the result = zero, there is **no renewable energy certificate shortfall** for the year. If the result is < zero, the corporation has a **carried forward surplus** for the year.

#### **Calculating the amount of charge payable**

The amount of renewable energy shortfall charge payable by a liable entity is worked out using the formula:

$$\text{renewable energy certificate shortfall} \times \$40 \text{ per MWh}$$

No renewable energy shortfall charge is payable by a liable entity for a year if its renewable energy certificate shortfall for the year is less than 10% of the liable entity's required renewable energy for the year. However, the renewable energy certificate shortfall becomes a **carried forward shortfall** for the year (*Renewable Energy (Electricity) Act 2000* s36(2)).

**Regulator** – Renewable Energy Regulator.

*Renewable Energy (Electricity) Regulations 2001*

**Provides further details required to implement the mandatory 2% renewable energy measure**

- Part 3 – outlines how to determine the amount of electricity acquired under relevant acquisitions (reg 21) and how to determine the capacity of grids (reg 22).
- For an acquisition in the NEM the amount of acquired electricity is to be measured by metering that meets the performance standard required by the NEC, and at the point(s) where metering is required, adjusted by the distribution network loss factor assigned to the metering point under the NEC. In any other case (ie, non-NEM), the metering must enable the Regulator to determine the amount of electricity acquired at equivalent point(s) (reg 21).
- The capacity of a grid is the sum of all installed electricity generation capacity of the grid other than standby plant; and privately owned domestic generators (reg 22).

- Part 4 – reg 23 sets the renewable power percentage for 2001 at 0.24%.
- Part 5 – reg 24 deals with the formal requirements for annual energy acquisition statements, reg 25 prescribes the content of annual renewable energy shortfall statements.

**Regulator** – Renewable Energy Regulator.

### *Rivers and Foreshores Improvement Act 1948*

#### **Special controls on development in riverine foreshore areas**

- s22B – the corporation must **not**:
  - make an excavation on, in or under **protected land, or**
  - remove material from **protected land, or**
  - do anything which obstructs, or detrimentally affects, the flow of **protected waters**, or which is likely to do so,

**unless** either authorised to do so by a permit, by the regulations, or in the exercise of lawful rights otherwise conferred (e.g. by development consent or under *EPA Act Part 5*). Note that *make an excavation* includes to cause or allow an excavation to be made. Similarly, *remove material* includes causing or allowing material to be removed. *Material* means any part of the surface of any land or any matter lying beneath that surface.
- s22C – provides for the grant or refusal of a permit.

**Regulator** – the **Constructing Authority**, which will be the Minister for Ports, the Minister for Public Works or the Water Administration Ministerial Corporation.

#### **Responsibility**

The corporation must ensure when carrying out activities in foreshore areas that it is exercising lawful rights or is acting in accordance with a permit.

#### **Consequences**

A person who contravenes s22B is guilty of an offence and is liable:

- in the case of a corporation to a maximum penalties of \$137,500, and \$66,000 for each day the offence continues; or
- in the case of an individual to a penalty of \$66,000 or \$33,000 per day for a continuing offence.

It is a defence if the commission of the offence was due to causes over which the person had no control and that the person took all reasonable precautions and exercised due diligence to prevent the commission of the offence, **or**, in the case of an obstruction or detrimental effect, that the person could not reasonably have foreseen that the act would result in, or in the likelihood of, the obstruction or detrimental effect concerned.

The Constructing Authority may issue a stop order to a person who is contravening, or is about to contravene s22B. Non-compliance with such an order carries the same penalties as those for breach of s22B. The Land and Environment Court may also issue an injunction under s22E. The Constructing Authority may give directions to undertake remedial work in certain circumstances (s22G).

A public authority may be required to carry out specified work where damage has been caused to **protected land**, even where this has occurred in the exercise of rights that are lawfully exercisable.

### *Road and Rail Transport (Dangerous Goods) Act 1997*

#### **Transport of certain dangerous goods (DB Hazardous 2.1, 2.7, 3.1, 3.8, 3.9, 4.1 to 4.4 / DB Waste 3.9, 4.1, 4.3)**

- s35 – offence where an unlicensed vehicle is used to transport dangerous goods or an unlicensed driver is employed, engaged or permitted to transport dangerous goods, in breach of a licence requirement under the regulations. Section 35(4) also makes it an offence for a person to be involved in the transport of dangerous goods without being accredited to do so, where that is required under the regulations.
- s37(1) – offence of failing to ensure, so far as practicable, that dangerous goods are transported by road or rail in a safe manner.
- s37(2) – it is a separate offence to fail to comply with a provision of the *RRT(DG) Act* where the person knew, or ought reasonably to have known, that this would be likely to endanger the safety of another person, of property or of the environment.

**Regulator** – NSW Environment Protection Authority so far as the Act relates to the on-road and on-rail transport of dangerous goods by road or rail. The WorkCover Authority administers the remainder of the provisions.

#### **Responsibility**

The corporation must observe licensing and precautionary obligations on persons involved in the transport of dangerous goods by rail or road. *Involvement* is defined broadly in s6 to include consigning, loading and undertaking or being responsible for the transport of dangerous goods. It also includes being involved as a director, secretary or manager.

Conduct engaged in by a director, employee or agent of the within the scope of their authority will be taken to have been engaged in by the corporation. Any director, secretary, manager is also liable to be individually punished unless the person did not know that the offence was committed, **or** the person was not in a position to influence the conduct of the body corporate in relation to the offence, **or** the person took reasonable precautions and exercised due diligence to prevent the commission of the offence. Individual employee drivers may also be liable.

#### **Consequences**

Fines may be imposed on the corporation of up to \$250,000 (or \$500,000 if breach of s37(2) results in death or serious injury to a person). An individual may be fined up to \$50,000 or imprisoned for 2 years, or both (\$100,000 or 4 years for s37(2) death or serious injury).

### *Scheduled Chemical Wastes Chemical Control Order 1994*

#### **Scheduled chemical wastes (DB Waste Executive Summary, 3.2)**

- clause 6.3 – requirements for the keeping of **scheduled chemical wastes**:
  - where less than one tonne, packages must be clearly marked and maintained in good order;
  - where more than 50 kg but less than one tonne, storage must be sited and constructed so as to prevent any discharge to external environment and EPA must be notified of identity, amount and location;
  - where one tonne or more in aggregate, a licence must be in force and complied with, the storage area must meet special design and construction standards, personal protective equipment must be readily available and the store must be inspected at least once per month.
- clause 6.4 – scheduled chemical wastes to be conveyed in the approved manner.
- clause 6.5 – disposal of scheduled chemical wastes must be by an approved process.

**Regulator** – NSW Environment Protection Authority.

#### **Responsibility**

The corporation as occupier of relevant premises must ensure that the quantities of **scheduled wastes** are monitored and controlled in accordance with the storage/transport requirements in the CCO.

The CCO(SCW) affects depot and equipment handling practices concerning a range of toxic **chemicals**. Scheduled chemical wastes include benzene, chlordane, heptachlor, dieldrin and endrin. Failure to comply with a CCO is an offence under *EHC Act* s26.

*EHC Act* s53 – each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the person can satisfy the court that (1) the corporation committed the breach without the person's knowledge, (2) the person was not in a position to influence the conduct of the corporation, (3) the person, if in such a position, used all due diligence to prevent the contravention, or (4) a defence would be available to the corporation.

#### **Consequences**

The corporation may be fined up to \$137,500 for a breach of the CCO and an individual up to \$66,000 (*EHC Act* s54).

### *Soil Conservation Act 1938*

#### ***Erosion and degradation of land***

- Notices under the *SC Act* may be issued to the owner or occupier of the relevant land. An occupier is defined to include a person having the control or management of the land, whether residing there or not.
- s15A – the Commissioner of Soil Conservation Service may issue a notice requiring or preventing any act if it has caused or is likely to cause soil erosion or land degradation. It is an offence to fail to comply with the requirements of a notice within the time specified, unless the corporation has no legal right to enter the land in respect of which the notice was given (s15E).
- s18 – Minister may authorise the Commissioner to give directions requiring the corporation to carry out remedial works or measures on land gazetted as an area erosion hazard.
- s22 – notice requiring the corporation to do or abstain from doing acts such as may be necessary to mitigate or avoid damage to a ***proclaimed work***.
- s27 – makes it an offence for any person to interfere with or damage any works that have been carried out under the *SC Act*.

**Regulator** – Department of Land and Water Conservation (through the Soil Conservation Service).

#### ***Responsibility***

Under the *SC Act*, the corporation may be required to undertake conservation measures or refrain from activities if it has structures in areas of erosion hazard or where the structure itself has caused degradation. The corporation would be responsible if it can be classified in law as the owner or occupier of the land.

#### ***Consequences***

If proceedings are brought in respect of non-compliance, the court can impose a maximum penalty of \$55,000.

If the corporation fails to comply with a soil conservation notice and damage is caused to the land of another person, being damage which would not have been caused if the requirement had been complied with, the owner or occupier of the land damaged would have a right of action against the corporation (s15G).

### *State Environmental Planning Policy No. 4 – Development Without Consent*

#### **Exemption from development consent for certain ESI activities**

- Part 4 of the *EPA Act* applies where an **environmental planning instrument** requires that consent be obtained before a **development** can be carried out. Clause 11(1) of *SEPP 4* allows the construction of electricity transmission lines, by or on behalf of a public authority, to proceed without development consent. Public authorities are defined in s4(1) of the *EPA Act* to include statutory State owned corporations. The corporation is listed as a statutory State owned corporation in Schedule 5 of the *State Owned Corporations Act 1989*.
- Note also clause 11D, which allows bush fire hazard reduction to proceed without development consent if it is consistent with a bush fire management plan referred to in s52 of the *Rural Fires Act 1997*, and does not include clearing of coastal wetlands within the meaning of clause 7 of *SEPP 14 – Coastal Wetlands*.
- The proposal will still need to be assessed under Part 5 of the *EPA Act*.

**Regulator** – Department of Urban Affairs and Planning.

- *SEPP 4* does not apply to land to which *State Environmental Planning Policy No 26-Littoral Rainforests* applies.
- *SEPP 26* imposes requirements to obtain the consent of council and concurrence of the Minister in respect of certain actions within littoral rainforest areas (e.g., carrying out work, using land for any purpose, or disturbing, removing or destroying any native flora). Any act which falls under *SEPP 26* will constitute designated development and thus require an *EIS*.

#### **Responsibility**

*SEPP 4* does not impose any obligation as such (other than the fact that the corporation must ensure that it applies before seeking to rely upon it)

Where *SEPP 4* does not apply and the development falls under Part 4 of the *EPA Act* it will be subject to the *Crown development* provisions under Part 5A of the *EPA Act*. The local council cannot refuse its consent, or impose a condition on consent, except with the written approval of the corporation or of the Minister for Urban Affairs and Planning (*EPA Act* s116C).

*State Environmental Planning Policy No. 69 – Major Electricity Supply Projects*

**Special approval regime for Picnic Point to Haymarket and Haymarket to Surry Hills projects**

- clause 6 – except as provided in clause 7, a person may carry out development for the purposes of a major electricity supply project without development consent, (similarly, no consent is required in respect of development for the purpose of winning extractive material if this is carried out as part of the construction work for a major electricity supply project). However, Part 5 of the EPA Act would still apply.
- clause 7 – development consent may be required for:
  - development for the purpose of the erection, modification or maintenance of electricity substations on land to which SEPP 69 applies (ie, Bankstown, Canterbury, Hurstville, Marrickville, Rockdale, South Sydney and Sydney local government areas); or
  - development specified in Schedule 2 on the land, or generally in the vicinity of the land identified in relation to the development in the Picnic Point to Haymarket EIS.
- clause 8 – development applications that involve excavation, or other penetration of the ground and that may affect the major electricity supply projects are to be referred to the proponent of the relevant project (ie, TransGrid or EnergyAustralia).

**Regulator** – Department of Urban Affairs and Planning.

**Responsibility**

TransGrid and EnergyAustralia remain subject to Part 5 assessment obligations under the EPA Act as well as duties imposed under other legislation.

*Threatened Species Conservation Act 1995*

**Approvals for activities which impact upon threatened species**

- s91 – provides for the granting of a licence by the Director-General of National Parks and Wildlife. The licence would allow the corporation to take an action (e.g., line construction) that is likely to harm animals or pick plants belonging to a threatened species, population or ecological community and/or to damage critical habitat.
- s110 – details the information that must be included in an *SIS* prepared pursuant to s112C of the *EPA Act*.

**Regulator** – National Parks and Wildlife Service.

**Responsibility**

The corporation is responsible for preparing an *SIS* in the circumstances prescribed by the *EPA Act*. Specific offences for harming threatened species without a licence are covered in the *NPW Act*. The *TSC Act* sets out *SIS* requirements that will need to be met by the corporation if a particular activity is likely to impact on threatened species. It also allows for the licensing of such an activity.

### *Wilderness Act 1987*

#### **Consent required for development in wilderness areas**

- s15 – the corporation must not carry out development in a wilderness area that is subject to a wilderness protection agreement or a conservation agreement unless:
  - it has given written notice of the proposed development to the Minister, any other party to the agreement, any statutory authority on behalf of which the agreement was entered into and, in the case of a conservation agreement, any successor in title to the owner who entered into the conservation agreement; **and** it has received written notice from the Minister consenting to the development.
  - The Minister may consent to the development only if he or she is of the opinion that the proposed development will not adversely affect the area; and in the case of an area subject to a wilderness protection agreement – the Minister responsible for the statutory authority which entered into the agreement, or on behalf of which the agreement was entered into, has consented to the development.

**Regulator** – National Parks and Wildlife Service.

#### **Responsibility**

The corporation must give the appropriate notice and obtain relevant consent prior to commencing development.

#### **Consequences**

Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

## Part D – Frequently Asked Questions and Answers

The answers provided below are for the purposes of general information and should not be taken to constitute legal advice. Neither Allens Arthur Robinson nor the Electricity Association of New South Wales warrants the accuracy, completeness or correctness of any statement made below. In practice, the appropriate legal opinion may differ from the answers given below because of the particular facts of a situation. The user is advised to seek specific legal advice where any of the questions below are in issue.

**1. What is environmental law (e.g., criminal, case law, how is it made, who makes it, who administers it, how can it change)?**

Environmental law regulates the use of physical resources, whether natural or man-made. Its source is primarily statute (although the tort of nuisance, for example, was developed by judges at common law). The basic obligations are made by Parliament in the form of Acts or statutes. There is usually a specific power in an Act of Parliament for the Governor or authorised delegate (e.g., Minister of the Department of Urban Affairs and Planning) to make certain types of regulations pursuant to that Act. These also constitute law. In NSW, this regulation-making power is exercised subject to the procedures laid down in the *Subordinate Legislation Act 1989*. As noted below departmental guidelines may have a legal character if the statute requires that their terms be considered or applied. Most environmental statutes have a 'criminal' law component in that they contain offence provisions and impose penalties for contraventions.

Environmental law changes through the enactment, amendment or repeal of legislation, as well as through a gradual process by which the judiciary interprets the meaning of provisions within those statutes.

**2. Are standards and guidelines law?**

This depends on whether they have been incorporated by the relevant legislation.

Some standards and guidelines, although not a statutory instrument in their own right, have a legal effect conferred on them by statute. For example, the *POEO Act* incorporates the following documents for the purpose of defining **waste** disposal obligations:

- *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-liquid Wastes* issued by the EPA and in force as at 1 July 1999; and
- *Environmental Guidelines: Use and Disposal of Biosolids Products* issued by the EPA and in force as at 31 December 1997.

In other cases, standards and guidelines will merely be policy documents that provide information on how the law works, the type of criteria used by a regulator in making a decision and best practice technical advice. Even if they are not legally binding, they should be complied with as a matter of due diligence.

### 3. What is the common law (e.g., nuisance, negligence) and how do these apply to us?

Australian common law is a system of justice based on British legal traditions that were introduced to Australia when the Colony of New South Wales was established in 1788.

Common law (as opposed to statute law) is made by judges in the course of hearing cases and in accordance with the doctrine of judicial precedent.

A main branch of the common law is the law of torts. This area of law deals with compensating civil wrongs that are not based on contract. Nuisance and negligence are two principal forms of action in tort.

A nuisance is an *indirect* interference with an occupier's land or the enjoyment of it, such as may result from *noise* or air emissions, or an escape of substances from the corporation's land or infrastructure on to an adjoining property. Generally, there will be no liability in nuisance unless an act of pollution produces some material injury to the land or affects the reasonable enjoyment of it. However, unlike negligence, the plaintiff is not required to establish that the defendant owed, and was in breach of, a duty of care. Nor is the obligation to avoid inflicting a nuisance upon one's neighbours necessarily discharged by exercising reasonable care or even all possible care.

The corporation would be liable in negligence if:

- it owed a duty of care to the plaintiff;
- it has not achieved a reasonable standard of care in carrying out its activities; and
- damage was caused to the plaintiff that was foreseeable.

The standard of care required is one which is reasonable in the circumstances, meaning that the more hazardous an undertaking the higher will be the standard of care demanded.

Courts, in recent cases, have been increasingly willing to impose liability where public authorities fail to exercise statutory powers with the care and diligence required in the circumstances. In this context, the risk of fire due to deficient line maintenance is one potential basis for liability.

A body corporate is liable at common law for the acts of its servants committed in the course of employment. The corporation may also be liable for the conduct of independent contractors where it exercises sufficient control over the work performed by them (see also Question 34).

Remedies such as an injunction and/or damages could be ordered against the corporation.

Note that the *POEO Act* does not limit or affect any right, remedy or proceeding under any other Act or law. Merely conducting operations in accordance with an *environment protection licence* will not automatically provide a defence to an action at common law.

#### 4. What are the different types of liability?

- **Ordinary liability** – where proof is required of fault (e.g., the culpable intent or negligence required for conviction under Tier One of the *POEO Act*).
- **Strict liability** – imposed regardless of fault, but where a defence of honest and reasonable mistake of fact is available (e.g., Tier Two Offences under the *POEO Act* for which no mental element is specified).
- **Vicarious liability** – the term applied to circumstances where one person is held liable for the actions of another. Under this principle, the corporation may become liable for the conduct of an officer, employee or agent acting within the scope of their authority.
- **Absolute liability** – for which no proof of fault is required and no defence is available.

#### 5. What are the different types of land ownership and what are the implications (e.g., freehold, national parks, roads, public land, Crown land, reserve, etc)?

- **Freehold** – this is the most extensive interest in land in terms of the rights which it confers. For practical purposes, a freehold estate in fee simple is equivalent to 'ownership' of the land itself (although, technically, the land is held upon a Crown grant).
- **National Parks, Reserves, etc** – usually consists of land that is retained in Crown ownership but set aside under the *National Parks and Wildlife Act 1974 (NPW Act)* for the special purpose of preserving unique scenery or natural phenomena. National parks can also consist of land owned by public authorities and land especially acquired for the purpose. The use of national parks is regulated by the *National Parks and Wildlife (Land Management) Regulation 1995*. Note that under s153 of the *NPW Act*, the Minister may upon such terms and conditions as the Minister thinks fit grant easements or rights of way through, upon or in a national park, historic site, state recreation area, regional park, nature reserve, state game reserve or karst conservation reserve for the purpose of providing access to any area included in any lease or licence within the park, site, area or reserve, or for the construction of pipelines, or for the erection of standards, posts, wires and appliances for the conveyance or transmission of electricity, or for any other purpose deemed necessary.

Any easement or right of way that was in force before the lands were reserved or dedicated will continue in force and be deemed to have been granted under s153.

- **Roads** – under the *Roads Act 1993* the RTA is the roads authority for all freeways, the Minister is the roads authority for all Crown roads, and the council is the roads authority for all public roads within its local government area (other than any freeway, Crown road or public road for which some other public authority is declared by the regulations to be the roads authority). Roads are owned by the respective roads authorities. A person who has a right to the control, use or benefit

of a structure or work in, on or over a public road must maintain the structure in a satisfactory state of repair.

Section 138 of the *Roads Act 1993* provides that a person must not (among other things):

- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- otherwise than with the consent of the appropriate roads authority.

It can be argued that the corporation is a public authority for the purposes of the *Roads Act 1993*. If so, the roads authority and (in the case of a classified road) the RTA, would have to consult with the corporation before deciding whether or not to grant consent or concurrence. A consent cannot be given in relation to a classified road except with the concurrence of the RTA.

- **Public land** – under the *LG Act* is owned by the relevant local council. Section 45 of the *ES Act* enables the corporation to carry out work connected with the erection, installation, extension, alteration, maintenance and removal of electricity works on a public road or public reserve (provided notice and a reasonable opportunity for comment has been given to the local council).
- **Crown Land** is land retained in Crown ownership and managed under the *Crown Lands Act 1989*. Crown land can be dedicated or reserved for any public purpose, or reserved for future public requirements, although this does not prevent it from being sold or leased by the reserve trust (usually a local council) with the consent of the Minister for Land and Water Conservation.

#### 6. Do all Acts bind the Crown? What does this mean?

The Crown is presumed **not** to be bound by statutes unless an intention appears either expressly or by necessary implication from the words of the statute.

Having said that, most environmental and planning statutes contain a provision to the effect that the Act **does** bind 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. Where this is present it means that the Executive and government instrumentalities are also subject to obligations under the relevant Act.

In any event, for the reasons outlined in Question 7 below, the corporation would not represent the Crown **unless**:

- the particular Act which is in issue expressly provides for this; **or**
- there has been an express agreement between the corporation's voting shareholders (which under s20H of the *SOC Act* are restricted to the Treasurer and another Minister).

## 7. Is the corporation a public authority? What are the implications?

The answer to the first question will vary depending on how individual legislation is drafted. As to the second, the status of the corporation may have a significant impact upon the rights and obligations that affect the corporation, its officers and employees. An example of the latter issue can be found in the differential duties of private and public occupiers under the *Noxious Weeds Act 1993*.

The corporation is listed as a statutory State owned corporation (**SOC**) under Schedule 5 of the *State Owned Corporations Act 1989 (SOC Act)*. This will resolve the first question in respect of many Acts, as they expressly define the term **public authority** to include a statutory State owned corporation. Examples include the *POEO Act*, *EPA Act*, *Rural Fires Act 1997* and *Pesticides Act 1999*.

On the other hand, *CLM Act* s4 states that a *public authority* means a public or local authority constituted by or under an Act, and includes a statutory body representing the Crown (*but not a State owned corporation*).

The answer is even more ambiguous for other statutes, such as the *LG Act*, the *NW Act* and the *NPW Act*. For instance, the Dictionary to the *LG Act* defines **public authority** to mean:

*a public authority constituted by or under an Act, a government department or a statutory body representing the Crown, and includes a person exercising any function on behalf of the authority, department or body and any person prescribed by the regulations to be a public authority.*

As for the first possibility, the corporation is clearly constituted by an Act (namely the *Energy Services Corporations Act 1995*). However, this does not get around the circular threshold criterion that it must first be a *public authority*.

Contrast this with s4 of the *EPA Act*, which defines *public authority* to mean:

- (a) a public or local authority constituted by or under an Act, or
- (b) a government Department, or
- (c) a statutory body representing the Crown, or
- (d) a chief executive officer within the meaning of the *Public Sector Management Act 1988* (including the Director), or
- (e) a statutory State owned corporation (and its subsidiaries) within the meaning of the *State Owned Corporations Act 1989*, ...

The separate listing in paragraph (e) might be taken to suggest that statutory SOC's were not seen by the parliamentary drafters to constitute *public authorities* within the ordinary meaning of that phrase. We have not identified any judicial authority on this point. However, we believe, that an arguable case can still be put that the corporation, given its close ties to government, **is** a public authority.

The corporation will obviously not be a government department and nor would it be a statutory body representing the Crown (subject to what is said below).

Section 20F of the *SOC Act* provides that:

*A statutory SOC or any of its subsidiaries:*

- (a) *is not and does not represent the State except by express agreement with the voting shareholders of the SOC, and*
- (b) *is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State merely because it is a SOC, and*
- (c) *cannot render the State liable for any debts, liabilities or obligations of the SOC or any of its subsidiaries,*

*unless this or any other Act otherwise expressly provides.*

Section 3 of the *SOC Act* provides that *the State includes the Crown in right of New South Wales and the Government of New South Wales.*

The corporation would not represent the Crown **unless** the particular Act which is in issue expressly provides for this, **or** there has been an express agreement between the corporation's voting shareholders (which under s20H of the *SOC Act* are restricted to the Treasurer and another Minister).

A strong argument may nevertheless be put that it **is** a *public authority*, given the non-commercial nature of many of the corporation's objectives (as set out in the *SOC Act* and *ESC Act*) and the significant degree of government control that may be exercised over its operations. In order to forestall possible disputes about differential obligations under various statutes, it may be worthwhile seeking amendments or a memorandum of understanding at the Ministerial level.

## 8. How do Commonwealth laws affect the corporation?

### ***The Need for Assessment and Approval***

The *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* will take effect from 16 July 2000. Under the Act, Commonwealth approval is required to take any action that has or will have a significant impact, or is likely to have a significant impact, on environmental assets for which the Commonwealth is responsible. These include world heritage properties (s12), Ramsar wetlands (s16), listed threatened species or endangered communities (s18), listed migratory species (s20), Commonwealth marine areas (s23) and Commonwealth land (s26). Refer to DB Cth EIA 3.1.

The *EPBC Act* prohibits a person from taking such an action except:

- in accordance with an approval from the Commonwealth Environment Minister; or
- in accordance with an approval from another Commonwealth decision-maker under a management plan accredited by the Commonwealth Environment Minister for the purposes of a Ministerial declaration; or
- in accordance with an approval from a State in accordance with a management plan accredited by the Commonwealth Environment Minister for the purposes of a bilateral agreement (under Chapter 3, Division 2).

Part 9 of the *EPBC Act* deals with the granting of approval.

Also note that a decision by the corporation to grant any governmental authorisation (however described) for another person to take an **action** will not itself be an action (as a result of s524).

Under s523, an action includes a project, development, an undertaking, an activity or series of activities, an alteration of any of these things.

A lawful continuation of a use of land that was occurring immediately before the commencement of the *EPBC Act* is not an action. However, its enlargement, expansion or intensification will amount to an action because it is not a mere continuation of the existing use.

An action does not require assessment or approval under the *EPBC Act* if:

- it has been approved by the Commonwealth or a State before 16 July 2000; and
- no further approvals are required in order for the action to be lawfully taken.

### **Commonwealth Heritage Laws**

The corporation should also be aware of the implications of listing as part of the national estate under the Australian Heritage Commission Act 1975 (**AHC Act**).

The *AHC Act* does not give the Commonwealth Government any rights to acquire or manage registered places that are private property. Nor does it impose any obligations on a private landowner to manage, maintain or dispose of such property in a particular way. However, listing under the *AHC Act* may indirectly affect development options in the following ways:

- as a relevant consideration in environmental impact assessment;
- increasing the likelihood of State listing under the Heritage Act 1977 (NSW); and
- impeding the grant of any Commonwealth Government approval that may be required where this would *adversely affect* the heritage values of the site (e.g., foreign investment or export approval).

The *Environment and Heritage Amendment Bill (No. 2) 2000*, the *Australian Heritage Council Bill 2000* and the *Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000* was introduced into the Commonwealth Senate on 7 December 2000. Among other things, the proposed legislation would repeal the *AHC Act* and establish a mechanism for identifying heritage places of national significance. These places will be entered on a National Heritage List. The list will consist of natural, historic and indigenous places that are regarded as being of outstanding national heritage significance. Places on the National List will be identified under the *EPBC Act* as matters of national environmental significance. The Bills also provide for the establishment of a list of Commonwealth heritage places which will include places in Commonwealth areas.

### **Possible Greenhouse Trigger**

On 16 November 2000, draft regulations were released which would have the effect of applying the *EPBC Act* to certain greenhouse emitting projects. This proposal has yet to become law.

The key regulation, 2.04, states that an action is a “*prescribed action*” (and thus requires approval) if it results, will result or is likely to result in the emission, in a **12 month period**, of greenhouse gases equivalent to over **0.5 million tonnes** of carbon dioxide.

The draft regulation would not affect certain existing developments (eg, where the action was a lawful continuation of a use of land that was occurring immediately before the commencement of the regulations).

#### *Mandatory 2% Renewables*

The relevant legislation consists of the *Renewable Energy (Electricity) Act 2000 (RE(E) Act)*, *Renewable Energy (Electricity) (Charge) Act 2000* and the *Renewable Energy (Electricity) Regulations 2001 (RE(E) Regs)*.

The purpose of the legislation is to encourage use of renewable energy by imposing a legal liability on wholesale purchasers of electricity to proportionately contribute towards the generation of an additional 9,500 GWh of renewable energy by 2010. The measure will be phased in through a number of interim targets over the period 2001 to 2010.

The measure applies to all wholesale electricity purchases on grids of 100 MW or more installed capacity. A wholesale purchase of electricity is a purchase directly from the electricity pool or from a generator. Where the generator sells directly to an end user, and the end user is not required to be specially registered for this to occur (under the National Electricity Code (**NEC**)), the generator will be deemed to be a notional wholesaler and be the party responsible for holding renewable energy certificates (**RECs**) against that sale.

If a liable party purchases 10% of the liable electricity in the Australian market for a given year, they will need to meet 10% of the interim target level for that year. The renewable power percentage, specified in regulations each year, provides the mechanism for determining the actual number of RECs which must be surrendered each year to discharge a liability. The penalty for non-compliance is set at \$40/MWh. Penalties will be redeemable if the shortfall is made up within the following 3 years.

#### **9. What kind of environmental impact assessment (EIA) must be carried out under State laws?**

This is only a general overview of *EIA* procedures under the *Environmental Planning and Assessment Act 1979 (EPA Act)* and the *Environmental Planning and Assessment Regulation 1994 (EPA Reg)*.

The corporation should be aware that special consent and/or concurrence requirements may apply by reason of particular statutory instruments, such as the *Coastal Protection Act 1979 (CP Act)*, *Fisheries Management Act 1994 (FM Act)*, *Forestry Act 1916*, *Heritage Act 1977*, *National Parks and Wildlife Act (NPW Act)*, *Native Title (NSW) Act 1994*, *Native Title Act 1993 (Cth)*, *Native Vegetation Conservation Act 1997 (NVC Act)*, *Wilderness Act 1987*, *State Environmental Planning Policy No 14 - Coastal Wetlands (SEPP 14)*, *State Environmental Planning Policy No 26 - Littoral Rainforests (SEPP 26)*, the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. The range of environments that involve special laws include – rainforest, coastal wetlands, riverine areas, mangroves, State forests, wilderness areas, national parks, reserves and conservation areas.

In terms of project design, the corporation should start considering environmental impacts as soon as a proposal is first mooted. Obviously, at this preliminary stage the corporation

will not be in possession of sufficient facts to reach a formal and comprehensive assessment. However, the process of *EIA* should not be something that is merely tacked on after the corporation is already committed to proceeding.

Many projects undertaken by the corporation will be assessed as activities under Part 5 of the *EPA Act* because they are permissible without the need for development consent under an **environmental planning instrument** (being a *SEPP*, *REP* or *LEP*).

In most cases the proposal will involve either **development** under Part 4 or an **activity** under Part 5. Both terms include the use of land, the subdivision of land, the erection of a building, the carrying out of a work and the demolition of a building or work.

There are **3** ways for a project to be permissible without development consent:

- the relevant environmental planning instrument says the activity does not require consent or the land is unzoned; **or**
- the relevant environmental planning instrument states that the development requires consent but
  - the activity involves the construction of electricity transmission lines by or on behalf of the corporation (exempt under *SEPP 4*); **and**
  - the land is not a littoral rainforest under *SEPP 26* or land reserved for open space, a public place or reserve, a national park, a public cemetery, hospital, railway or school; **or**
- the relevant local environmental plan says the development requires consent or is prohibited but that instrument also adopts the *Model Provisions*. In this case, the following acts are exempt from the need to obtain development consent:
  - development of any description at or below the surface of the ground;
  - the installation of any plant inside a building, or the installation or erection within the premises of a generating station or substation established before 1 September 1980 of any plant or other structures or erections required in connection with the station or substation;
  - the installation or erection of any plant or other structures or erections by way of addition to or replacement or extension of plant or structures or erections already installed or erected, including the installation in an electrical transmission line of substations, feeder-pillars or transformer housings, but not including the erection of overhead lines for the supply of electricity, or the installation of substations, feeder-pillars or transformer housings of stone, concrete or brickworks;
  - the provision of overhead service lines pursuant to the corporation's statutory power to provide a supply of electricity; **or**
  - any other development except –
    - (i) the erection of buildings, the installation or erection of plant or other structures or erections and the reconstruction or

alteration, so as materially to affect the design or external appearance thereof, of buildings; or

- (ii) the formation or alteration of any means of access to a road.

#### **Consent under Part 4**

If consent under Part 4 **is** required, the corporation can take advantage of the special *Crown development* regime in Part 5A. EPA Act s116C provides that:

*A consent authority, in respect of a development application made by or on behalf of the Crown, must not:*

- (a) *refuse its consent to the application, except with the written approval of the Minister, or*
- (b) *impose a condition of its consent, except with the written approval of the Minister or the applicant.*

Why is a DA lodged by the corporation “*made by or on behalf of Crown*”?

- Under s116B of the *EPA Act*, a reference to the Crown includes a reference to a person who is prescribed by the regulations to be the Crown.
- Clause 226 of the *EPA Reg* states that a “*public authority (not being a council)*” is a person so prescribed.
- *Public authority* is defined in s4(1) of the *EPA Act* to include:
  - a statutory State owned corporation (and its subsidiaries) within the meaning of the *State Owned Corporations Act 1989 (SOC Act)*, or
  - a chief executive officer of such a corporation or subsidiary.
- The corporation is listed as a statutory State owned corporation under Schedule 5 of the *SOC Act*.

Amendments to the *EPA Reg* have resulted in an important change since 1 January 2001. The corporation is now prescribed by *EPA Reg* clause 226 to be the Crown for the purposes of the *Crown building work* provisions in s116G of the *EPA Act*. This section allows certain building work to avoid the construction certificate process in s81A(2) of the *EPA Act* provided that the work is certified to comply with the technical provisions of the State's building laws.

#### **Impact Assessment**

If the development is a *designated development* under Schedule 3 of the *EPA Reg* it will be necessary to prepare an environmental impact statement (**EIS**) and, depending upon the circumstances, a **species impact statement (SIS)**. An example of designated development is clearing or disturbance of littoral rainforest under *SEPP 26*.

If the development is **not** a designated development, the process will generally require preparation of a Statement of Environmental Effects (**SEE**). The corporation should consider *whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats* using the ‘eight part test’ under s5A of the *EPA Act*.

This involves assessment of:

- in the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction;
- in the case of an endangered population, whether the life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised;
- in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed;
- whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community;
- whether critical habitat will be affected;
- whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the region;
- whether the development or activity proposed is of a class that is recognised as a threatening process; and
- whether any threatened species, population or ecological community is at the limit of its known distribution.

If there *is* likely to be a significant effect in terms of the 'eight part test', an *SIS* must be prepared in accordance with Part 6, Division 2 of the *Threatened Species Conservation Act 1995 (TSC Act)* for lodgment with the DA. The consent authority will need to obtain the concurrence of the Director-General of National Parks and Wildlife before approving the development.

#### **Part 5 Assessment**

In the event that Part 4 does not apply, the corporation will be the **determining authority** under Part 5. Before commencing to undertake an activity, the corporation must comply with the general duty in EPA Act s111 to *examine to the fullest extent possible all matters affecting or likely to affect the environment by reason of [the] activity*. In exercising powers under Part 5, the corporation must have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the *TSC Act*.

Where an activity is likely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats, an *EIS* must be prepared.

The *EPA Reg* sets out at length what an *EIS* should cover. There are substantially similar provisions covering activities under Part 5 (clause 84) and designated development (clause 54A), applying the guidelines in Schedule 2 of the *EPA Reg*. Further criteria

relating to the form and content of the *EIS* can be imposed by the Director of Urban Affairs and Planning (clause 85).

If the activity is in respect of land that is part of critical habitat, or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, an *SIS* (or an *EIS* that includes a *SIS*), must be prepared. The concurrence of the Director-General of National Parks and Wildlife to the carrying out of an activity will be necessary if it requires the preparation of an *SIS*.

Where an *EIS* (and/or *SIS*) has been prepared a notice inviting inspection and comment must be published in both a Statewide and a local newspaper on 2 occasions. Public exhibition of the document must last for at least 30 days. Copies of any public comments which are made to a determining authority must be sent to the Secretary of the Department of Urban Affairs and Planning. The determining authority must make a report on its consideration of the *EIS* and any public submissions.

Where the corporation is both the determining authority **and proponent**, and has prepared an *EIS*, the Minister for Urban Affairs and Planning must make the final decision on whether the activity should go ahead. The Minister must also approve any proposed modification of an activity that is inconsistent with the original approval.

#### 10. Does the EPA Act apply to line maintenance?

The *Environmental Planning and Assessment Act 1979 (EPA Act)* is unlikely to affect routine or recurring low-impact maintenance where this is part of the ancillary use of the land. For example, item 2 of Schedule 1 to the *Model Provisions* removes the ability of a local environmental plan to restrict or prohibit the installation of erection of any plant or other structures by way of addition to or replacement of or extension of plant or structures already in place, including the installation in an electrical transmission line of substations, feeder-pillars or transformer housing (provided they are not made of stone, brick or concrete). However, for a major project which amounts to new development or an independent activity, EPA Act controls (including Part 5) would apply. This is not typically considered maintenance and would have similar requirements to design and construction.

#### 11. What are the implications if the corporation misses something in an EIA?

The case law suggests that the standard of compliance with the *EPA Reg* does not necessarily have to be one of perfection, but rather reasonable or substantial compliance. It was said in *Prineas v Forestry Commission of NSW* (1983) 49 LGRA 402 at 417 that a “superficial, subjective or non-informative EIS” would not comply with the provisions of the Act and thus nullify any decision to proceed with the proposal. However:

*provided an EIS is comprehensive in its treatment of the subject matter, objective in its approach and meets the requirement that it alerts the decision-maker and members of the public and the Department of Environment and Planning [now DUAP] to the effect of the activity on the environment and the consequences to the community inherent in the carrying out or not carrying out of the activity, it meets the standards imposed by the regulations. The fact that the EIS does not cover every topic and explore every avenue advocated by the experts does not*

*necessarily invalidate it or require a finding that it does not substantially comply with the statute and the regulations (Prineas at 417).*

Failure to comply with the *EIA* provisions of Parts 4 and 5 may be challenged by any person in civil proceedings (*EPA Act* s124). Even if the court holds that there has been a breach, there is a broad discretion with respect to remedies. It has been said, for example, that an authority should not be made to go through the motions where an order would have no practical utility (*Liverpool City Council v Roads and Traffic Authority* (1991) 74 LGRA 265).

Under *EPA Act* s124, where the court is satisfied that a breach of the Act has been committed **or** that a breach will, unless restrained by order of the court, be committed, it may make such order as it thinks fit to remedy or restrain the breach. For example, it may:

- restrain a use where the breach comprises the use of any building, work or land;
- require the demolition or removal of a building or work where the breach comprises the erection of a building or the carrying out of a work; and/or
- require the reinstatement, so far as is practicable, of that building, work or land to the condition or state the building, work or land was in immediately before the breach was committed where the breach has the effect of altering the condition or state of any building, work or land.

**12. What is the present position with regard to clearing vegetation, given that the corporation needs to maintain clearances around power lines?**

Different obligations apply depending upon the nature and location of the vegetation. This answer will focus on **native vegetation**. However, the reader should also consider the responses provided below in relation to Questions 12 to 20.

**Native vegetation** is defined for the purposes of the *Native Vegetation Conservation Act 1997 (NVC Act)* to mean any of the following types of indigenous vegetation: trees, understorey plants, groundcover and plants occurring in a wetland.

**Groundcover** means any type of herbaceous vegetation, but it is only to be regarded as native vegetation for the purposes of the *NVC Act* if it occurs in an area where not less than 50% of the herbaceous vegetation covering the area comprises indigenous species. In determining this percentage, not less than 10% of the area must be covered with herbaceous vegetation (whether dead or alive).

Native vegetation does not include any mangroves, seagrasses or any other type of marine vegetation within the meaning of the *Fisheries Management Act 1994*.

Where it applies, the *NVC Act* may require that development consent be obtained from the Minister for Land and Water Conservation before **clearing native vegetation**. The process in Part 4 of the *EPA Act* applies in respect of such development consent. One of the principal exemptions from this requirement is in respect of:

*clearing, to a minimum extent, of native vegetation for the maintenance of public utilities ... or which may reasonably be thought likely to be at risk of causing personal injury or damage to property..*

This exemption was contained in Schedule 3 to the former *SEPP 46*. It continues, by virtue of *NVC Act* Schedule 4, to operate **unless** the relevant land has been brought under a regional vegetation management plan (*RVMP*). The Department of Land & Water Conservation (*DL&WC*) has indicated that Regional Vegetation Committees will be required to have regard to departmental guidelines in formulating *RVMPs*. Amongst other things, these guidelines will stipulate that *RVMPs* must contain an exemption for public utilities to allow for:

*minimal clearing of native vegetation if necessary for the maintenance of public utilities (associated with the provision of power lines, transmission of electricity, water, gas, electronic communications or the like), or in the possible prevention of personal injury or damage to property.*

On the face of the *NVC Act*, there is no exemption from development consent requirements for **new** electricity infrastructure. However, there may be an argument that clause 11 of *SEPP 4* operates to exempt clearing which is ancillary or incidental to the construction of electricity transmission lines. In any case, the corporation should seek specific legal advice before proceeding without consent to construct new infrastructure.

The *NVC Act* does not apply to certain land (refer s9). Generally, this will be land which is zoned residential or which is within the operation of the *Forestry Act 1916*, the *NPW Act*, *State Environmental Planning Policy No 14 - Coastal Wetlands*, or *State Environmental Planning Policy No 26 - Littoral Rainforests*.

The *NVC Act* will also not apply to land (not being **State protected land**) in certain local government areas of metropolitan Sydney (refer s10).

Specific types of clearing are excluded from the operation of the *NVC Act*. (refer s12), including:

- any clearing authorised under the *Rural Fires Act 1997*,
- any clearing authorised under the *Noxious Weeds Act 1993*,
- any clearing authorised under a licence issued under Part 6, Division 1 of the *TSC Act*,
- any clearing carried out in accordance with a licence issued under s131 of the *NPW Act* (licence to pick protected native plants),
- any clearing that is authorised under the *Roads Act 1993*, and
- any clearing carried out in accordance with a permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*.

Note also the provisions of *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*, which requires the corporation to have regard to certain objectives in clause 2 before disturbing bushland zoned or reserved for public open space purposes. However, *SEPP 19* does not require the consent of council provided that the disturbance is for the purposes of bushfire hazard reduction or constructing, operating or maintaining electricity lines.

### 13. Is the corporation bound by a tree preservation order?

The answer will generally be no, at least where a particular **tree** is required to be trimmed or removed under s48 of the *ES Act*. However, where s48 does **not** apply, it **is** possible that the corporation may be constrained by a tree preservation order (**TPO**).

The various scenarios are outlined below.

Section 48 of the *ES Act* applies where the corporation has reasonable cause to believe that a tree situated on any premises:

- could destroy, damage or interfere with its **electricity works**, or
- could make its electricity works become a potential cause of bush fire or a potential risk to public safety.

**Tree**, for the purposes of s48, includes a shrub or plant.

Note, however, that s48 does not apply to any tree within a **protected area** or to any tree that is the subject of, or is within an area that is the subject of:

- an interim heritage order, or a listing on the State Heritage Register, under the *Heritage Act*, or
- an order in force under s136 of the *Heritage Act* (which provides for Ministerial orders to restrict harm), or
- an interim protection order under the *NPW Act*, or
- a protection conferred by any similar law.

For the purposes of s48, **protected area** means an area that is within:

- a national park or nature reserve within the meaning of the *NPW Act*, or
- land that is reserved or zoned for environmental protection purposes under the *EPA Act*, or
- a public reserve within the meaning of the *LG Act*.

Where s48 of the *ES Act* does **not** apply, the corporation should consider the possible availability of other exemptions under a local environmental plan (*LEP*) which incorporates the *Model Provisions*.

It will be a sufficient defence to proceedings for breach of a **TPO** to prove:

- that the tree was dying or dead or had become dangerous; or
- that taking the action was reasonably necessary to protect human life, buildings or other property from imminent danger from a bush fire burning in the vicinity of the land on which the tree was situated; or
- that written notice about the proposed action was given to the council of the area in which the tree was situated and the council, before the action was taken, confirmed in writing:
  - that the tree was in a fuel free zone; and

- that, if the council has classified species of trees as being likely to present a significant fire hazard, the tree was of such a species; or
- that council did not oppose the action within 14 days of receiving written notice about the proposed action

**Notice** means a notice that includes the name and address of the person who gives it and that explains that a tree of a named species situated in a specific position on land described in the notice is intended to be ring-barked, cut down, topped, lopped, removed, injured or wilfully destroyed for the purpose of bush fire hazard reduction.

Note also that *TPOs* do not apply to trees in a State forest or on land reserved as a timber reserve within the meaning of the *Forestry Act 1916*.

Arguably, a *TPO* would not bind the corporation if tree removal or trimming is ancillary to the types of **development** listed in Schedule 1, clause 2 of the *Model Provisions*.

**14. Are there industry-specific controls on tree removal or trimming?**

Yes.

Part 11 of the *Electricity Supply (General) Regulation 2001* regulates the removal and trimming of **trees** so as to minimise damage to or destruction of trees growing under or near powerlines. It is important to note that it applies only to the extent to which a service provider may lawfully remove or trim trees and **does not itself authorise** the removal or trimming of trees.

**Tree** is defined to mean a tree taller than 3 metres, or having a canopy more than 3 metres in maximum diameter or having a trunk with a circumference at a height of 1 metre from the ground of more than 0.3 metres.

Clause 102 prevents an electricity distributor from removing any tree, or trimming any tree in a way that substantially damages the tree, **unless**:

- it is of the opinion that it is **necessary** to do so **to protect** its **powerlines** or the **safety of persons** or **property** under or near its powerlines, **and**
- it has considered **alternative methods** and is of the opinion that none of those methods are feasible in the circumstances (including economically feasible), **and**
- the distributor is acting in accordance with a tree management plan.

Alternative methods include, but are not limited to, the use of aerial bundled cables, the controlled trimming of trees and the appropriate location or relocation of powerlines (including placing them underground).

Clause 103 states that an electricity distributor may establish a tree management plan (**TMP**) for the trimming, or for the staged removal and replacement, of those species of trees that have a propensity to interfere with powerlines. A **TMP may** contain (but need not be limited to) the following matters:

- lists of suitable species of trees for planting under or near powerlines;
- plans for trimming or removing and replacing existing trees and for controlling future planting of suitable species of trees;

- trimming or removing trees in an emergency;
- trimming methods;
- the use of accredited contractors for trimming trees;
- the intended allocation of costs between the electricity distributor and the relevant council;
- the environmental factors to be considered in trimming trees; and
- the development of public education and publicity programs encouraging the selection of appropriate species of trees for planting under or near powerlines.

Clause 104 states that a *TMP* is to be prepared in a way that gives an opportunity to comment on the proposed plan to the relevant council or councils for the district in which it is to operate, to the residents of the district and to local community groups.

**15. How does the corporation identify heritage trees? How does the corporation know if there is a protected species in the area?**

Heritage trees will be listed in the State Heritage Inventory (searchable online at <http://www.heritage.nsw.gov.au>) and in schedules to a local council's local environmental plan (**LEP**). Note that for the purposes of the *NPW Act*, "protected species" has a defined meaning (*i.e.*, fauna that are **not** named in Schedule 11, and native plants that **are** named in Schedule 13). The corporation should also bear in mind the classifications under the *TSC Act* of endangered species, populations and ecological communities (Schedule 1) and vulnerable species (Schedule 2).

In relation to "protected" species (using that term broadly), the corporation should consider the following sources of information:

- schedules to the *TSC Act 1995*;
- local consultants on the **Flora and Fauna Consultants Register** (available from the National Parks and Wildlife Service (**NP&WS**) website at [http://www.npws.nsw.gov.au/wildlife/ffc\\_register.html](http://www.npws.nsw.gov.au/wildlife/ffc_register.html));
- the **Atlas of NSW Wildlife**, also available through the **NP&WS**;
- the **Threatened Species Profiles** maintained by the **NP&WS** and accessible at <http://www.npws.nsw.gov.au/wildlife/tsprofile.htm>;
- Public documents available on the **NP&WS** website @ <http://www.npws.nsw.gov.au/news/exhbtsc.htm> (includes provisional listings that have been made on an emergency basis).

**16. Can the corporation be fined for causing the spread of noxious weeds? How can this be avoided?**

Yes, fines may be imposed for spreading noxious weeds. This is best avoided by cleaning plant and vehicles that may have come into contact with noxious weeds and also by ensuring that waste soil, rubble and vegetative matter is physically contained. Schedule 2 of the *NW Reg* provides a detailed example of cleaning procedures for use in the context of agricultural equipment.

Under s30(1) of the *NW Act* a person must not **scatter** or **cause to be scattered** on any land or water any notifiable weed material or other noxious weed material prescribed by the *NW Reg*, **knowing** it to be such weed material. Noxious weed material means noxious weeds or any seed or other part of a noxious weed. For the purposes of this section it is limited to a weed that is a notifiable weed in that part of the State where the land is situated. The maximum penalty is \$5,500.

Assuming that the corporation *is* a *public authority*, it will only be required to control noxious weeds on the land it occupies **to the extent necessary to prevent the weeds from spreading to adjoining land** (s13). No penalty is prescribed.

Conversely, a private occupier of land has a more extensive duty to control noxious weeds on the land in accordance with the requirements for the control category specified in relation to the weeds (s12). The maximum fine for failing to comply is \$4,400.

Moreover, private occupiers must comply with weed control notices issued by a local control authority (maximum penalty \$11,000) (s19).

**Both** public authorities that occupy land, as well as private occupiers, must comply with the terms of any weed control notice issued by the Minister for Agriculture. But again the consequences of non-compliance differ. Private occupiers may be subject to a penalty of \$11,000, whereas no fine is imposed on a public authority.

According to the *NW Act Dictionary*, a *public authority* includes:

- a public or local authority constituted by or under an Act (other than a local control authority);
- a statutory body representing the Crown; or
- a member of staff or other person who exercises functions on behalf of a public authority.

It may be argued for the reasons identified in Question 7 above that the corporation is a *public authority* for the purposes of the *NW Act*. However, this issue has yet to be judicially determined.

17. **What does the corporation have to do when clearing around a watercourse? Is this a local council responsibility?**

Note that any land that is situated within 20 metres of the bed or bank of any part of a river or lake might have been identified by the Minister as **State protected land** for the purposes of the *NVC Act*. If this is the case, the relevant order would have been published in the Government Gazette. Generally, clearing of State protected land can only be carried out pursuant to a development consent issued by the *DL&WC*. The laws covering tree destruction on State protected land not only apply to **native vegetation** but also to non-indigenous trees and dead trees whether standing or fallen. However, the **minimal clearing** exemption would apply, avoiding the need for consent in relation to maintenance of safety clearances under or within 15 metres of an existing power line, by a person who is employed or contractor. The *DL&WC* would be the relevant consent authority if the area is State protected land.

The corporation has the power under the *ES Act* to undertake clearing for this purpose. Arguably, it may be held to owe a duty of care to surrounding occupiers for the maintenance of safe separation distances. If the embankments of the watercourse are public land vested in the local council under the *LG Act*, the council should be responsible for regular clearing. The terms of the relevant easement should be reviewed to ascertain exactly where in law the obligations lie.

Note that the *Rivers and Foreshores Improvement Act 1948* may have some application to this issue, depending on the nature and extent of the proposed clearing. Under this Act, a person must not, among other things, excavate any **protected land**, or remove material from protected land, **unless** either authorised to do so by a permit, by the regulations, or in the exercise of lawful rights conferred (for example) by a development consent or under *EPA Act* Part 5. To **remove material** includes causing or allowing material to be removed. **Material** means any part of the surface of any land or any matter lying beneath that surface.

Protected land includes land that is not more than 40 metres from the top of the bank or shore of a river, lake or lagoon.

The corporation may be required to carry out specified work where damage has been caused to protected land, even where this has occurred as a result of lawfully exercised rights.

The *Water Management Act 2000 (WM Act)* repeals, among other statutes, the *Water Act 1912* and the *Rivers and Foreshores Improvement Act 1948*. It has yet to fully enter into force and as at 30 April 2001, Part 3A of the *Rivers and Foreshores Improvement Act 1948* remains operative.

**18. Who does the corporation notify when working in mangroves and how much work can it carry out there?**

A public authority (other than a local government authority) must, before it carries out or authorises the carrying out of dredging or reclamation work:

- give the Minister for Fisheries written notice of the proposed work, and
- consider any matters concerning the proposed work that are raised by the Minister within 28 days after the giving of the notice (or such other period as is agreed between the Minister and the public authority) (s99 of the *Fisheries Management Act 1994 (FM Act)*).

“Public authority” is defined in the *FM Act* to mean “a person or body established or constituted by an Act for a public purpose, and includes a local government authority or a state-owned corporation”. The corporation would have to notify the Minister of any dredging or reclamation work that it proposes to carry out or authorise contrary to any matter raised by the Minister. The Minister may, within 14 days after being so notified, refer any dispute to the Minister for Energy. If the dispute cannot be resolved by those Ministers, it is to be referred to the Premier for resolution.

The corporation must not harm any mangroves in “protected areas” except under the authority of a permit issued by the Minister for Fisheries under Part 7 of the *FM Act*.

A “protected area” includes any **public water land** (ie, land submerged by water (whether

permanently or intermittently), being Crown land or land vested in a public authority). A Part 7 permit can only be obtained for scientific purposes, for the welfare of fish or marine vegetation, or if there is a threat to life or property. The potential penalty for harming marine vegetation is \$110,000 in the case of a corporation, or \$22,000 in any other case (see s205). *Harm* is defined to mean gather, cut, pull up, destroy, poison, dig up, remove, injure or otherwise harm any part of the mangroves, but does not include harm by changing the surrounding habitat of the mangroves.

The *Water Management Act 2000 (WM Act)* will require “*water management work approvals*” in certain circumstances (ie, for water supply work, drainage work and flood work respectively) and “*activity approvals*” (for specified “*controlled activities*” in, on or under waterfront land or for “*aquifer interference*”). These provisions are contained in Chapter 3, Part 3 (which has yet to enter into force). A “*controlled activity*” includes the erection of a building or the carrying out of a work within the meaning of the *EPA Act*; and the removal of material or vegetation from land, whether by way of excavation or otherwise. Chapter 3, Part 3 has yet to be proclaimed. As at 30 April 2001, relevant provisions of the *Water Act 1912* and the *Rivers and Foreshores Improvement Act 1948* continue in force.

Consider, too, whether *SEPP No. 14 – Coastal Wetlands* or *SEPP 26 – Littoral Rainforest* might apply to the subject area. *SEPP 14* identifies over 1300 wetlands outside the Sydney metropolitan area that front the Pacific Ocean. Generally, land clearing, levee construction, drainage work or filling may only be carried out in these wetlands with the consent of the local council and the agreement of the Director-General of DUAP. It might be argued, however, that the exemption in *SEPP 4* for electricity transmission lines would avoid the need for local council consent in some circumstances.

*SEPP 26* applies to ‘core’ areas of littoral rainforest as well as a 100 metre wide ‘buffer’ area surrounding these ‘core’ areas, except for residential land and areas to which *SEPP 14* applies. Eighteen local government with direct frontage to the Pacific Ocean are affected. *SEPP 26* requires the consent of council and concurrence of the Minister for Planning in respect of certain actions within littoral rainforest areas (e.g., carrying out work, using land for any purpose, or disturbing, removing or destroying any native flora). Any act which falls under *SEPP 26* will constitute designated development, requiring an *EIS*. *SEPP 4* expressly does not apply to land affected by *SEPP 26*.

Note also that there are also provisions covering mangroves in “*special port areas*” (Sydney, Newcastle, Botany Bay, Port Kembla, Richmond River, Clarence River, Coffs Harbour and Twofold Bay and adjoining land owned by the Marine Ministerial Holding Corporation or under its control). This land is regulated by the *Management of Waters and Waterside Lands Regulations NSW*, made under the *Maritime Services Act 1935*. It is an offence to cut, remove or damage mangroves or other timber growing in these areas, without the prior permission of the Minister for Ports.

**19. Can the corporation be fined for failing to install erosion and sediment control devices? How can this be avoided?**

Basically not unless it is the **owner** or **occupier** of the relevant land. Note, however, that an occupier is defined to include a person having the control or management of the land, whether residing there or not. Refer also to Question 19.

The corporation may be fined for failing to install erosion and sediment control devices where such work is required by one of the following notices (and assuming that it has been validly issued to the corporation):

- a soil conservation notice under s15A of the *Soil Conservation Act 1938 (SC Act)*;
- a s18 notice directing the recipient to carry out remedial works or measures within an areas of erosion hazard (SC Act s18); or
- a s22 Ministerial notice in relation to the protection of **proclaimed works** and catchment areas.

These notices would **only** be issued to the corporation in its capacity as **owner or occupier of the relevant land**. Penalties can be avoided by complying with the terms of the relevant notice within the time specified (or exercising appeal rights under the SC Act ).

### **Soil conservation notices**

The Commissioner of Soil Conservation Service has the power under SC Act s15A to issue a soil conservation notice where:

- any act or thing done or proposed to be done on or in relation to any land; or
- the failure to do any act or thing on or in relation to any land;

*has caused or is likely to cause soil erosion or land degradation* on the land or on other land which can be mitigated or avoided.

The notice may require the person served, within the time specified in the notice, to abstain from doing, or do or permit to be done, such acts and things as may be specified in the notice.

Notices may, in relation to the same area of land, be served on one or more of the following persons: the owner or occupier of, or on the holder or grantee of any timber rights over, the subject land. *Occupier* is defined to include a person having the control or management of the land, whether residing thereon or not. A person who fails to comply with the requirements of a notice under s15A within the time specified in the notice is guilty of an offence and is liable to a penalty not exceeding \$55,000. It is a defence to a prosecution of a person if the court is satisfied that the person had no legal right to enter the land in respect of which the notice was given and comply with the requirements of the notice.

In the event of a failure to comply with the requirements of a notice issued under s15A, an authorised officer of the Soil Conservation Service may enter upon the land and carry out the work specified in the notice (SC Act s15F). Any costs incurred as a result may be recovered from the person served with the notice as a debt due to the Crown.

If a person fails to comply with a requirement of a s15A notice and damage is caused to the land of any other person, being damage which would not have been caused if the requirement had been complied with, the owner or occupier of the land damaged has a right of action against the person for the damage (s15G).

### ***Directions in respect of erosion hazard areas***

Land may be notified in the *Gazette* as an **area of erosion hazard** under *SC Act* s17(1). For example, the Snowy River catchment area and its tributaries are expressly designated as an area of erosion hazard under s16 of the *SC Act*.

An owner, occupier or mortgagee of any land within an area of erosion hazard may be directed to carry out remedial works or measures in certain circumstances (*SC Act* s18).

Failure to comply with any direction contained in a notice may result in a penalty of \$55,000 (*SC Act* s18(12)).

If the works or measures are not carried out as directed, the Minister may authorise the Commissioner of Soil Conservation Service to enter upon the land and carry them out. The costs incurred can be recovered from the owner, occupier or mortgagee of such land (s18(13)).

### ***Protection of proclaimed work and catchment areas***

Under *SC Act* s22, the Minister may serve a notice on the owner and the occupier requiring them to abstain from doing or to do such acts as the Minister considers necessary to avoid damage to the utility of a proclaimed work or to mitigate or avoid soil erosion, siltation or land degradation. Such a notice can only be served where the Minister is satisfied that the act which has been done or is proposed to be done:

- has caused or is likely to cause damage to or has interfered or is likely to interfere with the utility of any proclaimed work; or
- on or in relation to any land within a catchment area has caused or is likely to cause soil erosion, siltation or land degradation; *and*
- that such damage, interference, soil erosion, siltation or land degradation can be mitigated or avoided.

Any person who fails to comply with any of the requirements of such a notice will be liable to a penalty of up to \$55,000. Any person who interferes (without authorisation from the Commissioner of Soil Conservation Service) with any structure, plantation, windbreak or vegetative cover placed on any land in connection with anti-erosion works will be liable to a penalty not exceeding \$55,000 and in addition will be liable for any loss or damage caused by the offence (*SC Act* s27).

**20. The customer is to build an access track into the work site. Should the corporation offer any advice regarding erosion? What are the customer's responsibilities? What are the corporation's responsibilities?**

See also Question 18 above for more details. The principal duties for the avoidance of erosion are contained in the *Soil Conservation Act 1938*. This requires that an owner or occupier comply with:

- the terms of any soil conservation notice, notice directing remedial works or measures within an area of erosion hazard, or Ministerial notice in respect of a proclaimed work or catchment area; and
- any erosion hazard direction.

It may be prudent for the corporation to check with the *DL&WC's* Soil Conservation Service to determine whether any of these notices have been issued in respect of the access track area.

The corporation may wish to draw the customer's attention to the responsibilities of an owner / occupier under the *SC Act*. Note that any person who interferes with or does any act which damages or tends to damage any structure, plantation, windbreak or vegetative cover placed or planted on any land in connection with any anti-erosion works can be liable for a penalty of \$55,000, and in addition, will be liable for any loss or damage caused by the offence.

The corporation should also satisfy itself that the track is being built in accordance with the relevant consent / Part 5 determination, and in line with the corporation's standards of environmental due diligence. Be cautious, however, about giving **advice** as such. Depending on its extent and content, the advice could open the way for a subsequent negligence action or prosecution against the corporation in the event that something goes wrong. The customer contract might contain a disclaimer and indemnity to the effect that the corporation takes no responsibility for damage, loss, penalty *etc* arising out of **how** the track is constructed.

**21. The slope is greater than 18 degrees and the customer is to carry out the clearing. What should the corporation advise the customer?**

Land that has a slope generally greater than 18 degrees is a category of **State protected land** under the *NVC Act*. There is a minimal clearing exemption available in respect of such land, but only where this done by a person who is employed or contracted by the corporation for the purposes of maintaining safety clearances under or within 15 metres of an existing power line. Although it would depend on the precise nature of the clearing and the terms of the agreement between the corporation and the customer, it is possible that the customer would need to obtain development consent from the Minister for Land and Water Conservation (see *NVC Act* s22).

**22. Who is responsible for maintenance of tracks after the power line is built?**

The owner of the land would generally be responsible for maintaining tracks after a power line is built. However, the terms of the relevant easement or occupation permit may contain provisions to the contrary.

**23. Who can carry out flora / fauna assessments for proposed works?**

There is no express obligation to engage persons, such as ecologists, with a particular qualification or level of experience. However, as a practical matter, failure to do so makes it more likely that the assessment could be challenged on grounds of inadequacy.

A **species impact statement (SIS)** must include details of the qualifications and experience in threatened species conservation of the person preparing the statement and of any other person who has conducted research or investigations relied on in preparing the statement (*TSC Act* s110(4)).

Furthermore, under s113 of the *TSC Act*, the Director-General of the National Parks and Wildlife Service has instituted arrangements for the accreditation of suitably qualified and experienced persons to prepare assessment reports on SISs. A **Flora and Fauna**

**Consultants Register** is available from the National Parks and Wildlife website at [http://www.npws.nsw.gov.au/wildlife/ffc\\_register.html](http://www.npws.nsw.gov.au/wildlife/ffc_register.html).

**24. How does the corporation check whether native title affects land along a proposed route?**

The corporation should search the Register of Native Title Claims (for claims lodged) and the National Native Title Register (for determinations made). These registers may be inspected at any Registry of the National Native Title Tribunal. The Sydney Registry is located at Level 25, 25 Bligh Street.

**25. What laws deal with the identification and protection of archaeological sites, such as Aboriginal sites?**

All significant *non*-Aboriginal archaeological relics more than 50 years old are protected under the *Heritage Act 1977*. This Act also covers places, buildings, works, moveable objects and precincts. Before conducting work on suspected archaeological sites contact the local council's heritage officer or the NSW Heritage Office.

Aboriginal sites and artefacts are protected under the *National Parks and Wildlife Act 1974 (NPW Act)*. An area may be gazetted as an *Aboriginal place* if the Minister is satisfied that there is enough evidence to show that it is of special significance to Aboriginal culture.

Some of the potentially relevant provisions include:

**Heritage Act**

- s139 (protection of relics not subject to interim or permanent protection) – a person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed unless the disturbance or excavation is carried out in accordance with an excavation permit.

**NPW Act**

- s90 – (protection of relics or *Aboriginal places*) – a person must not, without first obtaining the consent of the Director-General of the National Parks & Wildlife Service, knowingly destroy, deface or damage, or knowingly cause or permit the destruction or defacement of or damage to, a *relic* or *Aboriginal place*.

**26. Is the corporation expected to conduct searches in respect of heritage, contaminated land, protected land, flora / fauna, aboriginal sites, native title, etc, to evaluate all relevant SEPPs, REPs and LEPs, and to potentially carry out environmental impact assessment in respect of a multitude of projects each year? Is it reasonable to take some short cuts and make assumptions?**

This question cannot be answered in the abstract, as it depends crucially on the facts of each project. As a practical matter, some issues may appear to be irrelevant in certain circumstances. It may be tempting to make assumptions that avoid particular kinds of searches, or that employ a less rigorous procedure. However, such an approach leaves the corporation potentially liable for breach of the law if the matters are assessed incorrectly. For the purposes of general due diligence in a planning context, employees and officers of the corporation should **not** take 'short cuts' or 'assume' anything without reasonably satisfying themselves that the circumstances are as they believe them to be.

## 27. What is a practical definition of 'due diligence'?

The concept has not been clearly defined by either statute or case law. The key statutory provisions under the *POEO Act* are:

- s118, which provides a defence for both corporations and individuals (but only in respect of Tier One offences) where:
  - the commission of the offence was due to causes over which the defendant had no control; and
  - the defendant took all reasonable precautions and exercised due diligence to prevent the commission of the offence.
- s169(1), which provides a defence to any charge under the *POEO Act* for directors and managers where:
  - the corporation breached the provision without the actual, imputed or constructive knowledge of the person; or
  - the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
  - the person, if in such a position of influence, used all due diligence to prevent the contravention by the corporation.

Refer to DB Air 4.4 / DB Land 4.4 / DB Hazardous 4.5 / DB Noise 4.4 / DB Waste 4.4 / DB Water 4.4. In general terms it might be said to involve reasonable precautions and effective risk management in the conduct of operations. The cases suggest the following points:

- the requirements of due diligence depend on the circumstances of the case, but involve a mind that is concentrated on the likely risks;
- due diligence is not satisfied by precautions that are merely usual in the industry, unless also designed to prevent the contravention;
- whether the corporation or a director took the precautions that ought to have been taken is a question of fact that will be decided objectively according to the standard of a reasonable person in the circumstances; and
- it is no answer for the corporation or a director to say that they did the 'best' that could be done given the resources available.

Due diligence means that directors and managers identify all environmental risks and sources of existing or potential environmental harm and introduce measures and procedures to ensure that these risks or sources of harm are adequately addressed.

This will generally require evidence of some form of environmental management system (*EMS*) aimed at ensuring environmental compliance and the prevention of environmental harm. Case law on this subject demonstrates that it is not enough to merely establish a system, but to ensure that the system is:

- implemented on site and throughout the company to create a culture of environmental compliance;

- reinforced through staff training programs, to ensure staff are aware of the company's environmental programme and understand the environmental risks associated with activities carried out on site;
- regularly monitored with a system for reporting non-compliance;
- regularly reviewed to ensure that it is operating effectively; and
- improved when necessary to address increased standards or to ensure that environmental issues are brought to the attention of the company or its officers.

**28. Can the corporation be fined for failure to report a spill?**

Yes.

The answer to this question can be found in Part 5.7 of the *POEO Act*. Refer to DB Land 3.1.1.

- ***What must be notified?***

A ***pollution incident*** by which ***material harm to the environment*** is caused or threatened. A pollution incident means an incident or set of circumstances during or as a consequence of which there is, has been or is likely to be a leak, spill or other escape of a substance, as a result of which pollution has occurred, is occurring or is likely to occur.

- ***If I fail to notify what are the possible penalties (s152)?***

- in the case of the corporation \$250,000 and a further penalty of \$120,000 for each day the offence continues, or
- in the case of an individual \$120,000, and a further penalty of \$60,000 for each day the offence continues.

- ***What is material harm (s147)?***

***Harm to the environment*** is material if it:

- it involves actual or potential harm to the health or safety of human beings or to ecosystems that is *not trivial*, or
- it results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (or such other amount as is prescribed by the regulations), and

Loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment. It does not matter that harm to the environment is caused only in the ***premises*** where the pollution incident occurs.

- ***Who must notify, when must they notify and to whom (s148)?***
  - The ***person carrying on the activity*** must, as soon as practicable after the person becomes aware of the incident, notify the ***appropriate regulatory authority*** (i.e., the EPA) of the incident and all relevant information about it.
  - A ***person engaged as an employee or agent*** in carrying on an activity must, as soon as practicable after the person becomes aware of the incident, notify the employer or principal of the incident and all relevant information about it. If the employer (or principal) cannot be contacted, the person is required to notify the EPA.
  - The occupier of the premises on which the incident occurs must, as soon as practicable after the occupier becomes aware of the incident, notify the EPA of the incident and all relevant information about it.
  - An ***employer or an occupier of premises*** must take all reasonable steps to ensure that, if a pollution incident occurs in carrying on the activity of the employer, or occurs on the premises, as the case may be, the persons engaged by the employer or occupier will, as soon as practicable, notify the employer or occupier of the incident and all relevant information about it. A reference to an ***employer*** here also extends to a ***principal***.
- ***What relevant information is to be included in the notification (s150)?***
  - the time, date, nature, duration and location of the incident;
  - the location of the place where pollution is occurring or is likely to occur;
  - the nature, the estimated quantity or volume and the concentration of any pollutants involved;
  - the circumstances in which the incident occurred (including the cause of the incident, if known);
  - the action taken or proposed to be taken to deal with the incident and any resulting pollution or threatened pollution; and
  - other information prescribed by the regulations.
- ***Under what circumstances would a pollution incident not require notification?***
  - if the person is aware that the incident has already come to the notice of the person or authority required to be notified; or
  - if the incident is an ordinary result of action required to be taken to comply with an ***environment protection licence***, an ***environment protection notice*** or other requirement under the *POEO Act*.
- ***What if the information shows that I am guilty of some other offence (s153)?***

A person is required to notify a relevant pollution incident under Part 5.7 even though it might incriminate them or make them liable to a penalty. The notification

itself is not admissible in evidence against the person for an offence or for the imposition of a penalty. However, this protection does **not** extend to evidence that is obtained following, or as a result of, the notification.

**29. Is the duty to report contamination different from the duty to notify pollution incidents?**

Yes. Recall that Part 5.7 of the *POEO Act* applies where a **pollution incident** occurs in the course of an activity so that **material harm to the environment** is caused or threatened. The obligation of the corporation is to provide timely information soon after the incident occurs. Refer to DB Land 3.1.1.

It is prospective in its outlook, for instance, the duty arises even where:

- the incident or set of circumstances is only **likely** to result in a leak, spill or other escape of a substance; and
- where material harm is merely **threatened**.

By contrast, the duty to report contamination under s60 of the *CLM Act* is principally designed to deal with the consequences of a pollution incident, where this presents a **significant risk of harm**. Refer to DB Land 3.2., 4.2, 9.1.2 / DB Waste 4.3.

Note, however, that **both** statutory duties may be triggered by the same incident or set of circumstances.

- **What is the duty to report under the CLM Act?**

Section 60 of the *CLM Act* requires:

- **a person** (*i.e.*, potentially the corporation, a director (via s98), an employee or contractor) who becomes aware that the person's activities in, on or under **land** have contaminated the land in such a way as to present a significant risk of harm must, as soon as practicable after becoming so aware, notify the EPA in writing that the land has been so contaminated.
- an **owner of land** who becomes aware that the land has been contaminated (whether before or during the owner's ownership of the land) in such a way as to present a significant risk of harm must, as soon as practicable after becoming so aware, notify the EPA in writing that the land has been so contaminated.
- **When will activities be regarded as having 'contaminated the land'?**

**Contamination of land** means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present, and thereby presenting a risk of harm to human health or any other aspect of the **environment** (see s5).

However, land is not, for the purposes of the *CLM Act*, contaminated land:

- merely because in any surface water standing or running on the land a substance is present in such a concentration; or
- merely because of the presence of a substance prescribed by the regulations, or in circumstances prescribed by the regulations.

Land may, for the purposes of this Act, be contaminated land even if it became contaminated partly or entirely by the migration of contaminants into, onto or under the land from other land.

• **What is a 'significant risk of harm'?**

This concept is not defined in the *CLM Act*. Guidance is instead provided through a non-prescriptive approach in s9(1) and Chapter 2 of the EPA's *Guidelines on Significant Risk of Harm from Contaminated Land and the Duty to Report* (April 1999) (**Risk Guidelines**). See DB Land 9.1.

Section 9(1) directs the EPA to consider the following site-specific factors in s9(1):

- whether the contamination of the land has already caused harm (e.g., toxic effects on plant or animal life);
- whether the substances are toxic, persistent or bioaccumulative, or are present in large quantities or high concentrations or occur in combinations;
- whether there are exposure pathways available to the substances;
- whether the uses to which the land and adjoining land are currently being put are such as to increase the risk of harm (e.g., food production)
- whether the approved uses of the land and adjoining land are such as to increase the risk of harm;
- whether the substances have migrated or are likely to migrate from the land (whether because of the nature of the substances of the land); and
- any guidelines made or approved by the EPA on contamination and remediation.

The *Risk Guidelines* point out that a site may be contaminated with abnormally high levels of a substance, yet still not present a significant risk of harm given the current or approved use of the land, and in view of the limited pathways. An example might be an old power station site in a remote of industrial area.

The corporation should review the site history to determine whether current or past activities may contribute to contamination of the site. Then follow this with a site inspection to look for indicators of contamination or harm. Section 2.5.1 provides a list of indicators including:

- presence of **chemicals** in surface or groundwater;
- visible signs of response to toxic contaminants in flora and fauna;
- liquid or solid chemical waste found on or in soil during site works;
- chemicals entering service trenches (e.g., from oil-filled cables);
- evidence of off-site migration into adjacent environments (e.g., creeks).

If one or more of these indicators are present but there is some uncertainty as to whether the contamination presents a significant risk of harm, a further investigation should be undertaken.

- **What is the penalty for non-compliance?**

For both 'persons' and 'owners', the maximum penalty in the case of a failure to report is:

- for the corporation – \$137,500; or
- for an individual – \$66,000.

- **What must the notice contain?**

A notice under this section must specify the following matters to the extent that they are within the knowledge of the person required to give the notice:

- the location of the land;
- the activities that have contaminated the land;
- the nature of the contamination;
- the nature of the risk;
- any other matter prescribed by the regulations (s60(3)).

Clause 7 of the *Contaminated Land Management Regulation 1998* states that a notification under s60 is to be given using Form 1. This is currently omitted from Schedule 1.

- **Is the information I give protected from disclosure in any way?**

Yes. Information provided by a person for the purpose of complying with this section is not admissible as evidence in any proceedings against that person for an offence under the **environment protection legislation**. This term is defined in s3 of the *Protection of the Environment Administration Act 1991* to mean the following Acts (and the regulations and other instruments made under those Acts): the *Protection of the Environment Administration Act 1991*, *Contaminated Land Management Act 1997*, *Environmental Trust Act 1998*, *Environmentally Hazardous Chemicals Act 1985*, *Ozone Protection Act 1989*, *Pesticides Act 1999*, *Protection of the Environment Operations Act 1997*, *Radiation Control Act 1990*, *Recreation Vehicles Act 1983*, *Road and Rail Transport (Dangerous Goods) Act 1997*, *Unhealthy Building Land Act 1990* and the *Waste Minimisation and Management Act 1995*. Note that it does **not** include all legislation that may contain penalties for environmental harm caused by contamination (e.g., *National Parks and Wildlife Act 1974*).

The fact that a person notifies the EPA in accordance with s60 does not prevent the EPA declaring the land to be an investigation area or remediation site or from making an investigation or remediation order in respect of that or any other person.

30. **Who owns the soil around a pole if there is (or is not) an easement?**

The owner of the land owns the soil surrounding a pole. This answer remains the same whether or not there is an easement. An easement is merely a right annexed to land that enables something to be done on that land (e.g., entry for the purpose of erecting and maintaining powerlines). Although it operates as an encumbrance on the title it does not give the corporation any ownership interest in the soil where the poles have been situated. In the event that soil contamination occurs because of the presence of the pole, the corporation would be liable (as the party who had principal responsibility for the contamination) to investigate or remediate the site (see *CLM Act* s17). The corporation,

having generated the **waste** is also responsible for treating or disposing of it in accordance with clause 16 of the *Waste Reg*. Refer to DB Land 3.2.2, 4.2.4 / DB Waste 4.1.14.

31. If a property owner wants to take potentially contaminated soil away from an area where a pole is being changed, does the owner have to be inducted? Is the soil classed as **waste**? If so, must a record be kept of what was done with it?

The generating or on site storage of contaminated soil is not a *waste activity* that requires a licence under the *POEO Act*. However, potentially contaminated soil may constitute **hazardous** or **industrial waste** for the purposes of the *POEO Act*. Although the property owner 'owns' the contaminated soil, the corporation would remain liable (as the party responsible for causing any contamination) if the property owner fails to comply with legal requirements in handling and/or disposing of the soil. Although there is no specific statutory duty to 'induct' the property owner in these circumstances, the corporation should ensure (to the extent possible) that the property owner is aware of, and complies with, appropriate legislation. In particular, no potentially contaminated soil should be removed from a site until it has been assessed.

The corporation should keep a record of what was done with the contaminated soil. Even if the soil is ultimately assessed as being **inert** or **solid waste**, it is a useful (albeit not mandatory) exercise to record where the soil was taken. Records must be kept in accordance with clause 16 of the *Waste Reg* if the soil is hazardous or industrial waste. The relevant obligations are set out in the answer to Question 33 (e.g., waste data form kept for at least 3 years). Refer DB Waste 4.1.14.

Where the material contains contaminants but satisfies the EPA criteria for beneficial reuse it is preferable that the soil be replaced in the same location at the completion of the work.

If **waste** soil does not meet the criteria for beneficial reuse as approved by the EPA, and the soil needs to be **disposed** of to landfill, the *Waste Guidelines* should be used to assess and classify the soil before disposal. Section 5.2 of the *Waste Guidelines* states that the EPA continues to support the ANZECC hierarchy for site clean-up as set down in the *Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites* (ANZECC/NHMRC, January 1992 at p 5):

"The preferred order of options for site clean-up and management are:

- on-site treatment of the soil so that the contaminant is either destroyed or the associated hazard is reduced to an acceptable level; and
- off-site treatment of excavated soil, which, depending on the residual contamination in the treated material, is then returned to the site, removed to an approved waste disposal site or facility or used as fill for landfill.

Should it not be possible for either of these options to be implemented, then other options that should be considered include:

- removal of contaminated soil to an approved site or facility, followed where necessary by replacement with clean fill;
- isolation of the soil by covering with a properly designed barrier;

- choosing a less sensitive land use to minimise the need for remedial works, which may include partial remediation; and
- leaving contaminated material in-situ, providing there is no immediate danger to the environment or community and the site has appropriate controls in place.”

The nature of the contaminant may dictate that more exacting procedures must be followed. For example, clause 6.3.3 of the *Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997 (PCB CCO)* allows the keeping of **PCB contaminated soils** (i.e., PCB above 2 mg/kg) subject to the following conditions:

- the occupier of **premises** on which PCB contaminated soils are generated may keep them on site provided the PCB contaminated soils are kept in a manner approved in writing by the EPA; **but**
- where PCB contaminated soils are **conveyed** and kept other than on the premises where they are generated they are considered to be and must be managed as **PCB waste** in accordance with the *PCB CCO*. These requirements are discussed in the answer to Question 39 below. Refer also to DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 3.2.

The presence of contaminants in soil may trigger the duty to notify the EPA pursuant to s60 of the *CLM Act*. Where applicable, this duty falls upon both the corporation and the property owner. However, s60 only operates where the land has become contaminated in such a way as to present a **significant risk of harm**. See the EPA *Guidelines on Significant Risk of Harm from Contaminated Land and the Duty to Report* (April 1999).

**32. Is it possible to contract out responsibility (e.g., under the *Contaminated Land Management Act 1997* regarding the sale of a property)?**

The basic rule is that the corporation cannot avoid a statutory duty by entering into a private agreement (unless the statute itself allows this).

The corporation cannot contract out of potential liability to the Crown under the *Contaminated Land Management Act 1997*. The corporation would remain potentially the subject of an EPA investigation or remediation order where it is principally responsible for contamination, or is the owner of the contaminated land (if it is not practicable to locate the principal polluter). Although the corporation cannot avoid the operation of the statute, in a commercial sense it may shift the risk by contractual mechanisms. Properly drafted warranties and indemnities in a purchase or sale agreement can thus allow for recovery of the costs of complying with regulatory orders.

**33. Can a waste generator transfer responsibility by selling waste as a product?**

The definition of **waste** includes any otherwise discarded, rejected, unwanted, surplus or abandoned substance **intended for sale** or recycling, etc. This might be taken to suggest that a substance **actually sold as product** would not constitute waste so as to trigger any obligations relating to proper assessment, storage and disposal. However, the better view (which the EPA appears to have adopted) is that a waste generator **cannot** transfer its responsibilities merely by selling the waste.

34. **If the corporation contracts a job out who owns the waste? Who has the responsibility for disposing of it? What are the obligations?**

The corporation owns the **waste** and is responsible for disposing of it. The responsibility of the corporation ends when it has fulfilled the conditions of an **environment protection licence** (and those of an *EHC Act* licence in some circumstances), which pertain to disposal of the waste, **or**, if the activity is **not** required to be licensed, it has duly complied with any relevant terms of the *Waste Reg.* Refer to DB Land 2.4 / DB Waste 2.1, 4.1.14.

A *POEO Act* licence is required for:

- the generating of more than 10 tonnes per year, or the on site storage of 2 tonnes or more at any one time, of **hazardous waste, industrial waste** or **Group A waste** in the form of oil, paint, lacquer, varnish, resin, ink, dye, pigments, adhesives, hydrocarbons or emulsions;
- mobile waste processing (e.g., the treatment, processing or reprocessing of hazardous waste, industrial waste or Group A waste (or any combination of those types of waste); and
- transport of hazardous waste, industrial waste or Group A waste, **Group B** or **Group C** in loads exceeding 200 kg, except where it consists only of stabilised **asbestos waste** in bonded matrix.

Clause 16 of the *Waste Reg* details the obligations relating to the non-licensed generation or storage of hazardous waste, industrial waste or Group A waste. Among other requirements, the corporation must (**unless** the waste is asbestos waste or the corporation has entered into a written agreement with an “*authorised contractor*” for the transportation of the waste from the **premises**):

- obtain a consignment authorisation number for the **waste** from the person to whom the waste is to be delivered;
- complete, to the required extent, an approved waste data form in relation to the consigned waste and give a copy of the form to the person transporting the waste; and
- ensure that the waste data form is completed accurately, and is retained for a period of not less than 3 years from the time the form was completed, and is made available for inspection by an authorised officer on request.

Furthermore, if the waste is transported from the premises and it is of such an amount as to require the person transporting it to be licensed, the person must ensure that the person transporting the waste is licensed.

An “*authorised contractor*” means a person who, firstly, is licensed under the *POEO Act* to transport waste, and, secondly, is specifically authorised under that licence:

- to transport waste from premises on which **non-licensed waste activities** are carried on; and
- to perform the requirements relating to obtaining a consignment number and completing a waste data form on behalf of the corporation.

Under clause 16(4), if the corporation enters into an agreement with an authorised contractor, the corporation must:

- before any waste is transported under the agreement:
  - make a record of the name, address and licence number of the authorised contractor, and
  - retain that record and a copy of the agreement for a period of at least 3 years from the date the agreement was made, and
  - make the record and copy of the agreement available for inspection by an authorised officer on request, and
  - in relation to each load of waste that is transported by the authorised contractor under the agreement:
    - accurately identify the waste and advise the authorised contractor accordingly, and
    - inform the EPA (or such other person or body as may be approved for the purposes of this clause) if the person does not, within 21 days of the waste being collected by the authorised contractor, receive a receipt from the authorised contractor detailing the name and address of the person to whom the waste was delivered, and
    - keep each receipt that is received by the person for a period of at least 3 years from the date of the collection of the waste, and
    - make each such receipt available for inspection by an authorised officer on request.

Pursuant to *Waste Reg* clause 16(2)(h), if the waste is transported from the premises, the corporation must ensure that the waste is transported:

- to a waste facility that is licensed under the *POEO Act*; or
- to a person carrying on mobile waste processing that is licensed under the *POEO Act*; or
- to a place that can otherwise lawfully be used as a waste facility for that waste.

If the waste is transported from the premises, the person must accurately identify the waste (including identification in accordance with the relevant description set out in Technical Appendix 4 to the *Waste Guidelines*) and advise the transporter accordingly (*Waste Reg* clause 16(2)(i)). The maximum corporate penalty for breach of clause 16 is \$22,000.

Note further that where liquid, hazardous or industrial waste is to be transported outside of NSW, the corporation must comply with the requirements of Part 6A of the *Waste Reg*, which applies the *National Environment Protection (Movement of Controlled Waste Between States and Territories) Measure* (June 1998).

**35. Is the corporation responsible for contractors (and how much does this depend on the contract)?**

Even when the corporation outsources an activity, it should oversee the contractor to ensure that they abide by environmental laws in performing the contract.

The corporation may be indirectly liable, under both criminal and civil law, for the acts of independent contractors (as well as the employees of independent contractors). The relevant test is whether the corporation exercised “sufficient control” over them (*Tiger Nominees Pty Ltd v State Pollution Control Commission* (1992) 75 LGRA 71, *Environment Protection Authority v Snowy Mountains Engineering Corporation Ltd* (1994) 83 LGRA 51).

It is implicit in some statutory provisions that the corporation cannot escape liability merely because the acts were those of a contractor. For example, the *POEO Act* provides a defence in s64(2) to breach of licence condition where another person who was **not associated** with the licence holder caused the breach **and** the licence holder took all reasonable steps to prevent the breach. However, the defence is unavailable in respect of employees, agents, contractors and sub-contractors of the licence holder, as these parties are all deemed to be ‘associated’.

At common law, the contractual terms will be important, but not necessarily determinative, in evaluating whether there was sufficient control. Factors which may assist in defending a claim of vicarious liability include:

- that the contractor was suitably qualified and was engaged to carry out a particular task using his or her own skill and judgement;
- that the contractor is paid by result rather than by wage;
- that the contractor is not obliged under the contract to follow instructions in relation to the specific manner in which work should be performed; and
- that the contractor provides and maintains their own equipment.

In some contexts, the common law duty of care may be regarded as effectively non-delegable. This means that the corporation will **not** be able to avoid liability for negligent performance of the work, for example, in relation to especially dangerous activities, or the introduction of dangerous substances onto premises.

The corporation should include an appropriate indemnity clause in its contracts. Although this will not necessarily prevent the EPA taking enforcement action against the corporation, it will, if properly drafted, allow recovery of any penalties, expenses or losses suffered as a contractor’s actions.

**36. How does the corporation recognise an environmental emergency, and how should it handle it?**

It is not possible to define, in advance, what constitutes an ‘environmental emergency’. This depends on a complex interaction between factors such as the activity being engaged in, the type of substance and the physical environment in which the incident takes place.

The definition of **pollution incident** under the *POEO Act* provides a general understanding of the types of circumstances that might give rise to an environmental emergency. The definition includes events, during or as a consequence of which, there is, has been or is

likely to be a leak, spill or other escape of a substance. However, it should be noted that potential emergencies are **not** limited to these events. For example, one might technically say that a bushfire caused by an overhead power line fault involves the escape of a substance (electricity). Yet this would not be the usual understanding of such an event.

The method of handling an environmental emergency similarly depends on the specific fact situation. The corporation should have a response plan for the most common types of emergency likely to be encountered in the course of operations. All employees and contractors should be aware of the procedures to be adopted. As a practical matter, the Fire Brigade should be the immediate point of contact for emergencies involving fire or hazardous materials. The corporation should also be aware of the duty under s148 of the *POEO Act* to notify the EPA (as soon as practicable) of pollution incidents causing or threatening **harm to the environment** (discussed at Question 27).

**37. When does an environmental problem become more of a safety problem, or vice versa, that others need to be made aware of (e.g., chemicals)? Where in law is the handover point?**

There is often no clear delineation between environmental and safety problems, particularly in relation to **chemicals**. This is because many of the incidents that cause or threaten environmental harm may also be deleterious to human health. In other words, a single set of circumstances may give rise to both a breach of environmental laws **and** occupational/public health laws. Consequently, it is more of an intersection or crossover, rather than a 'handover point'.

The following safety issues could readily involve or lead to environmental problems (such as chemical spills):

- failure to maintain a safe system of work;
- failure to provide information and instruction on workplace hazards and supervision of employees in safe work practices; or
- failure to ensure so far as reasonably practicable the safety of employees in relation to the use and maintenance of plant and substances.

WorkCover NSW must be notified of the following as soon as practicable (but no later than 7 days):

- death or serious personal injury occurring to any person at a place of work;
- a work-related illness suffered by an employee; or
- any dangerous occurrence at a place of work.

*Dangerous occurrence* is defined to include:

- damage to any plant, equipment or other thing which endangers or is likely to endanger the health or safety of persons at a place of work; or
- an uncontrolled explosion, fire or escape of gas, dangerous goods or steam or any other occurrence involving imminent risk of explosion, fire or escape of gas, dangerous goods or steam or of death or serious personal injury to any person or substantial damage to property.

In New South Wales, an employer has an obligation to ensure the health, safety and welfare at work of all employees (*Occupational Health and Safety Act 2000* (NSW) s8).

The corporation also owes a duty of care in relation to:

- independent contractors;
- persons **not** working for the employer but who are **present** at the workplace (e.g., visitors, trespassers, inspectors, police and emergency services personnel); and
- persons **outside** the workplace who may be affected by the conduct of operations at that workplace.

**38. What waste issues arise in respect of electricity structures (e.g., poles and crossarms)?**

A pole, structure or lighting column becomes a **waste** as soon as it is taken out of service unless it is an identifiable reuse stockpile item (i.e., it must be taken to a facility at which poles, structures and lighting columns are stockpiled for reuse). The stockpile facility would have a maximum number of poles, structures and columns which could be stockpiled at that site.

Steel is an **inert waste** that can be **disposed** of to any class of licensed landfill, or to landfills that do not require a waste facility licence under Schedule 1 of the *POEO Act*. Untreated timber poles are also inert. Treated timber may be inert, **solid, industrial** or **hazardous waste** depending on the type and concentration of **chemicals** used.

There is an argument that timber poles treated with copper chrome arsenate, high temperature creosote, pigmented emulsified creosote or light organic solvent preservative may qualify as **building and demolition waste** under the EPA's *Waste Guidelines*. If so, it would be a category of inert waste. Alternatively, if this interpretation is not accepted by the EPA, treated timber should be classified as solid waste. No licence is required for its generation, storage or transport (although there are restrictions on its recycling and reuse). Refer to the Electricity Association's draft *Guidelines on the Reuse and Disposal of Redundant Power Poles and Crossarms* (1999).

Natural timber which has only been remedially treated with arsenic trioxide, biogard bandages, osmoplastic or pole saver rods is classifiable as inert waste.

Pentachlorophenol (**PCP**) and organochlorines (e.g., dieldrin, chlordane, aldrin and heptachlor) are **scheduled chemical wastes** which must be managed in accordance with the *Scheduled Chemical Wastes Chemical Control Order 1994* (**SCW CCO**). Timber treated with these **chemicals** would also be classified as hazardous waste for licensing purposes under the *POEO Act*. A *POEO Act* licence is required if the corporation generates more than 10 tonnes per year of hazardous waste, or stores 2 tonnes or more on site at any one time.

PCP or organochlorine treated timber can only be disposed of by:

- an approved process, under the authority of, and in accordance with the conditions of a licence under the *EHC Act*; or

- burial in a controlled landfill in an approved manner, where the total concentration of constituents in the waste is less than 50 mg/kg (clause 6.5 of the *SCW CCO*).

Refer to DB Waste 3.1.

**39. What licensing does the corporation need for PCB contaminated oil?**

The answer to this question depends on the quantity of oil involved and the concentration of PCB.

**Storage**

A *POEO Act* licence is required if the corporation generates more than 10 tonnes per year of PCB contaminated oil, or stores 2 tonnes or more on site at any one time. An *EHC Act* licence must be held where 1 tonne or more of **scheduled PCB waste** (*i.e.*, concentration of 50 mg/kg or greater at 50 g or greater) in aggregate is kept on any premises.

**Transport**

See also Question 39. The transport of PCB contaminated oil may require a licence under the *POEO Act* if the load exceeds 200 kg. A licence under the *EHC Act* is required where 1 tonne or more of **scheduled PCB material** or scheduled PCB waste is to be **conveyed** by road. A licence is required under the *Road and Rail Transport (Dangerous Goods) (Road) Regulation 1998* pursuant to the *RRT(DG) Act* where the

- the goods are not transported in an intermediate bulk container (**IBC**); or
- the IBC is filled or emptied on the vehicle; or
- the total capacity of IBCs on the vehicle is more than 3,000 litres.

The Regulation places licensing obligations on the prime contractor, driver and consignor.

Where the corporation, as prime contractor, uses a vehicle to transport PCB contaminated oil in bulk (other than as the driver of the vehicle), the vehicle must be licensed to transport the goods and the driver must be licensed to drive the vehicle. A person must not consign PCB contaminated oil in bulk for transport by road on a vehicle if the person knows, or reasonably ought to know, that the vehicle is not licensed under this Part to transport the goods. Refer to DB Land 2.2, 4.1 to 4.4 / DB Hazardous 2.1, 4.1, 4.3, 4.3, 4.5 / DB Waste 3.2, 4.1, 4.2, 4.4.

**40. What are the transport and disposal obligations in respect of PCB waste (e.g., arising from the replacement of power factor correction equipment)?**

Under the *Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997 (PCB CCO)*, **scheduled PCB material** and **scheduled PCB waste** must be **conveyed** according to the following conditions:

- the vehicle must carry personnel trained in PCB spill containment, as well as personal protective equipment and clean-up equipment;
- the EPA must be notified as soon as is practicable by the person conveying the scheduled PCB material or waste of any spill that occurs during the course of conveyance;

- where one tonne or more of scheduled PCB material or waste is to be conveyed by road, it must be conveyed under the authority of, and in accordance with a licence under the *EHC Act*;
- scheduled PCB waste must not be disposed of to landfill or elsewhere in the environment;
- scheduled PCB waste must only be disposed of by an approved process under the authority of, and in accordance with the conditions of a licence under the *EHC Act*.

A *POEO Act* licence is required if the corporation generates more than 10 tonnes per year of PCB waste or stores 2 tonnes or more on site at any one time.

A licence may also be required under the *Road and Rail Transport (Dangerous Goods) (Road) Regulation 1998* pursuant to the *RRT(DG) Act* (see Question 38).

Disposal of **non-scheduled PCB waste** (*i.e.*, PCB waste containing PCB at a concentration below 50 mg/kg) is subject to the following conditions:

- solid non-scheduled PCB waste must be disposed of by a method approved in writing by the EPA or at landfills approved by the EPA to receive such waste;
- liquid non-scheduled PCB waste must be disposed of by a method approved in writing by the EPA;
- **PCB material** containing less than 50 grams of PCB at a concentration of 50 mg/kg or greater must be disposed of as scheduled PCB waste at the end of its useful life;
- PCB waste containing less than 50 grams of PCB at a concentration of 50 mg/kg or greater must be disposed of as scheduled PCB waste.

A **declared chemical waste** that is the subject of a *CCO* under the *EHC Act* and which is not permitted to be disposed of to a landfill site because of such an order is regarded as **hazardous waste** for the purposes of the *POEO Act*.

Immobilised wastes containing **scheduled chemical wastes** or PCBs in concentrations of 50 mg/kg or greater cannot be disposed of to landfill.

Refer to DB Land 4.1, 4.2 / DB Hazardous 2.1, 2.4, 4.1, 4.3 / DB Waste 3.2.

**41. Does the corporation need to equip vehicles with fire extinguishers?**

The answer to this question depends on the context and location in which the vehicle is being used.

For example, if it is being used to convey **dangerous goods**, obligations will arise under the *Road and Rail Transport (Dangerous Goods) Road Regulation 1998 (RRT(DG) Reg)*. This Regulation applies the *Road Transport Reform (Dangerous Goods) Regulations 1997 (Cth)* and incorporates by reference the *Australian Dangerous Goods Code (ADG Code)*. The *RRT(DG) Reg* makes it an offence punishable by a fine of \$1,000 for a person to drive a vehicle transporting a placard load of dangerous goods unless the vehicle is equipped with fire extinguishers and portable warning devices complying with Chapter 12 of the *ADG Code*.

Under clause 22(2) of the *Rural Fires Regulation 1997*, a person must not (in connection with any agricultural, pastoral **or other land use**) drive or use in any grass, crop or stubble land a motorised machine on which it is practicable to carry prescribed fire safety equipment unless the person carries on the machine, or has in the vicinity, prescribed fire safety equipment and that equipment is maintained in a serviceable condition. The maximum penalty for breach of the clause is \$2,200. Prescribed fire safety equipment means a knapsack spray pump of 16 litre minimum capacity filled with water, or a fire extinguisher (liquid type) of 9 litre minimum capacity, or a dry powder type extinguisher of 0.9 kg minimum capacity.

In the case of *ESI* members, the choice of extinguisher would need to reflect the problem of dealing with electrical fires.

More generally, the corporation is obliged under the *Rural Fires Act 1997* to take practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of a bush fire on or from:

- any land vested in or under its control or management, or
- any highway, road, street, land or thoroughfare, the maintenance of which is charged on the authority (s63(1)).

Given the possible fire risks associated with electrical infrastructure it would be a useful due diligence precaution to equip all vehicles with a portable fire extinguisher as a basic due diligence measure.

Note that the *Ozone Protection Regulation 1997* regulates the discharge of portable HCFC fire extinguishers, and the possession and discharge of portable halon fire extinguishers.

#### 42. What other common types of waste may be generated by the corporation?

##### **Inert waste**

- *building and demolition waste* which is not mixed with any other type of waste and does not contain **asbestos**;
- asphalt waste from road construction or waterproofing;
- biosolids categorised as unrestricted use, or as restricted use 1, in accordance with the criteria set out in the *Biosolids Guidelines*;
- used, rejected or unwanted tyres; and
- office and packaging waste (*e.g.*, paper, plastics, glass, metal and timber) that is not mixed with any other type of waste).

This would include conductors, insulators, cable drums and meters (except for Zellweger ZE relays).

Note that the transport of used, rejected or unwanted tyres in loads over 2 tonnes must be licensed.

### **Liquid waste**

An approval is needed to discharge **waste** into a sewer (see clause 55 of the *Protection of the Environment Operations (General) Regulation 1998*). The relevant sewage authorities will generally be Sydney Water, Hunter Water or a local council.

Wastes from septic tanks, aerated waste treatment systems and portable toilets are **Group C wastes**. Such wastes may only be **disposed** of to a waste facility that is licensed by the EPA.

Certain cleaning agents and solvents may be classified as dangerous goods under the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (6<sup>th</sup> edition, 1998). Any surplus liquid would be classified as **hazardous waste**. The corporation should be alert to this possibility where the substance is flammable, poisonous, corrosive or oxidising. Refer to the material safety data sheet if the product labelling leaves any doubt as to the matter.

If the cleaning agent is a non-aqueous or aqueous liquid it is classified as a **Group A waste** under the *POEO Act*. Paints, varnishes, lacquers, lubricants and fuels (provided that they do not constitute **dangerous goods**) may also fall under Group A.

Generally the generation or storage of Group A waste requires an **environment protection licence**. One of the main exceptions that is relevant for present purposes is where an activity involves the generating of not more than 10 tonnes per year, or the on site storage of less than 2 tonnes at any one time, of Group A waste in the form of oil, paint, lacquer, varnish, resin, ink, dye, pigments, adhesives, hydrocarbons or emulsions.

The transport of Group A waste in loads exceeding 200 kg must be done pursuant to a licence.

Containers with residues of hazardous or **industrial waste** can themselves constitute waste within the meaning of those categories. Some containers may be reused after undergoing the triple rinse procedure detailed in Technical Appendix 3 of the *Waste Guidelines*. However, this method would be inappropriate where, for example, the rinsate itself would be classified as **hazardous waste**. Page 83 of the *Waste Guidelines* details standards for container disposal.

#### **43. What obligations apply in relation to gases used by the corporation?**

The 3 most prevalent gases used in *ESI* operations are sulphur hexafluoride (**SF<sub>6</sub>**) (used to prevent arcing in circuit breakers), halons (used in fire suppression systems) and chlorofluorocarbons (**CFCs**) (used as refrigerant gases in air conditioning systems). CFCs can be disposed of by delivering them to an authorised supplier or destroying them in a manner approved by the EPA (*OP Reg* clause 35(2), maximum penalty \$22,000).

Halons may only be disposed of in a manner approved by the EPA (*OP Reg* clause 36(2), maximum penalty \$22,000). It is a Tier One offence to cause any **controlled substance** to be emitted into the atmosphere contrary to the *OP Act* and in a manner that harms or is likely to harm the **environment** (s117 *POEO Act*). SF<sub>6</sub> is **not** a scheduled ozone depleting substance to which the *OP Act* or *OP Reg* applies. However, as with these other gases, Tier Two **air pollution** offences under the *POEO Act* may be committed where **plant** is operated or maintained improperly or inefficiently (see *POEO Act* ss124 to 129).

Note that any gaseous waste that meets the criteria for assessment as dangerous goods under the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (6<sup>th</sup> edition, 1998) will constitute **hazardous waste** under the *POEO Act*. The provisions of the *Dangerous Goods Act 1975* and the *Road and Rail Transport (Dangerous Goods) Act 1997* would also apply in respect of the keeping and transport of such substances prior to the waste disposal stage.

Refer to DB Air 2.1, 2.3, 3.5, 4.1, 4.3 / DB Hazardous 2.1, 2.5, 2.7, 3.1, 3.4, 3.5, 3.7, 4.1 to 4.4.

**44. Do special obligations apply to asbestos waste ?**

Yes. Clause 29 of the *Waste Reg* sets out new provisions to replace the now revoked *Asbestos Waste Chemical Control Order* originally made under the *EHC Act*. The provisions in clause 29 apply to any activity that involves the transportation, collection, storage or disposal of any type of **asbestos waste**, **regardless** of whether the activity is required to be licensed. Asbestos waste must be disposed of only to a landfill site that may lawfully receive this type of waste. Note that a licence is required if the corporation generates more than 10 tonnes per year of asbestos waste, or stores 2 tonnes or more on site at any one time. No licence is needed for the generation or on site storage of stabilised asbestos waste in bonded matrix. Refer to DB Waste 4.1.14.14.

**Collection and storage**

- asbestos waste that is in the form of asbestos fibre and dust waste must be covered in such a manner as to prevent the emission of any dust;
- asbestos waste that is in the form of asbestos fibre and dust waste must not be collected and stored except in accordance with the following procedures:
  - the waste must be collected and stored in impermeable bags;
  - each bag must be made of heavy duty low-density polyethylene of at least 0.2 mm thickness, and have dimensions of no more than 1.2 m in height and 0.9 m in width;
  - each bag must be sealed by a wire tie, and contain no more than 25 kg of waste;
  - each bag must be marked with the words "CAUTION ASBESTOS" in letters that are not less than 40 mm and that comply with Australian Standard AS 1319 – *Safety Signs for the Occupational Environment*.
- if asbestos waste in any form is stored in a bag, the following procedures must be followed:
  - the bag must be placed in a leak-proof container that is used only for the purposes of storing asbestos waste; and
  - the container must be marked with the words "DANGER – ASBESTOS WASTE ONLY – AVOID CREATING DUST" in letters that are not less than 50 mm and that comply with Australian Standard AS 1319 – *Safety Signs for the Occupational Environment*; and

- the container must have a close-fitting sealed cover so as to prevent any spillage or dispersal of the waste.
- asbestos waste must not be stored except in accordance with the following procedures:
  - the waste must be stored in a secure area so as to prevent entry by unauthorised persons and to prevent the risk of environmental harm; and
  - the waste must, if it is practicable to do so, be stored separately from other types of waste.
- if stabilised asbestos waste in bonded matrix is stored otherwise than in a bag, the following procedures must be followed:
  - if it is practicable to do so, the waste must be wetted so as to prevent the emission of dust;
  - in wetting the asbestos waste, care must be taken to ensure that the wetting process does not cause any emission of dust or lead to any discharge of polluted water; and
  - the waste must be kept covered at all times.

### **Transportation**

- asbestos waste must not be transported unless it is **conveyed** in a covered leak-proof vehicle so as to prevent any spillage or dispersal of the waste;
- if stabilised asbestos waste in bonded matrix is to be transported and the waste is not stored in a bag in accordance with the requirements for collection and storage, the waste must be wetted prior to transportation; and
- any vehicle used to transport asbestos waste must be cleaned before leaving the landfill site at which the waste is disposed of, so as to ensure that all residual asbestos waste is removed from the vehicle.

Work in which asbestos was removed, repaired or disturbed previously had to comply with the system of licensing and permits under the *Occupational Health and Safety (Asbestos Removal Work) Regulation 1996*. Similar controls are continued under the *Occupational Health and Safety Regulation 2001*, which consolidates previous exposure standards in the *Occupational Health and Safety (Hazardous Substances) Regulation 1996*, *Occupational Health and Safety (Synthetic Mineral Fibres) Regulation 1993*, *Factories (Health and Safety – Asbestos Processes) Regulation 1984* and the *Construction Safety Regulations 1950*. Note also that under New South Wales occupational health and safety law, a controller of a workplace must (inter alia):

- determine whether asbestos is friable or bonded and arrange for the removal of any friable asbestos material; and
- ensure that nobody is exposed to an asbestos contaminated atmosphere.

**45. How should the corporation manage excavated acid sulphate soils (ASS)?**

This is covered in section 5.11 of the *Waste Guidelines*. The summary below applies to both **actual** and **potential acid sulphate soils** (see definitions).

ASS are naturally occurring sediments containing iron sulphides. Exposure to oxygen by drainage or excavation leads to the creation of sulphuric acid. These soils occur particularly in coastal areas. The Department of Land and Water Conservation has produced ASS Risk Maps to assist in identifying the probable location.

The *Acid Sulphate Soil Manual* (available from DUAP) recommends that ASS be managed on-site in accordance with an Acid Sulphate Soil Management Plan (**ASSMP**), drafted in accordance with the *Acid Sulphate Soil Manual*. If waste ASS cannot be managed on-site, the generator may consider the use of a landfill for disposal if no other options are viable. Disposal to landfill will require the development of an **ASSMP**.

The generator of the waste ASS must test the soil in accordance with Technical Appendix 1 of the *Waste Guidelines* to determine its correct classification. This will determine whether it contains other constituents apart from iron sulphides that might affect the disposal method. Subject to this classification, ASS may be disposed to a **solid waste** or **industrial waste** landfill. ASS cannot be disposed to an **inert waste** landfill as it is capable of environmentally significant chemical transformation. Nor can it be virgin excavated natural material because it contains sulphidic components. ASS must be treated by the generator in accordance with the neutralising techniques outlined in the *Acid Sulphate Soil Manual*, prior to acceptance by the landfill occupier.

**46. What are the powers of authorised officers?**

Employees and contractors of the corporation should be aware that authorised officers (whether from the EPA, local council or WorkCover) have extensive powers under statute to enter and search industrial / commercial premises; require the production of names and addresses; question persons; require information and records to be given; inspect, test and sample vehicles, plant or articles; and give directions. Failure to comply with these demands or directions may be an offence. An authorised officer must produce their identification card upon request. Once it has been ascertained that they are properly authorised, their instructions should be followed. Legal advice should be immediately sought if there are any doubts about the conduct of the officer(s) (e.g., due to the nature of the questions asked or the seizure of certain items or records). However, even if the demands made appear to be excessive, it is prudent to comply. If the officer did act in excess of their statutory power then the admissibility of the evidence obtained could be later challenged.

The types of questions that officers are likely to ask include those relating to the way plant is operated, maintenance schedules, materials handling procedures, descriptions as to how a particular pollution incident occurred, and demands for production of licences.

When faced with questioning, staff of the corporation should bear in mind the following points:

- Ask to see the officer's identification card.

- If you are asked a question and you think that the answer might leave you open to a criminal charge, object to giving the answer on the ground that it might incriminate you. Note that you still have to answer the question, but the information or answer given will not be admissible against you in criminal proceedings.
- Answer the question honestly, but only to the extent that you have direct knowledge of the matter. Do not speculate or give opinions about things that you might have heard but are unsure about. Where you do not possess sufficient information to give an accurate answer (e.g., because the matter is outside the scope of your job) or you cannot recall certain details, indicate this to the officer and request that they speak to your supervisor or the appropriate person who has responsibility for the matter.

For further details on entry, search and seizure powers see section 6 of DB Air, Land, Hazardous, Noise, Waste and Water. See also Question 48.

**47. What should be done when the corporation is prosecuted?**

Legal advice should be sought immediately on the prospects for defending the charge, or of mounting a case for mitigation of penalty. There are also procedural matters that may need to be considered, e.g., whether or not the prosecution has been brought by the appropriate person and within time.

**48. In what situations can local councils prosecute the corporation?**

For the purposes of the *POEO Act*, the EPA will be the **appropriate regulatory authority** with the principal power to prosecute. A local council will not be the appropriate regulatory authority for premises occupied by, or activities carried on by, a public authority. For the purposes of the *POEO Act*, **public authority** includes a State owned corporation. A local council therefore does not in most cases have power to issue a clean-up notice (Part 4.2), prevention notice (Part 4.3), prohibition notice (Part 4.4), compliance cost notice (Part 4.5) or noise control notice (Part 8.6). However, in the circumstances set out in s109A, a notice may be issued by a council (despite the fact that it is not the appropriate regulatory authority) and still have legal effect. This will be the case only where the EPA is satisfied that a council acted in good faith in issuing the notice and confirms the issue of the notice in writing.

A noise abatement order issued by a Local Court will have no force in so far as it is directed to the corporation by virtue of *POEO Act* s270.

The EPA would generally be the prosecutor in respect of pollution offences under the *POEO Act*. A local council only has a statutory right to institute proceedings for breach of the *POEO Act* against a State owned corporation for littering offences. In relation to other alleged offences, it could only institute proceedings with leave of the Land and Environment Court. This right is available to any person. However, leave is only granted if:

- the EPA has decided not to take any relevant action 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 requested the EPA to institute the proceedings; and

- the EPA has been notified of the proceedings; and
- the proceedings are not an abuse of the process of the Court; and
- the particulars of the offence disclose, without any hearing of the evidence, a prima facie case of the commission of the offence.

Note, however, that leaving aside the *POEO Act*, local councils have broad powers under s124 of the *LG Act* to issue orders for the:

- repair, alteration or demolition of a building in a catchment district that is likely to cause water pollution;
- fencing of land for public safety reasons;
- removal or screening of materials where they are being stored in a manner that is likely to create unsightly conditions;
- doing or refraining from work that is likely to cause environmental damage and which does **not** arise from premises, works or equipment the subject of any *POEO Act* **environment protection licence**; and
- storage, treatment, processing, collection or disposal of waste that is not being dealt with satisfactorily and which is **not** regulated under any *POEO Act* environment protection licence.

#### 49. What is admissible as evidence in court proceedings?

Risk assessments, incident registers and environmental improvement plans prepared in the ordinary course of operational activities may not be protected from disclosure in court proceedings (see below). However, certain documents may be subject to legal privilege and voluntary audits may be protected by statute. The *Evidence Act 1995* and the rules of individual courts deal with the admissibility of evidence under general law. Specific rules apply, however, under environmental statutes.

Refer to the following NSW sections of the Database:

- DB Air / DB Hazardous 3.1, 6.7, 9.2;
- DB Land / DB Waste 3.1, 6.8;
- DB Noise 3.1, 6.7.2, 9.4, 9.5;
- DB Water 3.1, 6.7.2, 9.4, 9.5.

#### **Client Legal Privilege**

Confidential documents and communications between a client and a third party or a lawyer and a third party will be privileged if the communication was made for the dominant purpose of the client being provided with legal advice.

Confidential documents and communications between a client and a third party (e.g., expert witness) or a lawyer and a third party will be privileged if made for the dominant purpose of the client being provided with legal services in relation to litigation.

### ***Privilege Against Self-incrimination***

In the 1993 case of *EPA v Caltex*, the High Court held that the privilege against self-incrimination is not available to corporations to resist producing documents.

Under the *POEO Act*, an individual is not excused from the requirement to furnish records or information or to answer a question on the ground that it might incriminate the person or make them liable to a penalty.

However, any information furnished or answer given by a natural person in compliance with a requirement under Chapter 7 of the *POEO Act* (which deals with investigations) is **not** admissible in evidence against the person in criminal proceedings if:

- the person objected at the time to doing so on the ground that it might incriminate the person; or
- the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

Conversely, note that any **record** furnished by a person in compliance with a requirement under Chapter 7 would still be admissible in evidence against the person despite the fact that it might incriminate them. **Records** include plans, specifications, maps, reports, books and other documents (whether in writing, in electronic form or otherwise). Also be aware that **further information** obtained **as a result of** a record or information furnished or an answer given may be admissible.

### ***Voluntary Audits***

Part 6.3 of the *POEO Act* protects documents that are prepared for the sole purpose of a voluntary **environmental audit**. Such documents include the final report of the audit and any documents prepared during the course of the audit, so long as the documents are prepared for the sole purpose of the audit. Documents are not protected if they are prepared wholly or partly in connection with monitoring that is required by any conditions attached to a licence or by an **environment protection notice**. Consequently, it is possible that normal risk assessments, incident reports and improvement/management plans will not be covered by voluntary audit protection.

Note also that documents prepared in relation to a voluntary audit cease to be protected if the person asserting or relying on the protection uses or relies on (or attempts to use or rely on) the whole or any part of one or more of the documents, whether directly or indirectly, in any proceedings connected with the administration or enforcement of environment protection legislation.

#### **50. What is available under the NSW *Freedom of Information Act*?**

Section 16(1) of the *Freedom of Information Act 1989* (NSW) provides people with a legally enforceable right to be given access to an agency's documents in accordance with the Act.

**Agency** includes a *public authority*, which in turn is defined by s7 of the Act to include a statutory State owned corporation. The corporation is **not** an exempt body under s9 and Schedule 2.

**Agency's document** means a document that is held by the agency.

The public right of access is qualified by several potentially broad exceptions under s25 and Schedule 1 of the Act.

Depending upon whether the circumstances satisfy particular statutory tests, there may be several grounds for refusing access to agency documents. The following grounds may be relevant to the corporation:

- that the request would involve substantial and unreasonable diversion of agency's resources; **or**
- that the documents are:
  - available under another agency's public register;
  - Cabinet or Executive Council documents;
  - affect personal or business affairs;
  - internal working documents;
  - subject to legal professional privilege;
  - contain confidential material;
  - affect the economy of the State;
  - affect financial or property interests; or
  - concern the operations of the agency.

Note also that under s308 of the *POEO Act*, the EPA must keep a public register of various matters, including:

- details of each licence application and decisions;
- details of each compliance certificate in connection with any licence;
- details of each **environment protection notice** or noise control notice issued by the EPA;
- details of convictions in prosecutions under this Act instituted by the EPA;
- the results of civil proceedings before the Land and Environment Court under this Act; and
- a summary of the conclusions of any audit report in connection with a mandatory **environmental audit** under Part 6.2.

## Part E – Appendices

### Appendix 1 – List of Relevant State Environmental Planning Policies (SEPPs)

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- SEPP 4 – Development Without Consent
- SEPP 14 – Coastal Wetlands
- SEPP 19 – Bushland in Urban Areas
- SEPP 26 – Littoral Rainforests
- SEPP 44 – Koala Habitat Protection
- Note that SEPP 46 – Protection and Management of Native Vegetation, has been repealed by the *NVC Act*. Special exemptions for the *ESI* continue, however, by means of the transitional arrangements in Schedule 4 of the *NVC Act*.
- SEPP 55 – Remediation of Land
- SEPP 58 – Protecting Sydney's Water Supply
- SEPP 69 – Major Electricity Supply Projects

## Appendix 2 – Codes of Practice or Guidelines Relevant to the ESI

Acts and Regulations for the Commonwealth and all States (including NSW *SEPPs*, *REPPs* and some *LEPs*) are available online from the Australasian Legal Information Institute at <http://www.austlii.edu.au>. Specifically, NSW Acts can be accessed at [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/](http://www.austlii.edu.au/au/legis/nsw/consol_act/) and NSW Regulations at [http://www.austlii.edu.au/au/legis/nsw/consol\\_reg/](http://www.austlii.edu.au/au/legis/nsw/consol_reg/). Printed copies of NSW legislation can be purchased from the Government Information Service NSW, Goodsell Building, corner Hunter and Elizabeth Streets, Sydney (ph: (02) 9743 7200). Copies of Commonwealth legislation and other publications can be purchased through the Commonwealth Government Bookshop, 32 York Street, Sydney (ph: (02) 9299 6737, fax: (02) 9262 1219). EPA guidelines and other documents can be ordered through the EPA's Pollution Line on 131 555 or (02) 9733 5000. Some EPA publications may be downloaded directly from the website at <http://www.epa.nsw.gov.au>.

<b>Organisation</b>	<b>Code of Practice / Guideline</b>
<b>Department of Land and Water Conservation</b>	Urban Erosion and Sediment Control Soils and Construction – Managing Urban Stormwater
<b>Department of Transport &amp; Regional Services</b>  <a href="http://www.dot.gov.au/land/vehicle/danger/dgoodsum.htm">http://www.dot.gov.au/land/vehicle/danger/dgoodsum.htm</a>  Dangerous Goods Policy Unit, Land Division, GPO Box 594, Canberra ACT 2601	Australian Code for the Transport of Dangerous Goods by Road and Rail (6 <sup>th</sup> edition, 1998)

<b>Organisation</b>	<b>Code of Practice / Guideline</b>
<p><b>Department of Urban Affairs and Planning (DUAP)</b></p>	<p>Acid Sulphate Soil Manual 1998. Loose-leaf folder published by the Acid Sulphate Soils Management Advisory Committee</p> <p>Commonwealth Environment Protection and Biodiversity Conservation Act 1999 – Guide to Implementation in NSW (June 2000)</p> <p>EIS Guidelines 1996 includes guidelines on Roads and Related Facilities</p> <p>Is an EIS Required? Best Practice Guidelines for Part 5 of the Environmental Planning and Assessment Act 1979 (1995)</p> <p>Floodplain Development Manual 1986 (published by Public Works Department but sold through DUAP)</p> <p>Guidelines for the Development of Electricity Systems: Community and Environmental Considerations (1992)</p> <p>Planning in Fire Prone Areas</p> <p>Managing Land Contamination – Planning Guidelines (DUAP/EPA 1998)</p>
<p><b>Electricity Association of New South Wales</b></p>	<p>Draft Guidelines for the Reuse and Disposal of Redundant Power Poles and Crossarms (1999)</p> <p>ISSC 3 – Guide to Tree Planting and Maintaining Safety Clearances Near Power Lines (1996)</p> <p>EC 7 – Guide to the Prevention of Unauthorised Access (1992)</p> <p>EC 10 – Guide to the Aerial Inspection and Patrol of Overhead Lines (1992)</p> <p>EA 18 – Guide to the Training of Personnel Working on or near Electricity Works (1998)</p> <p>EC 20 – Guidelines for the Management of Electricity Easements (1992)</p> <p>EC 22 – Guidelines for the Development of Electricity Systems – Community and Environmental Considerations (1992)</p>

<b>Organisation</b>	<b>Code of Practice / Guideline</b>
<b>Electricity Supply Association of Australia Limited (ESAA)</b>	<p>ESAA EMF Policy Statement March 1997</p> <p>Environmental Policies and Code of Practice (October 1997)</p> <p>Guidelines for the Design and Maintenance of Overhead Distribution and Transmission Lines (C(b)1/1999)</p> <p>Guide to the Maintenance of High Voltage Paper/Oil Insulated Cables and Accessories (D(b)31/1989)</p> <p>Guidelines for Noise Control (D(b)31/1989)</p> <p>Guide for the Design of Substations in Cyclone and Other High Wind Areas (D(b)36/1990)</p> <p>Guidelines for the Control of Tree Growth using Tree Growth Regulators (ND/NL 05 March 1994)</p> <p>Guideline – Helicopters for Live Line Work (being reprinted after revision in 2000)</p> <p>Guidelines for Preparing Specifications (SSD/CP 01 June 1994)</p> <p>Joint Use of Poles (1975) (published by Standards Australia as CJC1 1997)</p>

<b>Organisation</b>	<b>Code of Practice / Guideline</b>
<b>Environment Protection Authority (EPA)</b>	<p>NSW Industrial Noise Policy (Jan 2000)</p> <p>Environment Matters – Pesticides Act 1999</p> <p>Draft: Guidance for the Use of Herbicides Near Waters April 2000</p> <p>Controls on HCFCs, CFCs &amp; Halons: NSW Ozone Protection Regulation 1997 (March 2000)</p> <p>Bunding &amp; Spill Management. Insert to the Environment Protection Manual for Authorised Officers (Technical section “Bu”) (Nov 1997)</p> <p>Contaminated Sites: Sampling Design Guidelines (1995)</p> <p>Contaminated Sites – Guidelines on Significant Risk of Harm from Contaminated Land and the Duty to Report (May 1999)</p> <p>Discussion paper – Improving Pesticide Management in NSW (1997)</p> <p>Environmental Guidelines: Assessment, Classification &amp; Management of Liquid &amp; Non-Liquid Wastes (June 1999)</p> <p>Authorisation of Council Officers under the Protection of the Environment Operations Act 1997 - Environment Protection Manual (June 1999)</p> <p>Guide to Notices Under the Protection of the Environment Operations Act 1997 – Environment Protection Manual (June 1999)</p> <p>Guide to Licensing under the Protection of the Environment Operations Act 1997 – Parts A and B - Environment Protection Manual (June 1999)</p> <p>Powers of Authorised Officers under the Environment Protection Legislation – Environment Protection Manual (June 1999)</p> <p>Environmental Noise Management - NSW industrial noise policy (December 1999)</p> <p>A Guide to the Waste Minimisation and Management Regulation 1996</p>

<b>Organisation</b>	<b>Code of Practice / Guideline</b>
<b>Heritage Council and NSW Heritage Office</b>	<p><b>NSW Heritage Manual</b> containing individual guideline and companion documents, including: Heritage Assessments; Altering Heritage Assets; Planning and Heritage; Heritage Planning Practice Notes 1 and 2; Statements of Heritage Impact; Heritage Approvals; Heritage Studies; Conservation Management Documents; Archaeological Assessments; Conservation Areas; Heritage Curtilages.</p> <p><b>Other Guidelines</b></p> <p>Aboriginal History and Heritage: A Guide</p> <p>Guidelines for Photographic Recording of Heritage Sites, Building and Structures</p> <p>Historical Research for Heritage: A Guide</p> <p>How to Prepare Archival Records of Heritage Items</p> <p>Minimum Standards of Maintenance and Repair</p> <p>Principles of Conservation Work on Heritage Place</p> <p>Standard Exemptions for Works Requiring Heritage Council Approval</p> <p>Understanding the Burra Charter: a guide to the principles of heritage conservation in Australia</p> <p>How to Carry Out Work on Heritage Buildings and Sites: a Practical Guide</p> <p>The Maintenance of Heritage Assets: A Practical Guide</p>
<b>Ministry of Energy and Utilities</b>	<p>Electricity Distributors' &amp; Retail Suppliers' Licences: Guidelines And Requirements Policy</p> <p>Further Environmental Guidelines and Requirements: Retail Suppliers – Greenhouse Gas Reduction Strategies July 1997</p> <p>Greenhouse Gas Emissions from Electricity Supplied in NSW: Framework for Calculation of Electricity Sales Foregone for use in reporting in 1998/99 and subsequent years (attachment to Further Environmental Guidelines &amp; Requirements) (February 1999)</p> <p>Greenhouse Gas Emissions from Electricity Supplied in NSW: Emissions Workbook (October 2000)</p> <p>Approved Greenhouse Methodology (October 2000)</p>

<b>Organisation</b>	<b>Code of Practice / Guideline</b>
<p><b>National Occupational Health &amp; Safety Commission</b></p>	<p>Interim Guidelines on Limits of Exposure to 50/60 Hz Electric and Magnetic Fields (1989) (prepared by the National Health and Medical Research Council)</p> <p>National Standard for Limiting Occupational Exposure to Ionizing Radiation (NOHSC:1013(1995))</p> <p>National Code of Practice for the Safe Handling of Timber Preservatives and Treated Timber</p> <p>National Code of Practice for the Control of Workplace Hazardous Substances (NOHSC:2007(1994))</p> <p>National Code of Practice for the Control of Scheduled Carcinogenic Substances (NOHSC:2014(1995))</p> <p>Guidance Note for the Safe Handling of Timber Preservatives and Treated Timber</p> <p>Guidance Note for the Assessment of Health Risks Arising from Hazardous Substances in the Workplace (NOHSC:3017 (1994))</p>
<p><b>Scheduled Waste Management Group</b></p> <p><i>(under the auspices of the Australian and New Zealand Environment and Conservation Council)</i></p> <p>Available through Community Information Unit, Environment Australia, GPO Box 787 Canberra ACT 2601</p> <p><a href="http://www.environment.gov.au/psg/igu/anzecc/pubs_anzecc.html">http://www.environment.gov.au/psg/igu/anzecc/pubs_anzecc.html</a></p>	<p>Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites (1992)</p> <p>Hexachlorobenzene Waste Management Plan (1996)</p> <p>Guidelines and Criteria for Determining the Need for and Level of Environmental Impact Assessment in Australia (1996)</p> <p>Identification of PCB-Containing Capacitors (1997)</p> <p>Guidelines for the Assessment of On-site Containment of Contaminated Soil (1999)</p> <p>Polychlorinated Biphenyls Management Plan (1999)</p>

<b>Organisation</b>	<b>Code of Practice / Guideline</b>
<b>WorkCover NSW</b>	<p>Publication No. 372 – Pesticides and your health and safety</p> <p>Publication No. 401 – Dangerous goods: who to call?</p> <p>Publication No. 456 – Hazardous substances in the workplace</p> <p>Publication No. 454 – Managing chemical hazards in the workplace: advice for managers and supervisors</p> <p>Code of Practice: Electrical Practices for Construction Work (1 February 1992)</p> <p>Code of Practice for the Control of Workplace Hazardous Substances (12 July 1996)</p> <p>Code of Practice for the Preparation of Material Safety Data Sheets (12 July 1996)</p> <p>Code of Practice for the Labelling of Workplace Substances (12 July 1996)</p> <p>Code of Practice for the Safe Use of Pesticides including Herbicides in Non-Agricultural Workplaces (1 September 1998)</p> <p>Code of Practice for the Safe Handling of Timber Preservatives and Treated Timber (1 November 1991)</p> <p>Code of Practice: Amenity Tree Industry (8 August 1998)</p>

### Appendix 3 – Relevant Contacts

<b>Agency</b>	<b>Office Location</b>	<b>Contact Details</b>
<b>Department of Land and Water Conservation</b>  Internet address: <a href="http://www.dlwc.nsw.gov.au/">www.dlwc.nsw.gov.au/</a>	<b>Sydney Office</b>	23-33 Bridge St, Sydney NSW 2000; GPO Box 39, Sydney NSW 2001  Ph: (02) 92286111, Fax: (02) 9228 6455
	<b>Parramatta Office</b>	10 Valentine Ave, Parramatta NSW 2150; PO Box 3720, Parramatta NSW 2124  Ph (02) 9895 6211, Fax (02) 98957281
	<b>Tamworth (Regional Office)</b>	155-157 Marius St, PO Box 550 NSW 2340  Ph: (02) 6764 5900, Fax: (02) 6764 5982
	<b>Orange (Regional Office)</b>	Cnr Anson & Kite Sts, PO Box 53 NSW 2800  Ph: (02) 6393 4300, Fax: (02) 6361 3839
	<b>Dubbo (Regional Office)</b>	45 Wingewarra St, PO Box 1840 NSW 2830  Ph: (02) 6883 3000; Fax: (02) 6883 5231
	<b>Newcastle (Regional Office)</b>	Suite 6, 464 King St, Newcastle West NSW 2309; PO Box 2213 Dangar NSW 2302  Ph: (02) 4929 4346, Fax: (02) 4929 6364
	<b>Deniliquin (Regional Office)</b>	8-20 Edwardes St, PO Box 205 NSW 2710  Ph: (03) 5881 2122, Fax: (03) 5881 3465
	<b>Wagga Wagga (Regional Office)</b>	43-45 Johnston St, PO Box 10 NSW 2650  Ph: (02) 6923 0400; Fax: (02) 6923 0520
	<b>Grafton (Regional Office)</b>	76 Victoria St, Locked Bag 10 NSW 2460  Ph: (02) 6640 2000; Fax: (02) 6640 2185
	<b>Wollongong (Regional Office)</b>	84 Crown St, Wollongong NSW 2500; PO Box 867 Wollongong East NSW 2520  Ph: (02) 4226 8563; Fax: (02) 4226 8500

<b>Agency</b>	<b>Office Location</b>	<b>Contact Details</b>
<p><b>Department of Urban Affairs and Planning (DUAP)</b></p> <p>Internet address:  <a href="http://www.duap.nsw.gov.au">www.duap.nsw.gov.au</a></p>	<p><b>Sydney (Head Office)</b>  Governor Macquarie Tower, 1 Farrer Place, Sydney NSW</p>	<p>Postal address: GPO Box 3927, Sydney 2001  Ph: (02) 9391 2000; Fax: (02) 9391 2111</p>
	<p><b>Resource and Conservation Division</b></p>	<p>Level 20, Governor Macquarie Tower; 1 Farrer Place, Sydney 2000  Ph: (02) 9228 3166; Fax: (02) 9228 4967</p>
	<p><b>Sydney Region Central</b></p>	<p>Ground Floor, 26-32 Pyrmont Bridge Road, Pyrmont 2009  Ph: (02) 9338 9360; Fax: (02) 9338 9350</p>
	<p><b>Sydney Region East</b></p>	<p>Level 1, 26-32 Pyrmont Bridge Road, Pyrmont 2009  Ph: (02) 9338 9360; Fax: (02) 9338 9387</p>
	<p><b>Sydney Region West</b></p>	<p>Level 8, Signature Tower, 2-10 Wentworth Street, Parramatta 2150  Ph: (02) 9895 7633; Fax: (02) 9895 6270</p>
	<p><b>Land Management Branch</b></p>	<p>Ph: (02) 9895 7626; Fax: (02) 9895 7646</p>
	<p><b>Hunter and Central Coast</b></p>	<p>Level 4, 251 Wharf Road, Newcastle 2300  Ph: (02) 4926 2566; Fax: (02) 4926 1529</p>
	<p><b>Illawarra and South Coast</b></p>	<p>Level 2, 84 Crown Street, Wollongong East 2520  Ph: (02) 4226 8120; Fax: (02) 4226 8127</p>
	<p><b>North Coast</b></p>	<p>49 Victoria Street, Grafton 2460  Ph: (02) 6642 0622; Fax: (02) 6642 0640</p>
	<p><b>Western NSW</b></p>	<p>Level 17, Governor Macquarie Tower; 1 Farrer Place, Sydney 2000  Ph: (02) 9391 2225; Fax: (02) 9391 2339  District Office  32 Lowe Street, Queanbeyan 2620  Ph: (02) 6297 6911; Fax: (02) 6297 9505</p>

<b>Agency</b>	<b>Office Location</b>	<b>Contact Details</b>
<b>Department of Urban Affairs and Planning (DUAP)</b>  Internet address: <a href="http://www.duap.nsw.gov.au">www.duap.nsw.gov.au</a>	<b>Urban Design Advisory Service</b>	Level 18, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000  Ph: (02) 9391 2217; Fax: (02) 9391 2208
	<b>Land Management Branch</b>	Level 8, Signature Tower, 2-10 Wentworth Street, Parramatta 2150  Ph: (02) 9895 7626; Fax: (02) 9895 7946
<b>Electricity Association of New South Wales</b>  Internet address: <a href="http://www.eansw.asn.au">www.eansw.asn.au</a>	<b>Sydney</b>  <b>Michael Sinclair</b>  <b>Executive Manager</b>  <b>Dr Rex Campbell</b>  <b>Environmental Consultant</b>	Level 3 Connaught Offices, 185 Liverpool Street Sydney, Australia, NSW, 2000  Ph: (02) 9267 7088; Fax: (02) 9261 2451  email: eansw@eansw.asn.au
<b>Electricity Supply Association of Australia Limited (ESAA)</b>  Internet address: <a href="http://www.esaa.com.au">www.esaa.com.au</a>	<b>Sydney (Head Office)</b>	Level 11, 74 Castlereagh Street, Sydney NSW 2000, PO Box A2492, Sydney South NSW 1235  Ph: (02) 9233 7222; Fax: (02) 9233 7244
	<b>Melbourne</b>	Level 11, 459 Little Collins Street, Melbourne Vic 3000  GPO Box 1823Q, Melbourne Vic 3001  Ph: (03) 9670 0188; Fax: (03) 9670 1069
	<b>Canberra</b>	Canberra Office, Suite 2, Level 6 QBE Building, 33 Ainslie Avenue, Canberra ACT, 2600, Postal Address: PO Box 925, Civic Square ACT, 2608  Ph: (02) 6262 9577, Fax: (02) 6262 9578

<b>Agency</b>	<b>Office Location</b>	<b>Contact Details</b>
<p><b>Environment Australia (Commonwealth agency)</b></p> <p><i>Environment Assessment Branch</i></p> <p>Internet address: <a href="http://www.environment.gov.au/epg/eab.html">www.environment.gov.au/epg/eab.html</a></p>	<p><b>Canberra (Head Office)</b></p>	<p>GPO Box 787, Canberra ACT 2601</p> <p>Ph: 026 2741999; Fax: 026 2741666</p> <p>The Environment Assessment Branch is a specialist unit within Environment Australia that assesses environmentally significant development proposals that require Commonwealth Government approval.</p>
<p><b>Environment Protection Authority (EPA)</b></p> <p>Internet address: <a href="http://www.epa.nsw.gov.au">www.epa.nsw.gov.au</a></p> <p>The EPA also maintains a register of environmental clean up and restoration service providers that may assist with hazardous materials incidents at <a href="http://www.epa.nsw.gov.au/hazmat/">www.epa.nsw.gov.au/hazmat/</a></p>	<p><b>Sydney (Head Office)</b></p>	<p>59-61 Goulburn Street, Sydney, PO Box A290, Sydney South 1232</p> <p>Ph: (02) 9995 5000; Fax: (02) 9995 5999</p>
	<p><b>Parramatta</b></p>	<p>PO Box 668, Parramatta 2124</p> <p>Ph: (02) 9995 5000; Fax: (02) 9995 6900</p>
	<p><b>Albury</b></p>	<p>4th Floor, Albury City Council Chambers, 553 Kiewa Street, PO Box 544, Albury 2640</p> <p>Ph: (02) 6041 4963; Fax: (02) 6041 4973</p>
	<p><b>Armidale</b></p>	<p>Level 1, NSW Government Offices, 85 Faulkner Street, PO Box 494, Armidale 2350</p> <p>Ph: (02) 6773 7000; Fax: (02) 6772 2336</p>
	<p><b>Bathurst</b></p>	<p>219 Howick Street, PO Box 1388, Bathurst 2795</p> <p>Ph: (02) 6332 1838; Fax: (02) 6332 2387</p>
	<p><b>Grafton</b></p>	<p>NSW Government Offices, 49 Victoria Street, PO Box 498, Grafton 2460</p> <p>Ph: (02) 6640 2500; Fax: (02) 6642 7743</p>

<b>Agency</b>	<b>Office Location</b>	<b>Contact Details</b>
	<b>Newcastle</b>	Ground Floor, NSW Government Offices, 117 Bull Street, Newcastle West 2302, PO Box 488G, Newcastle 2300 Ph: (02) 4926 9971; Fax: (02) 4929 6712
	<b>Queanbeyan</b>	Suite 4, Robert Lowe Building, 30 Lowe Street, PO Box 622, Queanbeyan 2620 Ph: (02) 6122 3100; Fax: (02) 6299 3525
<b>Environment Protection Authority (EPA)</b>  Internet address: <a href="http://www.epa.nsw.gov.au">www.epa.nsw.gov.au</a>	<b>Wollongong</b>	Level 3, NSW Government Offices, 84 Crown Street, Wollongong 2500, PO Box 513, Wollongong East 2520 Ph: (02) 4226 8100; Fax: (02) 4227 2348
	<b>Buronga</b>	Unit 6/1 Silver City Highway, PO Box 386, Buronga 2739 Ph: (03) 5022 1096; Fax: (03) 5021 0547
	<b>Dubbo</b>	Level 2, NSW Government Offices, 37-39 Carrington Street, Dubbo 2830 Ph: (02) 6884 9745; Fax: (02) 6882 9217
	<b>Gosford</b>	Suite 14, William Court, Cnr Paul Lane & William Street, Gosford 2250 Ph: (02) 4323 9875; Fax: (02) 4323 9879
	<b>Moree</b>	Suite 15, Salina Court, 161-165 Balo Street, Moree 2400 Ph: (02) 6751 1519; Fax: (02) 6752 7946
	<b>Murwillumbah</b>	Suite 2A, Warina Walk Building, 114 Main Street, PO Box 723, Murwillumbah 2484 Ph: (02) 6672 6134; Fax: (02) 6672 6134
	<b>Muswellbrook</b>	Suite 1, 56 Brook Street, Muswellbrook 2333, Ph: (02) 6541 2381; Fax: (02) 6541 1634
	<b>Tamworth</b>	Level 1 (Lower Ground Floor), Noel Park House, 155-157 Marius Street, Tamworth 2340 Ph: (02) 6766 7871; Fax: (02) 6766 7493
	<b>Wyong</b>	Shop 5, 64 Pacific Highway, Wyong 2259 Ph: (02) 4352 2762; Fax: (02) 4352 2760

Agency	Office Location	Contact Details
<p><b>Heritage Council and NSW Heritage Office</b></p> <p>Internet address:  <a href="http://www.heritage.nsw.gov.au">www.heritage.nsw.gov.au</a></p> <p>The State Heritage Inventory and State Heritage Register can be accessed online at:  <a href="http://www.heritage.nsw.gov.au/index.html">www.heritage.nsw.gov.au/index.html</a></p>	<p><b>Sydney (Head Office)</b></p>	<p>Level 11, Signature Tower, 2-10 Wentworth Street, Parramatta, Postal address: Locked Bag 5020, Parramatta, NSW 2124, DX 8225</p> <p>Ph: (02) 9635 6155; Fax: (02) 9891 4688</p>
<p><b>Ministry of Energy and Utilities</b></p> <p>Licence condition guidelines are available from  <a href="http://www.doe.nsw.gov.au/doenew/neww/environment">www.doe.nsw.gov.au/doenew/neww/environment</a></p>	<p><b>Sydney (Head Office)</b></p>	<p>Minerals and Energy House</p> <p>29-57 Christie Street, St Leonards NSW 2065, PO Box 536 St Leonards 1590, DX 3324 St Leonards</p> <p>Ph: (02) 9901 8888; Fax: (02) 9901 8777</p>
<p><b>National Native Title Tribunal</b></p> <p><b>(Commonwealth agency)</b></p> <p>Internet address:  <a href="http://www.nntt.gov.au">www.nntt.gov.au</a></p>	<p><b>Sydney Registry</b></p>	<p>Level 25, 25 Bligh Street, Sydney, NSW, 2000</p> <p>Ph: (02) 9235 6300; Fax: (02) 9233 5613</p>
<p><b>National Occupational Health &amp; Safety Commission</b></p> <p><b>(Commonwealth agency)</b></p> <p>Internet address:  <a href="http://www.nohsc.gov.au">www.nohsc.gov.au</a></p>	<p><b>Mail address for contact</b></p>	<p>GPO Box 58, Sydney NSW 2001</p> <p>Ph: (02) 9577 9555; Toll free: 1800 252 22</p> <p>Fax: (02) 9577 9202</p>
<p><b>National Parks and Wildlife Service</b></p> <p>Internet address:  <a href="http://www.npws.nsw.gov.au">www.npws.nsw.gov.au</a></p>	<p><b>Sydney (Head Office)</b></p>	<p>Level 1, 43 Bridge Street, PO Box 1967, Hurstville NSW 2220</p> <p>Ph: (02) 9585 6444; Fax: (02) 9585 6555</p>

<b>Agency</b>	<b>Office Location</b>	<b>Contact Details</b>
<b>WorkCover NSW</b>  Internet address: <a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a>	<b>Sydney (head office)</b>	400 Kent Street, Sydney NSW 2000  Postal Address: WorkCover NSW, GPO Box 5364, Sydney NSW 2001  Ph: (02) 9370 5000; Fax: (02) 9370 5999

## Appendix 4 – Glossary of Terms

Always refer to the definitions section of the particular Act or Regulation with which you are dealing. The same phrase may have a different meaning in one statute than it carries under another statute. The trend in recent legislation is to place the definitions at the end of the Act in a schedule entitled 'Dictionary'. Note, however, that older Acts may not have this feature (e.g., most of the *EPA Act* definitions are in s4). For more details on particular terms use the search facility in the Allens Arthur Robinson Database.

<b>Statutory Abbreviations</b>	
<b>Agvet Code</b>	a schedule to the <i>Agricultural and Veterinary Chemicals Code Act 1994</i> (Commonwealth) dealing with the control of agricultural and veterinary chemical products.
<b>CP Act</b>	Coastal Protection Act 1979
<b>CLM Act</b>	Contaminated Land Management Act 1997
<b>DG Act</b>	Dangerous Goods Act 1975
<b>DG(G) Reg</b>	Dangerous Goods (General) Regulation 1999
<b>EANSW</b>	Electricity Association of New South Wales
<b>EHC Act</b>	Environmentally Hazardous Chemicals Act 1985
<b>EPA</b>	means the Environment Protection Authority constituted by the <i>Protection of the Environment Administration Act 1991</i> (POEO Act Dictionary).
<b>EPA Act</b>	Environmental Planning & Assessment Act 1979
<b>EPA Reg</b>	Environmental Planning & Assessment Regulation 1994
<b>EPBC Act</b>	Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)
<b>ESC Act</b>	Energy Services Corporations Act 1995
<b>ESI</b>	Electricity Supply Industry
<b>ES Act</b>	Electricity Supply Act 1995
<b>ES(G) Reg</b>	Electricity Supply (General) Regulation 2001
<b>LEC</b>	NSW Land and Environment Court
<b>LG Act</b>	Local Government Act 1993
<b>LG(G) Reg</b>	Local Government (General) Regulation 1999
<b>Model Provisions</b>	Environmental Planning and Assessment Model Provisions 1980
<b>NPW Act</b>	National Parks and Wildlife Act 1974

<b>NVC Act</b>	Native Vegetation Conservation Act 1997
<b>NW Act</b>	Noxious Weeds Act 1993
<b>NW Reg</b>	Noxious Weed Regulation 1993
<b>OP Act</b>	Ozone Protection Act 1989
<b>OP Reg</b>	Ozone Protection Regulation 1997
<b>POEO Act</b>	Protection of the Environment Operations Act 1997
<b>PCB CCO</b>	Polychlorinated Biphenyl Wastes (PCB) Chemical Control Order 1997
<b>RC Act</b>	Radiation Control Act 1990
<b>RC Reg</b>	Radiation Control Regulation 1993
<b>RF Act</b>	Rural Fires Act 1997
<b>RF Reg</b>	Rural Fires Regulation 1997
<b>RRT(DG) Act</b>	Road and Rail Transport (Dangerous Goods) Act 1997
<b>SC Act</b>	Soil Conservation Act 1938
<b>SCW CCO</b>	Scheduled Chemical Wastes Chemical Control Order 1994
<b>TSC Act</b>	Threatened Species Conservation Act 1995
<b>Waste Guidelines</b>	Environmental Guidelines: Assessment, Classification & Management of Liquid & Non-Liquid Wastes
<b>Waste Reg</b>	Protection of the Environment (Waste) Regulation 1996
<b>WMM Act</b>	Waste Minimisation and Management Act 1995

<b>Terms and Definitions</b>	
<b>Abatement</b>	the summary removal or remedying of a nuisance by an injured party without having recourse to legal proceedings ( <i>LG Act</i> s125).
<b>Acid sulphate soil</b> <i>(see also actual and potential acid sulphate soils)</i>	means <b>actual acid sulphate soil</b> , <b>potential acid sulphate soil</b> , sulphidic clay or sulphidic sand with soil profiles or layers (within the material to be disturbed or impacted by the development) with more than 0.1% sulphide and a net acid generation potential of more than zero ( <i>EPA Reg</i> Schedule 3, Part 3).
<b>Action</b>	includes a project, development, undertaking, an activity or series of activities, or an alteration of any of these things.  A lawful continuation of a use of land that was occurring immediately before the commencement of the <i>EPBC Act</i> is <b>not</b> an action. However, it would constitute an action to enlarge, expand or intensify a use ( <i>EPBC Act</i> (Commonwealth), s523).
<b>Activity</b>	includes the use of land, subdivision, erection of a building, carrying out of a work, demolition of a building or work and any other act, matter or thing referred to in s26 that is prescribed by the regulations for the purposes of this definition, <b>but does not</b> include: anything for which development consent under Part 4 is required or has been obtained, or anything that is prohibited under an <b>environmental planning instrument</b> or which is exempt development ( <i>EPA Act</i> s110(1)).
<b>Actual acid sulphate soils</b> <i>(see potential acid sulphate soils)</i>	soil containing highly acidic soil horizons or layers resulting from the aeration of soil materials that are rich in iron sulphides. This oxidation produces iron in excess of the sediment's capacity to neutralise the acidity, resulting in soil pH of 4 or less when measured in dry season conditions. These soils can usually be identified by the presence of pale yellow mottles and coatings of jarosite ( <i>Waste Guidelines</i> Definitions and Glossary)
<b>Agricultural chemical product</b>	a substance that is represented, imported, manufactured, supplied or used as a means of directly or indirectly:  (a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest in relation to a plant, a place or a thing; or  (b) destroying a plant; or  (c) modifying the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity; or  (d) modifying an effect of another agricultural chemical product; or  (e) attracting a pest for the purpose of destroying it ( <i>Agvet Code</i> ).
<b>Air impurity</b>	includes smoke, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, mists, odours and radioactive substances ( <i>POEO Act</i> Dictionary).
<b>Air pollution</b>	the emission into the air of any <b>air impurity</b> ( <i>POEO Act</i> Dictionary).

<b>Appropriate regulatory authority</b>	<p>the appropriate regulatory authority will in most cases be the Environment Protection Authority. In relation to certain <b>non-scheduled activities</b>, other public authorities may be declared by the regulations to be the appropriate regulatory authority.</p> <p>Local councils will <b>not</b> be the appropriate regulator under the <i>POEO Act</i> in respect of <b>premises</b> occupied by, or activities carried on by the corporation.</p> <p>(see s6 and the Dictionary of the <i>POEO Act</i>).</p>
<b>Asbestos</b>	<p>a generic name for a group of naturally occurring mineral silicates of the amphibole or serpentine series that are characterised by fibres or bundles of fine single crystal fibrils. Naturally occurring asbestos fibres typically have length-to-width ratios of the order of 100 or higher. Included in the definition are the following rock-forming minerals: actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite (<i>Waste Guidelines Definitions and Glossary</i>).</p>
<b>Chemical</b>	<p>any chemical element or any chemical compound or complex, whether of known or unknown or variable or invariant composition, by whatever means created, discovered or obtained, including any such element, compound or complex that is a complex reaction product or a component of any mixture or that may be characterised as biological material, but does not include:</p> <ul style="list-style-type: none"> <li>(a) a physical mixture;</li> <li>(b) a substance of a prescribed description; or</li> <li>(c) a radioactive substance, within the meaning of the <i>Radioactive Substances Act 1957 (EHC Act s3(1))</i>.</li> </ul>
<b>Chemical control order (CCO )</b>	<p>an order in force under s22 or s23 of the <i>EHC Act (EHC Act s3(1))</i>.</p>
<b>Clean-up action</b>	<p>includes action to prevent, minimise, remove or disperse any pollution resulting or likely to result from the incident. It also includes action to remove or store <b>waste</b> that has been disposed of on land unlawfully</p> <p>(refer to DB Air 5.1.2, Land 5.1.2, Waste 5.1.1 or Water 4.2.8 and <i>POEO Act Dictionary</i>).</p>
<b>Clearing native vegetation</b>	<p>means any one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) cutting down, felling, thinning, logging or removing <b>native vegetation</b>;</li> <li>(b) killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation;</li> <li>(c) severing, topping or lopping branches, limbs, stems or trunks of native vegetation;</li> <li>(d) substantially damaging or injuring native vegetation in any other way (<i>NVC Act s5</i>).</li> </ul>

<p><b>Constructing Authority</b> (see <i>protected waters</i>)</p>	<p>when used in connection with <b>protected waters</b> or land under or adjacent to protected waters, Constructing Authority means:</p> <p>(a) the Minister for Ports, if the bed of the waters is vested in the Marine Ministerial Holding Corporation or a Port Corporation (within the meaning of the <i>Ports Corporatisation and Waterways Management Act 1995</i>), <b>or</b></p> <p>(b) the Minister for Public Works, if the waters are tidal and paragraph (a) does not apply, <b>or</b></p> <p>(c) in any other case-the Ministerial Corporation (<i>Rivers and Foreshores Improvement Act 1948</i> s22A).</p> <p><i>Ministerial Corporation</i> means the Water Administration Ministerial Corporation constituted by the <i>Water Administration Act 1986</i> (<i>Rivers and Foreshores Improvement Act 1948</i> s2).</p>
<p><b>Contamination of land</b></p>	<p>the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of <b>harm</b> to human health or any other aspect of the environment</p> <p>(Refer to DB Land 3.2 and <i>CLM Act</i> s5).</p>
<p><b>Controlled aqueous liquid waste</b></p>	<p>means any liquid waste that is assessed and classified as controlled aqueous liquid waste in accordance with the <i>Waste Guidelines</i>, but does not include any of the types of waste specified in Parts 3 (<b>hazardous</b>), 6 (<b>Group B</b>) or 7 (<b>Group C</b>) of the Appendix to <i>POEO Act</i>, Schedule 1.</p>
<p><b>Control equipment</b></p>	<p>any apparatus or device used or designed:</p> <p>(a) to prevent, limit or regulate pollution (including any emission of <b>noise</b>); or</p> <p>(b) to monitor or to give warning of pollution (including any emission of noise); or</p> <p>(c) to give warning of any emission, leak, spill or other escape of substances causing pollution</p> <p>(<i>POEO Act</i> Dictionary).</p>
<p><b>Controlled substance</b> (see also <i>ozone depleting substance</i>)</p>	<p>Controlled substance for the purposes of the <i>OP Act</i> means –</p> <p>(a) any substance specified in Schedule 1 (ozone depleting substances); or</p> <p>(b) any substance prescribed by the regulations as an ozone depleting substance on the recommendation of the Minister under s5 (<i>OP Act</i> s4).</p>
<p><b>Convey</b></p>	<p>in relation to a <b>chemical</b> or any chemical waste, includes carry, load, unload, transfer, transmit, pump and discharge the chemical or <b>waste</b> (<i>EHC Act</i> s3(1)).</p>
<p><b>Dangerous goods</b></p>	<p>any substance or article prescribed as dangerous goods for the purposes of the <i>Dangerous Goods Act 1975</i> (<i>DG Act</i> s4).</p>
<p><b>Deal with materials</b></p>	<p>means process, handle, move, store or dispose of the <b>materials</b> (<i>POEO Act</i> s126).</p>

<b>Declared chemical waste</b>	a substance the subject of an order in force under <i>EHC Act</i> s10 ( <i>EHC Act</i> s3(1)).
<b>Determining authority</b>	means a Minister or public authority and, in relation to any activity, means the Minister or public authority by or on whose behalf the activity is or is to be carried out or any Minister or public authority whose approval is required in order to enable the activity to be carried out ( <i>EPA Act</i> s110).
<b>Development</b>	includes the use of land, the subdivision of land, the erection of a building, the carrying out of a work, the demolition of a building or work any other act, matter or thing referred to in s26 that is controlled by an <b>environmental planning instrument</b> , <b>but does not</b> include any development of a class or description prescribed by the regulations for the purposes of this definition (s4 of the <i>EPA Act</i> , used in relation to assessment under Part 4).
<b>Dioxin</b>	2,3,7,8-tetrachlorodibenzo-p-dioxin (clause 1.2 of CCO(Dioxin)).
<b>Dioxin-contaminated waste materials</b>	waste materials that, when tested using an approved method, are found to contain more than 1 part in 100 million by weight of <b>dioxin</b> (clause 1.3 of <i>Chemical Control Order in relation to Dioxin-Contaminated Waste Materials 1986</i> ).
<b>Dispose of waste</b>	includes to dump, abandon, deposit, discard, reject, discharge or emit anything that constitutes <b>waste</b> , and also includes to cause or permit the disposal of waste ( <i>POEO Act</i> s115).
<b>Distribution network service provider</b>	means a person who owns or controls a distribution system.
<b>Distribution system</b>	means the electricity power lines and associated equipment and <b>electricity structures</b> that are used to convey and control the conveyance of electricity to the premises of wholesale and retail customers, or to convey and control the conveyance of electricity to, from and along the rail network electricity system, but does not include a <b>transmission system</b> ( <i>ES Act Dictionary</i> ).
<b>EIA</b>	environmental impact assessment
<b>EIS</b>	environmental impact statement
<b>Electricity distributor</b> (see <i>transmission operator</i> )	a person who owns or controls a <b>distribution system</b> ( <i>ES Act Dictionary</i> ).
<b>Distribution network service provider's licence</b>	means a licence referred to in s14 of the <i>ES Act</i> .
<b>Electricity structure</b>	any structure (other than a building) that is used to carry overhead lines or associated equipment, and includes any structure that is used for the purposes of street lighting ( <i>ES Act Dictionary</i> ).

<b>Electricity works</b>	any electricity powerlines or associated equipment or <b>electricity structures</b> that form part of a transmission or <b>distribution system</b> ( <i>ES Act Dictionary</i> ).
<b>Energy distributor</b>	means an entity constituted by the <i>Energy Services Corporations Act 1995</i> and whose corporate name is listed in Part 2 of Schedule 1 of that Act, being Advance Energy, Australian Inland Energy, EnergyAustralia, Great Southern Energy, Integral Energy Australia and NorthPower.
<b>Energy transmission operator</b>	means an entity constituted by the <i>Energy Services Corporations Act 1995</i> , whose corporate name is listed in Part 1A of Schedule 1 of that Act, being TransGrid.
<b>Environment</b>	means components of the earth, including: <ul style="list-style-type: none"> <li>(a) land, air and water; and</li> <li>(b) any layer of the atmosphere; and</li> <li>(c) any organic or inorganic matter and any living organism; and</li> <li>(d) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (c) (<i>POEO Act Dictionary</i>).</li> </ul>
<b>Environmental audit</b>	a periodic documented evaluation of an activity (including an evaluation of management practices, systems and plant) to: <ul style="list-style-type: none"> <li>(a) provide information to the persons managing the activity on compliance with legal requirements, codes of practice and relevant policies; or</li> <li>(b) enable those persons to determine whether the way the activity is carried on can be improved (<i>POEO Act s172</i>).</li> </ul>
<b>Environmentally hazardous chemical</b>	a <b>chemical</b> (other than a <b>declared chemical waste</b> ) the subject of a <b>chemical control order</b> ( <i>EHC Act s3(1)</i> ).
<b>Environmental Planning Instrument</b>	means a State Environmental Planning Policy ( <b>SEPP</b> ), a Regional Environmental Plan ( <b>REP</b> ) or a Local Environmental Plan ( <b>LEP</b> ) and except where otherwise expressly provided by the <i>EPA Act</i> , includes a deemed environmental planning instrument. (such as an interim development order) ( <i>EPA Act, s4</i> ).
<b>Environment protection licence</b>	a licence authorising the carrying out of scheduled development work or scheduled activities or controlling the pollution of water arising from non-scheduled activities, being a licence issued under Chapter 3 of the <i>POEO Act</i> and in force ( <i>POEO Act Dictionary</i> ).
<b>Environment protection notice</b>	means a clean-up notice, prevention notice or prohibition notice issued under Chapter 4 of the <i>POEO Act</i> and in force ( <i>POEO Act Dictionary</i> ).
<b>EPA</b>	means the Environment Protection Authority constituted by the <i>Protection of the Environment Administration Act 1991</i> ( <i>POEO Act Dictionary</i> ).
<b>ESI</b>	the Electricity Supply Industry.

<b>Group A waste</b>	means <b>waste</b> specified in Part 5 of the Appendix to <i>POEO Act</i> Schedule 1. This category comprises: (a) <b>Non-aqueous liquid waste</b> (such as oils); and (b) <b>Controlled aqueous liquid waste</b> .
<b>Group B waste</b>	(a) Liquid food waste. (b) Liquid grease trap waste resulting from the preparation or manufacturing of food.
<b>Group C waste</b>	means <b>waste</b> specified in Part 7 of the Appendix to <i>POEO Act</i> Schedule 1. This class comprises liquid waste from human waste storage facilities or waste treatment devices (within the meaning of the <i>Waste Guidelines</i> ), including pump-out waste and septage.
<b>Harm</b>	means, in relation to the <b>contamination of land</b> , harm to human health or some other aspect of the environment (including any direct or indirect alteration of the environment that has the effect of degrading the environment), whether in, on or under the land or elsewhere ( <i>CLM Act</i> s4).
<b>Harm to the environment</b> <i>(see also material harm to the environment)</i>	includes any direct or indirect alteration of the <b>environment</b> that has the effect of degrading the environment and, without limiting the generality of the above, includes any act or omission that results in pollution ( <i>POEO Act</i> Dictionary).
<b>Hazardous waste</b>	means any liquid or <b>non-liquid waste</b> that is: (a) specified in Part 3 of the Appendix to <i>POEO Act</i> Schedule 1; or (b) otherwise assessed and classified as hazardous waste in accordance with the procedures set out in the <i>Waste Guidelines</i> ( <i>POEO Act</i> Schedule 1, Part 3, Division 2).  Relevantly, the Appendix lists the following as hazardous waste: (a) Any waste that meets the criteria for assessment as dangerous goods under the <i>Australian Code for the Transport of Dangerous Goods by Road and Rail</i> , and which is categorised as an explosive, gas, flammable solid; flammable liquid; substance liable to spontaneous combustion; substance which in contact with water emits flammable gases; oxidising agent or organic peroxides; toxic substance; or corrosive substance. (b) Any <b>declared chemical waste</b> that: (i) is the subject of a <b>chemical control order</b> under the <i>EHC Act</i> ; and (ii) is not permitted to be disposed of to a landfill site because of such an order.

<b>Industrial waste</b>	<p>means any <b>non-liquid waste</b> that is:</p> <ul style="list-style-type: none"> <li>(a) specified in Part 1 of the Appendix to <i>POEO Act</i> Schedule 1; or</li> <li>(b) otherwise assessed and classified as industrial waste in accordance with the procedures set out in the <i>Waste Guidelines</i> (<i>POEO Act</i> Schedule 1, Part 3 Division 2).</li> </ul> <p>This includes stabilised <b>asbestos waste</b> in bonded matrix; and asbestos fibre and dust waste (Part 1 of Schedule 1 Appendix).</p>
<b>Inert waste</b>	<p>means any <b>non-liquid waste</b> that is:</p> <ul style="list-style-type: none"> <li>(a) specified in Part 2 of the Appendix to Schedule 1 of the <i>POEO Act</i>, or</li> <li>(b) otherwise assessed and classified as inert waste in accordance with the procedures set out in the <i>Waste Guidelines</i>.</li> </ul> <p>The types of inert waste specified in Part 2 are as follows:</p> <ul style="list-style-type: none"> <li>(a) Virgin excavated natural material (e.g., uncontaminated clay, gravel, sand, soil and rock);</li> <li>(b) Building and demolition waste (e.g. bricks, concrete, paper, plastics, glass, metal and timber);</li> <li>(c) Asphalt waste;</li> <li>(d) Biosolids categorised as Unrestricted Use, or as Restricted Use 1, in accordance with the criteria set out in the <i>Biosolids Guidelines</i>.</li> <li>(e) Used, rejected or unwanted tyres (including shredded tyres or tyre pieces.</li> <li>(f) Office and packaging waste that is not mixed with any other type of waste.</li> </ul> <p>(Refer to Part 2, Appendix to Schedule 1 of the <i>POEO Act</i>)</p>
<b>Land</b>	<p>includes water on or below the surface of land and the bed of such water (<i>CLM Act</i> s4).</p>
<b>Land pollution</b>	<p>means the degradation of land because of the disposal of <b>waste</b> on the land (<i>POEO Act</i> Dictionary).</p>
<b>LEC</b>	<p>NSW Land and Environment Court</p>
<b>Materials</b>	<p>includes raw materials, materials in the process of manufacture, manufactured materials, by-products or <b>waste</b> materials (<i>POEO Act</i> s126).</p>
<b>Material harm to the environment</b> <i>(see also harm to the environment)</i>	<p><b>harm to the environment</b> is material if:</p> <ul style="list-style-type: none"> <li>(a) it involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial; or</li> <li>(b) it results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (or such other amount as is prescribed by the regulations); and</li> <li>(c) it is no defence that harm to the environment was caused only in the <b>premises</b> where the <b>pollution incident</b> occurred (<i>POEO Act</i> s147).</li> </ul>

<b>Native vegetation</b>	<p>under the <i>NVC Act</i>, native vegetation means any of the following types of indigenous vegetation:</p> <ul style="list-style-type: none"> <li>(a) trees;</li> <li>(b) understorey plants;</li> <li>(c) groundcover;</li> <li>(d) plants occurring in a wetland.</li> </ul> <p>For the purposes of the <i>NVC Act</i>, native vegetation does not include any mangroves, seagrasses or any other type of marine vegetation within the meaning of the <i>Fisheries Management Act 1994</i> (<i>NVC Act</i> s6).</p>
<b>Network operator</b>	means a <b>transmission operator</b> or <b>distribution network service provider</b> .
<b>Noise</b>	includes sound and vibration ( <i>POEO Act</i> Dictionary).
<b>Noise pollution</b>	means the emission of <b>offensive noise</b> ( <i>POEO Act</i> Dictionary).
<b>Non-aqueous liquid waste</b>	means any liquid waste in which a liquid other than water constitutes more than 20% of the volume of liquid present ( <i>POEO Act</i> , Schedule 1, Part 3, Division 2).
<b>Non-liquid waste</b>	<p>means any <b>waste</b> that:</p> <ul style="list-style-type: none"> <li>(a) has an angle of repose of more than 5 degrees, and</li> <li>(b) does not contain, or is not comprised of, any free liquids (as determined in accordance with the <i>Waste Guidelines</i>), and</li> <li>(c) does not contain, or is not comprised of, any liquids that are capable of being released when the waste is transported, and</li> <li>(d) does not become free-flowing at or below 60 degrees Celsius or when it is transported, and</li> <li>(e) is generally capable of being picked up by a spade or shovel (<i>POEO Act</i>, Schedule 1, Part 3, Division 2).</li> </ul>
<b>Non-licensed waste activity</b>	<p>means an activity, carried on for business or other commercial purposes, that involves the generating or storage of any one or more of the following types of <b>waste</b> but which is not licensed under the <i>POEO Act</i>:</p> <ul style="list-style-type: none"> <li>(a) <b>hazardous waste</b>;</li> <li>(b) <b>industrial waste</b>;</li> <li>(c) <b>Group A waste</b> (<i>Waste Reg</i> clause 16(1)).</li> </ul>
<b>Non-scheduled activity</b>	an activity that is not listed in Schedule 1 of the <i>POEO Act</i> and which is not scheduled development work ( <i>POEO Act</i> Dictionary).
<b>Non-scheduled PCB material</b>	<b>PCB material</b> containing PCB at a concentration below 50 mg/kg (clause 4.12 of <i>PCB CCO</i> ).
<b>Non-scheduled PCB waste</b>	<b>PCB material</b> containing PCB at a concentration below 50 mg/kg (clause 4.13 of <i>PCB CCO</i> ).

<b>Notional owner</b>	a person who has an entitlement to have a freehold interest in the land, or who has a vested interest which enables the person to dispose of or otherwise deal with a freehold interest in the land, so that the person is able to benefit from the value of the land or a substantial portion of it by such vesting, disposal or dealing. A person is not a notional owner of land merely because the person has a security (such as a mortgage, charge or lien) over the land ( <i>CLM Act</i> s14).
<b>Nuisance</b>	interference with the enjoyment of public or private rights in a variety of ways. A nuisance is “public” if it materially affects the reasonable comfort and convenience of a sufficient class of people to constitute the public or a section of the public ( <i>LG Act</i> s125).
<b>Offensive noise</b>	means <b>noise</b> that is harmful to a person who is outside the <b>premises</b> from which it is emitted; or interferes unreasonably with the comfort or repose of a person who is outside the premises from which it is emitted; or is prescribed by the regulations ( <i>POEO Act</i> Dictionary, refer to DB definitions).
<b>Offensive odour</b>	means an odour that is harmful to a person who is outside the <b>premises</b> from which it is emitted; or interferes unreasonably with the comfort or repose of a person who is outside the premises from which it is emitted; or is prescribed by the regulations ( <i>POEO Act</i> Dictionary, refer to DB definitions).
<b>Owner of waste</b>	includes, in relation to <b>waste</b> that has been <b>disposed of</b> , the person who was the owner of the waste immediately before it was disposed of ( <i>POEO Act</i> s115).
<b>PCB</b>	polychlorinated biphenyl (clause 4.16 of <i>PCB CCO</i> ).
<b>PCB contaminated soils</b>	soils, or concrete or bricks present in soils, that contain PCBs at concentration levels above 2 mg/kg (clause 4.17 of <i>PCB CCO</i> ).
<b>PCB material</b>	articles, containers, equipment and other substances containing PCBs at concentration levels above 2 mg/kg (clause 4.18 of <i>PCB CCO</i> ).
<b>PCB waste</b>	waste containing PCB at concentration levels above 2 mg/kg (clause 4.19 of <i>PCB CCO</i> ).
<b>Penalty notice</b>	a notice to the effect that, if the person served with the notice does not wish to have a specified penalty notice offence dealt with by a court, the person may pay the penalty prescribed under section 227 for the offence:  (a) within the time specified in the notice (being 28 days from the date on which the notice was served); and  (b) to the person specified in the notice ( <i>POEO Act</i> s223).
<b>Pesticide</b>	pesticide under <i>Pesticides Act</i> s5 means:  (a) an <b>agricultural chemical product</b> within the meaning of the <i>Agvet Code</i> ; or  (b) a veterinary chemical product (within the meaning of the <i>Agvet Code</i> ) that is represented as being suitable for, or is manufactured, supplied or used for, the external control of ectoparasites of animals.

<b>Plant</b>	means any plant, equipment, apparatus, device, machine or mechanism, and includes any vessel, dredge, railway locomotive or crane, but does not include a motor vehicle ( <i>POEO Act Dictionary</i> ).
<b>Pollution incident</b>	means an incident or set of circumstances during or as a consequence of which there is, has been or is likely to be a leak, spill or other escape of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which <b>waste</b> has been placed or disposed of on <b>premises</b> unlawfully, but it does not include an incident or set of circumstances involving only the emission of any <b>noise</b> or odour ( <i>POEO Act Dictionary</i> ).
<b>Potential acid sulphate soils</b> <i>(see actual acid sulphate soils)</i>	soils that contain iron sulphides or sulphidic material that have not been exposed to air and oxidised. The field pH of these soils in their undisturbed state is pH 4 or higher and may be neutral or slightly alkaline. However, they pose a considerable environmental risk when disturbed, as they will become severely acidic when exposed to air and oxidised ( <i>Waste Guidelines Definitions and Glossary</i> ).
<b>Premises</b>	includes: (a) a building or structure; or (b) land or a place (whether enclosed or built on or not); or (c) a mobile plant, vehicle, vessel or aircraft ( <i>POEO Act Dictionary</i> ).
<b>Prescribed activity</b>	in relation to a <b>chemical</b> or any chemical waste, means the act of manufacturing, processing, keeping, distributing, <b>conveying</b> , using, selling or disposing of the chemical or <b>waste</b> or any act related to any such act ( <i>EHC Act s3(1)</i> ).
<b>Proclaimed work</b>	any work or proposed work declared by the Governor (via proclamation in the Gazette): (a) any work or proposed work for the storage, regulation or conservation of water, or (b) any work or proposed work for or in connection with any one or more of the following: (i) preventing or mitigating the inundation of land or the overflow of water thereon, (ii) defining or changing the course of a stream or river, (iii) maintaining or improving the banks or foreshores of a stream, river or harbour, or (iv) deepening or maintaining the depth of a stream or river. ( <i>SC Act s19</i> ).
<b>Prohibited activity</b>	in relation to an <b>environmentally hazardous chemical</b> or a <b>declared chemical waste</b> , means a prescribed activity the carrying on of which in relation to the chemical or waste is prohibited by a <b>chemical control order</b> ( <i>EHC Act s3(1)</i> ).

<b>Proponent</b>	in relation to an activity, means the person proposing to carry out the activity, and includes any person taken to be the proponent of the activity by virtue of section 110B ( <i>EPA Act</i> s110).
<b>Protected land</b>	means: (a) land that is the bank, shore or bed of <b>protected waters</b> , or (b) land that is not more than 40 metres from the top of the bank or shore of protected waters (measured horizontally from the top of the bank or shore), or (c) material at any time deposited, naturally or otherwise and whether or not in layers, on or under land referred to in paragraph (a) or (b) ( <i>Rivers and Foreshores Improvement Act 1948</i> s22A).
<b>Protected waters</b> (see <i>Constructing Authority</i> )	protected waters means a river, lake into or from which a river flows, coastal lake or lagoon (including any permanent or temporary channel between a coastal lake or lagoon and the sea) ( <i>Rivers and Foreshores Improvement Act 1948</i> s22A).
<b>Public authority</b>	means a public or local authority constituted by or under an Act, and includes: (a) a government department; or (b) a statutory body representing the Crown, a State owned corporation or a local council; or (c) a member of staff or other person who exercises functions on behalf of a public authority ( <i>POEO Act</i> Dictionary).
<b>Remediation work</b>	means work for the remediation, rehabilitation or monitoring of any <b>premises</b> which are or have been the subject of an <b>environment protection licence</b> , being work that is required to be carried out by or under the <i>POEO Act</i> : (a) while the premises are being used for the purposes to which the licence relates; or (b) after the premises cease being used for the purpose to which the licence relates, or both ( <i>POEO Act</i> Dictionary).
<b>Scheduled activity</b>	means an activity listed in <i>POEO Act</i> Schedule 1 ( <i>POEO Act</i> Dictionary).
<b>Scheduled chemical wastes</b>	means any <b>waste</b> liquid, sludge or solid (including waste articles and containers) which contain one or more constituents in the following list, where the total concentration of those constituents is more than one milligram per kilogram: Aldrin / Benzene, hexachloro- / Benzene, pentachloronitro- / alpha-BHC / beta-BHC / gamma-BHC Lindane / delta-BHC / Chlordane / DDD / DDE / DDT / Dieldrin / Endrin / Endrin aldehyde / Heptachlor / Heptachlor epoxide / Hexachlorophene / Isodrin / Pentachlorophenol / 1,2,4,5-tetrachlorobenzene Phenol / 2,4,5-trichloro / 2,3,4,6-tetrachlorophenol / 1,2,4-trichlorobenzene / 2,4,5-Trichlorophenoxyacetic acids, salts and esters (clause 4.11 and Schedule A of the <i>SCW CCO</i> ).

<b>Scheduled PCB material</b>	<b>PCB material</b> containing PCB which in aggregate contains 50 grams or more of PCBs at concentration levels of 50 mg/kg (clause 4.25 of <i>PCB CCO</i> ).
<b>Scheduled PCB waste</b>	<b>PCB waste</b> that contain PCB at concentration levels of 50 mg/kg or greater at 50 grams or greater (clause 4.26 of <i>PCB CCO</i> ).
<b>Solid waste</b>	means any <b>non-liquid waste</b> that is: <p>(a) specified in Part 4 of the Appendix to Schedule 1 of the <i>POEO Act</i>, or</p> <p>(b) otherwise assessed and classified as solid waste in accordance with the procedures set out in the <i>Waste Guidelines</i>.</p> <p>Solid waste includes cleaned <b>pesticide</b>, biocide, herbicide or fungicide containers, as well as non-chemical waste generated from manufacturing and services (including metal, timber, paper, ceramics, plastics, thermosets and composites).</p> <p>(Part 4, Appendix to Schedule 1 of the <i>POEO Act</i>)</p>
<b>Species impact statement (SIS)</b>	means a statement referred to in Part 6, Division 2 of the <i>TSC Act</i> . An <i>SIS</i> includes an environmental impact statement, prepared under the <i>EPA Act</i> , that contains a species impact statement.
<b>State protected land</b>	means: <p>(a) land that is identified in an order under s7 as State protected land, and</p> <p>(b) any land defined as protected land under s21AB of the <i>Soil Conservation Act 1938</i> (as in force immediately before the repeal of that section by this Act).</p>
<b>Transmission operator</b> <i>(see electricity Distributor)</i>	means a person who owns or controls a <b>transmission system</b> ( <i>ES Act Dictionary</i> )
<b>Transmission system</b> <i>(see distribution system)</i>	means any electricity power lines and associated equipment and <b>electricity structures</b> that are a <b>transmission system</b> by virtue of an order in force under s93 of the <i>ES Act</i> ( <i>ES Act Dictionary</i> ).
<b>Tree</b>	for the purposes of the <i>Electricity Supply (General) Regulation 2001</i> means a tree taller than 3 metres, or having a canopy more than 3 metres in maximum diameter or having a trunk with a circumference at a height of 1 metre from the ground of more than 0.3 metres ( <i>ES(G) Reg</i> clause 46).
<b>Waste</b> <i>(POEO Act)</i>	under the <i>POEO Act</i> , waste generally has the same meaning as in the <i>WMM Act</i> . However, waste carries a specific meaning in relation to <i>POEO Act</i> s115 (disposal of waste) and s143 (unlawful transporting), which state that waste includes any unwanted or surplus substance (whether solid, liquid or gaseous) and is not precluded from being waste merely because it may be reprocessed, re-used or recycled.

<p><b>Waste</b> (<i>WMM Act</i>)</p>	<p>under the <i>WMM Act</i>, waste includes:</p> <ul style="list-style-type: none"> <li>(a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause alteration in the environment; or</li> <li>(b) any discarded, rejected, unwanted, surplus or abandoned substance; or</li> <li>(c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or recycling, reprocessing, recovery or purification by a separate operation from that which produced the substance; or</li> <li>(d) any substance prescribed by the regulations to be a waste for the purposes of the <i>Waste Minimisation and Management Act 1995 (WMM Act s5)</i>.</li> </ul>
<p><b>Waters</b></p>	<p>means any river, stream, lake, lagoon, swamp, wetlands, unconfined surface water, natural or artificial watercourse, dam or tidal waters (including the sea); or any underground or artesian water (<i>CLM Act s4, POEO Act Dictionary</i>).</p> <p>For the purposes of the <i>POEO Act</i> the term <i>also</i> includes any water stored in artificial works, any water in water mains, water pipes or water channels.</p>
<p><b>Water pollution</b></p>	<p>includes placing a substance in water, or in a position where it is likely to enter water, such that it changes the condition of the water (see <i>POEO Act Dictionary</i> for full definition).</p>