

# Protection of the Environment Administration Regulation 2012

As at 4 August 2017

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Administration Act 1991*.

Minister for the Environment

## **Explanatory note**

The object of this Regulation is to replace, with no substantial changes, the *Protection of the Environment Administration Regulation 2007* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation makes provision for members of the Board of the Environment Protection Authority to make disclosures of interests as required by clause 7 (3) of Schedule 1 to the *Protection of the Environment Administration Act 1991*. In particular, the Regulation:

- (a) sets out requirements relating to the time that disclosures should be made and the form of such disclosures, and
- (b) prescribes the types of interests to be disclosed, including interests in real property, sources of outside income, gifts, contributions to travel, interests and positions in corporations, positions in associations, debts and dispositions of property, and
- (c) includes requirements for keeping a Register of Disclosures by members of the Board and for inspection of the Register.

This Regulation is made under the *Protection of the Environment Administration Act 1991* including clause 7 (3) of Schedule 1 and section 39 (the general regulation-making power).

This Regulation comprises or relates to matters referred to in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

## **Part 1 – Preliminary**

### **1 Name of Regulation**

This Regulation is the *Protection of the Environment Administration Regulation 2012*.

### **2 Commencement**

This Regulation commences on 1 September 2012 and is required to be published on the NSW legislation website.

This Regulation replaces the *Protection of the Environment Administration Regulation 2007* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### **3 Definitions**

- (1) In this Regulation: "**address**" means:
  - (a) in relation to an individual, the last residential or business address of the individual known to the member disclosing the address, and

- (b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place in which it is incorporated, and
- (c) in relation to any real property, the postal address of the property or the particulars of title of the property.

**"approved"** means approved by the Minister. **"debt"** means a debt arising from a loan of money or from the supply of goods or services. **"disposition of property"** means any conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property and includes the following:

- (a) the allotment of shares in a company,
- (b) the creation of a trust in respect of property,
- (c) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property,
- (d) the release, discharge, surrender, forfeiture or abandonment (at law or in equity) of any debt, contract, chose in action or any interest in respect of property,
- (e) the exercise by a person of a general power of appointment over property in favour of any other person,
- (f) any transaction entered into by any person with the intention of diminishing, directly or indirectly, the value of his or her own property and increasing the value of the property of any other person.

**"environmental association"** means a body or association, whether or not incorporated, having as one of its objects or activities environment protection within the meaning of the Act. **"gift"** means any transfer of property made otherwise than by will without consideration in money or money's worth passing from the receiver to the giver, or with some such not fully adequate consideration so passing, but does not include any financial or other contribution to travel. **"interest"** means:

- (a) in relation to any property, any estate, interest, right or power, whether at law or in equity, in or over the property, and
- (b) in relation to any corporation, a relevant interest in securities that are shares of the corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

**"member"** means a member of the Board. **"occupation"** includes trade, profession and vocation. **"ordinary return"** means the return referred to in clause 6. **"ordinary return period"** means the period referred to in clause 7. **"outside income"** of a member means the member's assessable income within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth excluding remuneration payable to the member under the *Statutory and Other Offices Remuneration Act 1975* in his or her capacity as a member. **"primary return"** means the return referred to in clause 4. **"primary return date"** means the date referred to in clause 5. **"professional or business association"** means a body or organisation, whether or not incorporated, having as one of its objects or activities the promotion of the economic interests of its members in any occupation. **"property"** includes money. **"public company"** means a listed company within the meaning of the *Corporations Act 2001* of the Commonwealth. **"re-appointed member"** means a member who, immediately on completion of a term of office, is re-appointed for another term. **"register"** means the register referred to in clause 19. **"relative"**, in relation to a member, means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the member or of the member's spouse,
- (b) the spouse (including a de facto partner) of the member or of any other person referred to in paragraph (a).

"De facto partner" is defined in section 21C of the *Interpretation Act 1987*. **"return"** means a primary return or an ordinary return. **"special disclosure"** means a disclosure made under clause 7

(1) or (4) of Schedule 1 to the Act. "**the Act**" means the *Protection of the Environment Administration Act 1991*. "**travel**" includes accommodation incidental to a journey.

(2) A reference in this Regulation to a disclosure concerning any real property, outside income, corporation or other thing includes a reference to a disclosure concerning any real property situated, outside income derived, corporation incorporated, or other thing arising or received, outside New South Wales.

(3) For the purposes of this Regulation, gifts or contributions to travel given, loans made, or goods or services supplied, to a member by 2 or more corporations that are related to each other within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth are taken to have been given, made or supplied by a single corporation.

(4) A reference in this Regulation to the lodgment of a return with the Board is a reference to the tabling at a meeting of the Board of a return completed in accordance with directions set out in the form containing disclosures in accordance with this Regulation.

(5) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 – Disclosures by Board members**

A contravention of this Part by a member is not an offence. However, a contravention by an appointed member, within the meaning of Schedule 1 to the Act, constitutes grounds for removal of the member under clause 6 (3) of that Schedule.

### **Division 1 – Returns and special disclosures**

#### **4 Primary returns**

(1) A person who becomes a member must lodge a primary return with the Board within 3 months after the person becomes a member.

(2) A primary return is to be in an approved form.

#### **5 Primary return date**

For the purposes of this Part, the "**primary return date**" is, in relation to a member other than a re-appointed member, the date of the member's appointment.

#### **6 Ordinary returns**

(1) A member must lodge an ordinary return with the Board before 1 October in each year.

(2) Despite subclause (1), a member in relation to whom the primary return date is after 30 April in any year must lodge his or her first ordinary return with the Board before 1 October in the following year.

(3) An ordinary return is to be in an approved form.

#### **7 Ordinary return period**

For the purposes of this Part, the "**ordinary return period**" in relation to which an ordinary return is to be lodged by a member in a particular year is:

(a) if the last return lodged by a member was an ordinary return--one year ending on 30 June in that year, or

(b) if the last return was a primary return--the period beginning on the first day after the primary return date in relation to the member and ending on 30 June in that year.

#### **8 Nil returns**

A member must comply with this Division in relation to returns even if no disclosures are included in a return.

#### **9 Special disclosures**

A member who makes a special disclosure must do so in writing in an approved form that is to be tabled at the relevant meeting of the Board and is to be recorded in the register as soon as

possible.

## **Division 2 – Matters to be disclosed**

### **10 Real property**

- (1) A member must disclose in a primary return and an ordinary return:
  - (a) the address of each parcel of real property in which the member had an interest:
    - (i) in the case of a primary return--on the primary return date, or
    - (ii) in the case of an ordinary return--at any time during the ordinary return period, and
  - (b) the nature of the interest in each such parcel of real property.
- (2) An interest referred to in this clause need not be disclosed by a member if the member had the interest only in his or her capacity:
  - (a) as the executor or administrator of an estate, and the member was not a beneficiary of the estate, or
  - (b) as a trustee, and the member acquired the interest otherwise than in the course of his or her duties as a member.

### **11 Sources of outside income**

- (1) A member must disclose:
  - (a) in a primary return--each source of outside income that the member reasonably expects to receive in the period commencing on the first day after the primary return date and ending on 30 June in the year in which the first ordinary return must be lodged by the member with the Board, and
  - (b) in an ordinary return--each source of outside income received by the member during the ordinary return period.
- (2) A reference in this clause to each source of outside income received, or reasonably expected to be received, by a member is a reference to:
  - (a) in relation to income from an occupation of the member:
    - (i) a description of the occupation, and
    - (ii) if the member is employed--the name and address of the member's employer, and
    - (iii) if the member is the holder of an office--a description of the office, and
    - (iv) if the member is in partnership--the name (if any) under which the partnership is conducted, and
  - (b) in relation to income from a trust--the name and address of the settlor and the trustee, and
  - (c) in relation to any other outside income--a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
- (3) The source of any outside income referred to in this clause need not be disclosed if the amount received, or reasonably expected to be received, by the member from that source did not, or will not, exceed \$500.

### **12 Gifts**

- (1) A member must disclose in an ordinary return the description of each gift received by the member during the ordinary return period and the name and address of the donor of each gift.
- (2) A gift referred to in this clause need not be disclosed:
  - (a) if the amount of the gift did not exceed \$500, unless the gift was one of 2 or more such gifts made by one person during the period and the amount of the gifts exceeded, in the aggregate, \$500, or
  - (b) if the donor was a relative of the member.

(3) In this clause, the amount of a gift comprising property other than money is taken to be an amount equal to the value of the property.

### **13 Contributions to travel**

- (1) A member must disclose in an ordinary return:
  - (a) the name and address of each person who made any financial or other contribution to any travel undertaken by the member during the ordinary return period, and
  - (b) the dates on which the travel was undertaken, and
  - (c) the names of the States, Territories and overseas countries in which the travel was undertaken.
- (2) A financial or other contribution referred to in this clause need not be disclosed:
  - (a) if the contribution was made from public funds (including travel on free passes issued under any Act and travel in government vehicles), or
  - (b) if the contribution was made by a relative of the member, or
  - (c) if the contribution was made otherwise than in the course of his or her duties as a member, or
  - (d) if the amount of the contribution did not exceed \$250, unless the contribution was one of 2 or more such contributions made by one person during the period and the amount of the contributions exceeded, in the aggregate, \$250.
- (3) In this clause, the amount of a contribution (other than a financial contribution) is taken to be an amount equal to the value of the contribution.

### **14 Interests and positions in corporations**

- (1) A member must disclose in a primary return and an ordinary return:
  - (a) the name and address of each corporation in which he or she had an interest or held any position (whether remunerated or not) on the primary return date or at any time during the ordinary return period, as the case may be, and
  - (b) the nature of the interest, or a description of the position held, in each corporation, and
  - (c) except in the case of a public company--a description of the principal objects of each such corporation.
- (2) An interest or position referred to in this clause need not be disclosed if the corporation is formed for the purpose of providing recreation or amusement or promoting art, science, religion or charity or for any other community purpose.

### **15 Positions in associations**

A member must disclose in a primary return and an ordinary return:

- (a) the name of each professional, business or environmental association in which he or she held any position (including any honorary position) on the primary return date or at any time during the ordinary return period, as the case may be, and
- (b) a description of each position held.

### **16 Debts**

- (1) A member must disclose in a primary return and an ordinary return the name and address of each person to whom the member was liable to pay any debt:
  - (a) in the case of a primary return--on the primary return date, or
  - (b) in the case of an ordinary return--at any time during the ordinary return period.
- (2) The liability referred to in this clause must be disclosed whether or not the amount, or any part of the amount, was due and payable on that date or at any time during that period.
- (3) The liability referred to in this clause need not be disclosed:
  - (a) if the amount to be paid did not exceed \$500, unless the debt was one of 2 or more such debts that the member was liable to pay to one person and the amounts to be paid exceeded, in the aggregate, \$500, or

- (b) if the member was liable to pay the debt to a relative, or
- (c) if the debt arose from a loan of money, and the member was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender, or
- (d) if the debt arose from the supply of goods or services, and the goods or services were supplied:
  - (i) in the period of 12 months immediately preceding the primary date, or
  - (ii) during the ordinary return period, or
  - (iii) in the ordinary course of any occupation of the member that is not related to his or her duties as a member.

### **17 Dispositions of property**

- (1) A member must disclose in an ordinary return particulars of each disposition of real property effected by the member, at any time during the ordinary return period, as a result of which the member retained, either wholly or in part, the use and benefit of the property or the right to re-acquire it at a later time.
- (2) A member must disclose in an ordinary return particulars of each disposition of property (whether real or personal) effected by any other person, at any time during the ordinary return period, under arrangements made by the member as a result of which the member obtained, either wholly or in part, the use and benefit of the property.

### **18 Discretionary disclosures**

A member may, at his or her discretion, disclose in any return any direct or indirect benefits, advantages or liabilities, whether or not pecuniary:

- (a) that are not required to be disclosed by any other provision of this Division, and
- (b) that the member considers might appear to raise a conflict between the member's other interests and his or her public duty as a member, or that the member otherwise desires to disclose.

## **Division 3 – Register of disclosures**

### **19 Register**

- (1) The Board is to compile and maintain a register called the *Register of Disclosures by Members of the Board of the Environment Protection Authority* containing disclosures by members in accordance with the Act and this Part.
- (2) The register constitutes the book required to be kept under clause 7 (5) of Schedule 1 to the Act.

### **20 Form of register**

- (1) The register is to consist of the returns lodged, and any special disclosures made, by members within the previous 8 years, or within such longer period as may be required to include the primary returns of all current members.
- (2) The register is to be divided into the following parts:
  - (a) a part for primary returns,
  - (b) a part for the ordinary returns lodged in respect of each ordinary return period,
  - (c) a part for special disclosures.
- (3) The returns filed in any part of the register are to be filed in alphabetical order according to the surnames of the members concerned.

### **21 Inspection of register**

- (1) The register is to be open for public inspection at the head office of the Authority at all reasonable hours on payment of the fee (if any) determined by the Board in accordance with clause 7 (5) of Schedule 1 to the Act.
- (2) The register is to be open to inspection by members at the head office of the Authority at any time the register is open for public inspection and at any other reasonable time by arrangement with the Chairperson.

## Part 3 – Miscellaneous

### 22 Savings

Any act, matter or thing that had effect under the *Protection of the Environment Administration Regulation 2007* immediately before the repeal of that Regulation continues to have effect under this Regulation.

### Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cl	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Protection of the Environment Administration Regulation 2012 (409)*. LW 24.8.2012. Date of commencement, 1.9.2012, cl 2.