

STATE POLLUTION CONTROL COMMISSION (LICENCES
AND APPROVALS) AMENDMENT ACT, 1983, No. 96

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 96, 1983.

An Act to amend the State Pollution Control Commission Act, 1970, so as to consolidate provisions relating to the issuing of licences and the giving of approvals for the purposes of the Clean Air Act, 1961, the Clean Waters Act, 1970, and the Noise Control Act, 1975, by providing for the issuing of licences and the giving of approvals under the State Pollution Control Commission Act, 1970, in relation to pollution generally. [Assented to, 9th November, 1983.]

See also Clean Air (Licences and Approvals) Amendment Act, 1983; Clean Waters (Licences and Approvals) Amendment Act, 1983; Noise Control (Licences and Approvals) Amendment Act, 1983; Land and Environment Court (State Pollution Control Commission) Amendment Act, 1983.

State Pollution Control Commission (Licences and Approvals) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "State Pollution Control Commission (Licences and Approvals) Amendment Act, 1983".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Section 5 shall, in its application to a provision of Schedule 1 or 2, commence on the day on which the provision commences.

(3) Schedule 1 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The State Pollution Control Commission Act, 1970, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 3.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

State Pollution Control Commission (Licences and Approvals) Amendment.

Amendment of Act No. 95, 1970.

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Savings, transitional and other provisions.

6. Schedule 3 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS.

(1) Section 2—

After the matter relating to Part III, insert:—

PART IIIA.—LICENCES AND APPROVALS—ss. 17A–17N.

DIVISION 1.—*Licences*—ss. 17A–17H.

DIVISION 2.—*Pollution control approvals*—ss. 17I–17L.

DIVISION 3.—*Appeals*—ss. 17M, 17N.

(2) (a) Section 5, definition of “authorised officer”—

Before the definition of “Chairman”, insert:—

“authorised officer”, in relation to a power, authority, duty or function under this or any other Act, means a person authorised in writing by the Commission, either generally or in a special case, to exercise or perform that power, authority, duty or function;

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(b) Section 5, definition of “Court”—

After the definition of “Commission”, insert:—

“Court” means the Land and Environment Court;

(c) Section 5, definitions of “licence”, “occupier”, “pollution”, “pollution control approval”, “premises”—

After the definition of “Director”, insert:—

“licence” means a licence granted under this Act and in force, whether it is an original licence or a renewed licence;

“occupier”, in relation to premises, means the person in occupation or control of the premises and, in relation to any premises where different parts are occupied or controlled by different persons, means, in relation to any such part, the person in occupation or control of that part;

“pollution” means—

- (a) air pollution as defined in section 5 (1) of the Clean Air Act, 1961;
- (b) pollution of waters within the meaning of the Clean Waters Act, 1970;
- (c) the emission of offensive noise as defined in section 4 (1) of the Noise Control Act, 1975; and
- (d) pollution of any other kind, being pollution affecting any part of the environment and however caused;

“pollution control approval” means a pollution control approval given under this Act and in force;

“premises” includes place and vessel;

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—continued.****(d) Section 5, definition of “vessel”—**

After the definition of “Technical Advisory Committee”, insert:—

“vessel” means ship, lighter, barge, boat, craft, or vessel of whatever description and however navigated;

(3) Part IIIA—

After Part III, insert:—

PART IIIA.**LICENCES AND APPROVALS.****DIVISION 1.—*Licences.*****Persons may apply for licences required under certain other Acts.**

17A. A person may apply to the Commission for a licence in respect of any one or more of the following:—

- (a) scheduled premises within the meaning of the Clean Air Act, 1961;
- (b) the pollution of waters within the meaning of the Clean Waters Act, 1970;
- (c) a drain which discharges or is likely to be used for discharging any pollutants into any classified waters within the meaning of the Clean Waters Act, 1970;
- (d) scheduled premises within the meaning of the Noise Control Act, 1975.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.***Applications.**

17B. (1) An application under section 17A or an application for the renewal or transfer of a licence shall be made to the Commission in or to the effect of the prescribed form and shall be accompanied by the prescribed fee.

(2) An application for the renewal of a licence shall be made within the prescribed time before the licence would expire if not renewed.

(3) An application for the transfer of a licence shall be made with the consent of the holder of the licence.

Short-term licences.

17C. (1) An applicant may, in an application under section 17A or an application for the renewal of a licence, request that the licence be granted or renewed, as the case may be, for a specified period, being a period less than one year.

(2) The prescribed fee which shall accompany an application made as referred to in subsection (1) is the fee calculated in the prescribed manner.

(3) The Commission shall not grant an application made as referred to in subsection (1) unless it is satisfied that—

- (a) the act, matter or thing in respect of which the application is made is of a temporary nature; and
- (b) it is appropriate, in all the circumstances, to grant or, as the case may be, renew a licence in respect of the act, matter or thing for the period specified in the application.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—continued.****Licences.**

17D. (1) Subject to section 17C (3) and subsection (2), the Commission—

- (a) may grant any application for a licence or for the renewal or transfer of a licence, either subject to conditions or unconditionally; or
- (b) may refuse any such application.

(2) The Commission shall not, under subsection (1), refuse an application unless, before so doing—

- (a) it has given notice to the applicant that it intends to do so;
- (b) it has specified in that notice the reasons for its intention to do so;
- (c) it has given the applicant a reasonable opportunity to make submissions to it in relation to the proposal; and
- (d) it has taken into consideration any such submissions by the applicant.

(3) Except as provided by subsection (5), the Commission may, during the currency of a licence, by notice in writing served on the holder of the licence—

- (a) revoke the licence or suspend it for such period expiring not later than the date of expiry of the licence as the Commission thinks fit;
- (b) revoke or vary any conditions attached to the licence; or
- (c) attach new conditions to the licence.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(4) In exercising its powers under this section, the Commission shall have regard to—

- (a) the pollution being or likely to be caused by the applicant and the impact of that pollution on the environment; and
- (b) the practical measures which may be taken—
 - (i) to prevent, control, abate or mitigate that pollution; and
 - (ii) to protect the environment from defacement, defilement or deterioration as a result of that pollution.

(5) The Commission shall not, under subsection (3), revoke or suspend a licence unless, before so doing—

- (a) it has given notice to the holder of the licence that it intends to do so;
- (b) it has specified in that notice the reasons for its intention to do so;
- (c) it has given the holder of the licence a reasonable opportunity to make submissions to it in relation to the proposal; and
- (d) it has taken into consideration any such submissions by the holder of the licence.

(6) The refusal of an application, the revocation or suspension of a licence, the revocation or variation of any condition attached to a licence or the attaching of a condition to a licence, under this section, has no force—

- (a) until the time limited for appealing against the Commission's decision has expired; and
- (b) where within that time an appeal against the decision has been made under this Act, until the Court confirms the decision or the appeal is withdrawn.

*State Pollution Control Commission (Licences and Approvals) Amendment.*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(7) Nothing in this section authorises the attaching to a licence of a condition with which the holder could not comply without failing to meet any requirement made by or under the Clean Air Act, 1961, the Clean Waters Act, 1970, or the Noise Control Act, 1975.

(8) Where a holder of a licence cannot meet any requirement made by or under an Act referred to in subsection (7) without failing to comply with a condition for the time being attached to the licence, the holder shall, by meeting the requirement, be deemed to comply with the condition.

(9) Any person who, being the holder of a licence, contravenes any condition of the licence is guilty of an offence against this Act and is liable—

(a) where the offence was committed by a corporation—

(i) except as provided by subparagraph (ii)—to a penalty not exceeding \$40,000 and to a further penalty not exceeding \$20,000 for each day the offence continues; and

(ii) where the contravention relates exclusively to the emission of noise—to a penalty not exceeding \$10,000 and to a further penalty not exceeding \$1,000 for each day the offence continues; or

(b) where the offence was committed by any other person—

(i) except as provided by subparagraph (ii)—to a penalty not exceeding \$20,000 and to a further penalty not exceeding \$10,000 for each day the offence continues; and

(ii) where the contravention relates exclusively to the emission of noise—to a penalty not exceeding \$5,000 and to a further penalty not exceeding \$100 for each day the offence continues.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.***Duration of licences.**

17E. Subject to this Division—

- (a) an original licence remains in force—
 - (i) except as provided by subparagraph (ii), for a period of one year from the date of its grant; or
 - (ii) in the case of a licence applied for as referred to in section 17C (1), for the period requested commencing from the date of its grant; and
- (b) a renewed licence remains in force—
 - (i) except as provided by subparagraph (ii), until the expiration of the period of one year specified in the renewal; or
 - (ii) in the case of a renewal applied for as referred to in section 17C (1), until the expiration of the period requested and specified in the renewal.

Registers of licences.

17F. The Commission shall cause to be kept such registers of licences as may be prescribed.

Fees.

17G. (1) Without affecting the generality of section 32 (3), different fees may be prescribed for the purposes of section 17B (1) according to specified factors or circumstances.

(2) Where the Commission is satisfied that any pollution would not be such as to warrant the payment of the prescribed fee for a licence, the Commission may, upon the application of the person

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

applying for the licence or for the renewal or transfer of the licence, remit in whole or in part the fee payable under this Division for the licence.

Requirement to furnish information, etc.

17H. The Commission may, by notice in writing served on an applicant for a licence, require the applicant to furnish to the Commission such information and such plans and specifications as the Commission considers necessary and relevant to the application and specifies in the notice.

DIVISION 2.—*Pollution control approvals.***Persons may apply for approval to alter method of operation, type of fuel, etc.**

17I. A person may apply to the Commission for pollution control approval—

- (a) to do any thing specified in—
 - (i) section 16 (1) (a) or (b) or (2) (a) of the Clean Air Act, 1961;
 - (ii) section 19 (1) (a) of the Clean Waters Act, 1970; or
 - (iii) section 27 (1) (a) or (2) (a) of the Noise Control Act, 1975;
- (b) to do any thing that constitutes the beginning of, or any subsequent step in, the doing of any of the things so specified; or
- (c) to do any 2 or more of the things referred to in paragraph (a) or (b).

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—continued.****Application for pollution control approval.**

17J. (1) An application under section 17I shall be made to the Commission in or to the effect of the prescribed form and shall be accompanied by—

- (a) the prescribed fee; and
- (b) details of the work proposed to be undertaken, together with details of the methods intended to be adopted so as to control pollution.

(2) Without affecting the generality of section 32 (3), different fees may be prescribed for the purposes of subsection (1) according to specified factors or circumstances.

Pollution control approvals.

17K. (1) Subject to subsection (2), the Commission—

- (a) may grant any application under section 17I, either subject to conditions or unconditionally; or
- (b) may refuse any such application.

(2) The Commission shall not, under subsection (1), refuse an application unless, before so doing—

- (a) it has given notice to the applicant that it intends to do so;
- (b) it has specified in that notice the reasons for its intention to do so;
- (c) it has given the applicant a reasonable opportunity to make submissions to it in relation to the proposal; and
- (d) it has taken into consideration any such submissions by the applicant.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(3) Without affecting the generality of subsection (1), the Commission may—

- (a) refuse an application under section 171, having regard to the location at which any work that is the subject of the application is to be carried out; or
- (b) attach to a pollution control approval a condition that requires, or has the effect of requiring, that any work that is the subject of the approval is to be carried out at a location specified or referred to in the approval.

(4) The Commission may revoke any condition attached to a pollution control approval.

(5) Any person who contravenes any condition attached to a pollution control approval is guilty of an offence against this Act and is liable—

(a) where the offence was committed by a corporation—

- (i) except as provided by subparagraph (ii)—to a penalty not exceeding \$40,000 and to a further penalty not exceeding \$20,000 for each day the offence continues; and
- (ii) where the contravention relates exclusively to the emission of noise—to a penalty not exceeding \$10,000 and to a further penalty not exceeding \$1,000 for each day the offence continues; or

(b) where the offence was committed by any other person—

- (i) except as provided by subparagraph (ii)—to a penalty not exceeding \$20,000 and to a further penalty not exceeding \$10,000 for each day the offence continues; and

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(ii) where the contravention relates exclusively to the emission of noise—to a penalty not exceeding \$5,000 and to a further penalty not exceeding \$100 for each day the offence continues.

Requirement to furnish information, etc.

17L. The Commission may, by notice in writing served on an applicant for a pollution control approval, require the applicant to furnish to the Commission such information and such plans and specifications as the Commission considers necessary and relevant to the application and specifies in the notice.

DIVISION 3.—*Appeals.***Appeals to Court: licences, approvals.**

17M. (1) Any person—

- (a) who makes application for a licence or for the renewal or transfer of a licence, or who is the holder of a licence, and who is aggrieved by any decision of the Commission with respect to the application or licence; or
- (b) who makes application for a pollution control approval and who is aggrieved by the decision of the Commission with respect to the application,

may, within the prescribed period after being served with notice of the decision, appeal to the Court.

(2) The Court shall not decide an appeal under subsection (1) in such a manner that its decision would be likely to affect the condition of any waters so that those waters would not conform to their classification under the Clean Waters Act, 1970.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(3) The decision of the Court in an appeal under this section shall be final and is binding on the appellant and the Commission.

Disputes between Commission and public authorities, etc.

17N. (1) Where a dispute arises between the Commission and a public authority or a person acting on behalf of the Crown with respect to any matter or thing against which an appeal lies under this Division, the Commission or that authority or person may refer the dispute to the Premier for settlement.

(2) The decision of the Premier on a dispute referred to the Premier by the Commission, a public authority or a person acting on behalf of the Crown in accordance with subsection (1) shall be given effect to by the Commission and that authority or person.

(3) Where a dispute is settled by the Premier under this section, the public authority which or person who was a party to the dispute is not entitled to appeal under this Part against the matter or thing to which the dispute related.

(4) (a) Section 24 (1)–(2)—

Omit section 24 (1) and (2), insert instead:—

(1) For the purpose of enabling the Commission to exercise and perform its powers, authorities, duties and functions under this Act, an authorised officer may enter—

(a) any premises used as a factory or any premises in which an industry or trade is being carried on—at any time during which any manufacturing, industrial or trade process is being carried on therein;

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(b) any premises, not being a dwelling-house or land used in connection therewith, in or from which the authorised officer reasonably suspects pollution is being or is likely to be caused—at any time; and

(c) any other premises—at any reasonable time,

and may therein—

(d) examine any apparatus, equipment, works or plant;

(e) take and remove such samples and make such examination and inquiry and such tests as the authorised officer considers necessary to ascertain whether the conditions in force and attached to any licence or pollution control approval are being or have been complied with and otherwise as the authorised officer considers necessary in connection with the administration of this Act; and

(f) take such photographs as the authorised officer considers necessary in connection with the administration of this Act.

(1A) An authorised officer may, by notice in writing, require—

(a) the occupier of any premises in or from which pollution is being or is usually caused to produce to the authorised officer any records, reports, books, plans, maps or documents relating to the cause of any such pollution in or from those premises or relating to any manufacturing, industrial or trade process carried on in or on those premises; or

(b) any public authority to produce to the authorised officer any records, reports, books, plans, maps or documents in the custody or possession of the public authority relating to any apparatus, equipment, works

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

or plant from which any pollution is or may be caused, which causes or may cause any pollution or which is or may be used for causing pollution,

and may take copies of any such records, reports, books, plans, maps or documents.

(1B) A requirement made as referred to in subsection (1A) to produce to an authorised officer records, reports, books, plans, maps or documents shall, where the records, reports, books, plans, maps or documents are recorded or stored by means of a mechanical, electronic or other device, be construed as a requirement to produce to the authorised officer the records, reports, books, plans, maps or documents in written form or to provide the authorised officer with a document containing a clear reproduction in writing of them.

(1C) Subsection (1A) (b) only applies to an authorised officer who is a member or officer of the Commission.

(1D) The Commission may, by notice in writing served on the occupier of any premises, require the occupier to provide within such time and in such manner as are specified in the notice such assistance and facilities (whether of the same kind as, or of a different kind from, those prescribed pursuant to section 32 (2) (c)) as are specified therein, for the purpose of enabling an authorised officer to exercise and perform the powers, authorities, duties and functions conferred or imposed on the authorised officer by or under this Act.

(2) Any person—

(a) who wilfully delays or obstructs an authorised officer, or fails to comply with any requirement made under this section by an authorised officer, in the exercise

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

and performance of the powers, authorities, duties and functions conferred or imposed on the authorised officer by or under this Act; or

(b) who, being the occupier of any premises—

- (i) refuses to permit or to assist an authorised officer to do the matters or things, or any of the matters or things, which the authorised officer is authorised to do;
- (ii) refuses to provide such assistance and facilities as may be prescribed for the purpose of enabling an authorised officer to exercise and perform the powers, authorities, duties and functions conferred or imposed on the authorised officer by or under this Act; or
- (iii) refuses to comply with a requirement made under subsection (1D),

is guilty of an offence against this Act and liable to a penalty not exceeding \$1,000.

(b) Section 24 (3)—

Omit “person authorised under subsection (1)”, insert instead “authorised officer”.

(c) Section 24 (4)—

Omit the subsection.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(5) Section 27A—

After section 27, insert:—

Evidence.

27A. (1) In this section, “instrument” includes a notice.

(2) Any instrument purporting to be an instrument issued, made or given for the purposes of this Act (including subsection (3) or (4)) and to have been signed by the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so is admissible in any proceedings under this Act and shall, in the absence of evidence to the contrary, be deemed to be such an instrument and to have been so signed.

(3) A document certified by the Director or by an officer of the Commission authorised generally or specially by the Commission or the Director to do so to be a true copy of an instrument, being an instrument purporting—

- (a) to be issued, made or given for the purposes of this Act; and
- (b) to have been signed by the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so,

is admissible in any proceedings under this Act as if it were the original document of which it purports to be a copy.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(4) A certificate signed by the Director or by an officer of the Commission authorised generally or specially by the Commission or the Director to do so certifying any one or more of the following matters, that is to say—

- (a) that an instrument, a copy of which is set out in the certificate, being an instrument purporting—
 - (i) to be issued, made or given for the purposes of this Act; and
 - (ii) to have been signed by the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so,
- was issued, made or given on a day specified in the certificate;
- (b) that a person was, or was not, at a time or during a period so specified, the holder of a licence in respect of premises so specified;
- (c) that a licence was, or was not, at a time or during a period so specified, subject to conditions so specified;
- (d) that a condition attached to a licence was, at a time so specified, revoked or varied;
- (e) that a new condition was, at a time so specified, attached to a licence;
- (f) that a pollution control approval was, or was not, given in relation to any matter so specified;
- (g) that a pollution control approval was, or was not, subject to conditions so specified;
- (h) that a person was, or was not, at a time or during a period so specified, an authorised officer;

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(i) that a person was, or was not, at a time or during a period so specified, an officer of the Commission,

is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so certified.

(6) Section 28A—

After section 28, insert:—

Service of notices under this Act.

28A. Any notice or other instrument issued, made or given for the purposes of this Act (not being a notice, summons, writ or other proceeding required to be served on the Commission) may be served—

- (a) by delivering it personally to the person to whom it is addressed;
- (b) by delivering it to the place of abode or business of the person to whom it is addressed and by leaving it there for the person with some other person; or
- (c) by posting it duly stamped and addressed to the person to whom it is addressed at the place last shown in the records of the Commission as the person's place of abode or business.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—continued.****(7) Sections 30, 30A, 31—**

Omit section 31, insert instead:—

Power to order contravention to be remedied.

30. Where any person has been convicted of an offence against this Act arising in respect of the failure to comply with a condition attached to a licence or with a condition subject to which a pollution control approval is granted, not being a failure exclusively involving the emission of noise, the court by which the person is convicted—

- (a) in addition to imposing a penalty for the offence, may order that person to take such steps within such time as may be specified in the order to prevent the continuance or recurrence of the offence; and
- (b) may enlarge the time so specified,

and if, upon the expiration of the time originally specified or so enlarged, the order has not been complied with, the person so convicted is guilty of a further offence against this Act and is liable—

- (c) where the offence was committed by a corporation—to a penalty not exceeding \$20,000; or
- (d) where the offence was committed by any other person—to a penalty not exceeding \$10,000,

for every day that the non-compliance continues after that time.

Orders for restoration and compensation.

30A. (1) Where, in proceedings before the Court for an offence against this Act arising in respect of the failure to comply with a condition attached to a licence or with a condition subject to which

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

a pollution control approval is granted, being a failure which involves the pollution of any waters (within the meaning of the Clean Waters Act, 1970), a person is convicted, the Court, in addition to imposing a penalty for the offence, may—

- (a) order the person so convicted to take such steps as are specified in the order, within such time as is so specified or such further time as the Court upon application may allow, to remove, disperse, destroy or mitigate any pollution caused by reason of the commission of the offence; and
- (b) where it appears to the Court that—
 - (i) any public authority has incurred costs and expenses in connection with the removal, dispersion, destruction or mitigation of any such pollution; or
 - (ii) any other person has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the person so convicted to pay to the public authority or other person costs and expenses so incurred, or compensation for loss of or damage to property so suffered, as the case may be, in such amount as is fixed by the order.

(2) A person to whom an order under subsection (1) (a) has been given and who fails to comply with the order within the time specified therein (or, where the Court upon application allowed further time, within the time so allowed) is guilty of an offence against this Act and is liable—

- (a) where the offence was committed by a corporation—to a penalty not exceeding \$20,000; or
- (b) where the offence was committed by any other person—to a penalty not exceeding \$10,000,

for every day that the non-compliance continues after that time.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—continued.**

(3) An order under subsection (1) (b) is enforceable as if it were an order made by the Court in proceedings referred to in section 20 of the Land and Environment Court Act, 1979.

Proceedings for offences.

31. (1) Proceedings for an offence against this Act or the regulations may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone or before the Court in its summary jurisdiction.

(2) Subject to subsection (3), proceedings for an offence against this Act (section 26 excepted) or the regulations shall not be instituted without the written consent of the Minister or of such member or officer of the Commission as may be authorised in writing by the Minister for the purposes of this subsection.

(3) Subsection (2) does not apply to the institution of proceedings for an offence if the proceedings are instituted by a member or officer of the Commission and with—

- (a) the consent of the Commission; or
- (b) the written consent of such member or officer of the Commission as may be authorised by the Commission for the purposes of this paragraph,

not being proceedings against the Crown, or a person acting on behalf of the Crown, or a public authority.

(4) If proceedings in respect of an offence against this Act or the regulations are brought in a court of petty sessions held before a stipendiary magistrate, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, \$4,000 (including any daily penalty) or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(5) If proceedings in respect of an offence against this Act or the regulations are brought in the Court in its summary jurisdiction, the Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

(6) Proceedings in the Court in its summary jurisdiction in respect of an offence against this Act or the regulations may only be commenced within 6 months after the offence was committed.

(8) Section 32 (2)–(4)—

At the end of section 32, insert:—

(2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to—

- (a) the issue, renewal, refusal, revocation, suspension or transfer of licences and the giving or refusal of pollution control approvals;
- (b) the keeping of registers under this Act;
- (c) the assistance and facilities (including means of access, and the means of making examinations, inspections and tests) to be provided by occupiers of premises to enable authorised officers to exercise their powers under this Act;
- (d) the tests to be used for the purpose of ascertaining whether any condition attached to a licence or pollution control approval is being or has been complied with, being tests which may adopt, by reference, any required or permitted to be used for purposes under the Clean Air Act, 1961, the Clean Waters Act, 1970, or the Noise Control Act, 1975; and
- (e) appeals under Division 3 of Part IIIA.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(4) The regulations may impose, for an offence against the regulations committed—

(a) by a corporation—

- (i) except as provided by subparagraph (ii)—a penalty not exceeding \$20,000 and, in the case of a continuing offence, a further penalty not exceeding \$10,000 for each day the offence continues; and
- (ii) where the offence relates exclusively to the emission of noise—a penalty not exceeding \$2,500 and, in the case of a continuing offence, a further penalty not exceeding \$500 for each day the offence continues; or

(b) by any other person—

- (i) except as provided by subparagraph (ii)—a penalty not exceeding \$10,000 and, in the case of a continuing offence, a further penalty not exceeding \$5,000 for each day the offence continues; and

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO LICENCES AND APPROVALS—*continued.*

(ii) where the offence relates exclusively to the emission of noise—a penalty not exceeding \$250 and, in the case of a continuing offence, a further penalty not exceeding \$50 for each day the offence continues.

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

(1) (a) Section 6 (2) (b) (i)—

Omit “Local Government”, insert instead “Local Government and Lands”.

(b) Section 6 (3)—

Omit “subparagraph (iii) or (iv) of paragraph (a) of subsection (2)”, insert instead “subsection (2) (a) (iii) or (iv)”.

(c) Section 6 (3)—

Omit “that subparagraph”, insert instead “that subsection”.

(d) Section 6 (6)—

Omit “under subparagraph (i), (ii) or (iii) of paragraph (b) of subsection (2)”, insert instead “as referred to in subsection (2) (b)”.

(e) Section 6 (16)—

Omit “Public Service Act, 1902”, insert instead “Public Service Act, 1979”.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDELE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE
LAW REVISION—*continued.*

(2) (a) Section 8 (1)—

Omit “subsection (1) (paragraph (h) excepted) or (2) of section 7”, insert instead “section 7 (subsection (1) (h) excepted)”.

(b) Section 8 (2), (4)—

Omit “Local Government (Superannuation)” wherever occurring, insert instead “Local Government and Other Authorities (Superannuation)”.

(3) Section 9 (6)—

After “present” where firstly occurring, insert “and voting”.

(4) Sections 10 (1), 21 (4)—

Omit “Public Service Act, 1902” wherever occurring, insert instead “Public Service Act, 1979”.

(5) (a) Section 15—

Omit “paragraphs (a), (b) and (c) of section 11”, insert instead “section 11 (a), (b) and (c)”.

(b) Section 15—

Omit “paragraph (a) of section 12”, insert instead “section 12 (a)”.

(6) (a) Section 18 (2) (a)—

Omit “Primary Industries”, insert instead “Agriculture and Fisheries”.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 2—*continued.*

**AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE
LAW REVISION—*continued.***

(b) Section 18 (2) (c)—

Omit the paragraph, insert instead:—

(c) one shall be an officer of the Department of Mineral Resources nominated by the Minister for Mineral Resources;

(c) Section 18 (2) (1)—

Omit the paragraph, insert instead:—

(1) one shall be an officer of the Department of Environment and Planning nominated by the Minister;

(7) Section 20 (1)—

Omit “subsection (1) of section 19”, insert instead “section 19 (1)”.

(8) (a) Section 23 (5) (a)—

Omit “paragraph (a) of subsection (2)”, insert instead “subsection (2) (a)”.

(b) Section 23 (5) (a)—

Omit “that subsection”, insert instead “subsection (2)”.

(c) Section 23 (5) (b)—

Omit “paragraph (b) of that subsection”, insert instead “subsection (2) (b)”.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 3.

(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

1. (1) In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires—

“appointed day” means the day appointed and notified under section 2 (3);

“Commission” means the State Pollution Control Commission;

“former licence” means a license under the Clean Air Act, 1961, a licence under the Clean Waters Act, 1970, or a licence under the Noise Control Act, 1975.

(2) In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires, expressions used in this Schedule have the same meanings as in the Principal Act, as amended by this Act.

Former licences remain in force.

2. A former licence in force immediately before the appointed day shall be deemed to have been issued under the Principal Act, as amended by this Act, and shall remain in force until it is surrendered in accordance with clause 3 or until the date when, but for the amendment of the Principal Act by this Act, it would have ceased to be in force, whichever first occurs.

Surrender of former licences.

3. (1) Where a licence is issued under the Principal Act in respect of any premises, matter or thing in respect of which a former licence is in force, the holder of the former licence may surrender the former licence to the Commission.

(2) Where a former licence is surrendered as referred to in subclause (1), the Commission may refund to the holder of the former licence such proportion of the fee paid in respect of the former licence as it thinks fit having regard to the period for which the former licence would have continued in force.

Approvals deemed to be given under Principal Act.

4. An approval given by the Commission under section 16 of the Clean Air Act, 1961, as in force at any time before the appointed day, section 19 of the Clean Waters Act, 1970, as so in force, or section 27 of the Noise Control Act, 1975, as so in force, shall be deemed to be a pollution control approval given under the Principal Act, as amended by this Act.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Pending applications.**

5. (1) An application duly made and not determined before the appointed day, being an application under the Clean Air Act, 1961, as in force at any time before the appointed day, the Clean Waters Act, 1970, as so in force, or the Noise Control Act, 1975, as so in force, for a former licence or for the renewal or transfer of a former licence, shall be deemed to be an application under the Principal Act, as amended by this Act, for a licence or for the renewal or transfer of a licence, as the case may be.

(2) An application duly made and not determined before the appointed day, being an application for approval under section 16 of the Clean Air Act, 1961, as in force at any time before the appointed day, section 19 of the Clean Waters Act, 1970, as so in force, or section 27 of the Noise Control Act, 1975, as so in force, shall be deemed to be an application duly made under the Principal Act, as amended by this Act, for a pollution control approval.

Revocations, etc., not yet effective.

6. Where—

- (a) a refusal of an application for a former licence or for the renewal or transfer of a former licence;
- (b) a revocation or suspension of a former licence;
- (c) a revocation or variation of a condition attached to a former licence; or
- (d) the attaching of a new condition to a former licence,

which is in accordance with a decision of the Commission made before the appointed day does not take effect before the appointed day, the decision of the Commission shall be deemed to have been made under the Principal Act, as amended by this Act.

Pending appeals.

7. (1) An appeal duly made and not determined before the appointed day, being an appeal under section 26 of the Clean Air Act, 1961, as in force at any time before the appointed day, section 25 (1) of the Clean Waters Act, 1970, as so in force, or section 68 (1) of the Noise Control Act, 1975, as so in force, in relation to a decision of the Commission with respect to an application or a former licence shall be deemed to have been duly made under the Principal Act, as amended by this Act.

State Pollution Control Commission (Licences and Approvals) Amendment.

SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(2) For the purposes of an appeal referred to in subclause (1)—

- (a) an application the subject of a decision by the Commission, being an application for a former licence or for the renewal or transfer of a former licence shall be treated by the Court as an application under the Principal Act, as amended by this Act, for a licence or for the renewal or transfer of a licence, as the case may be;
- (b) a former licence the subject of a decision by the Commission shall be treated by the Court as a licence under the Principal Act, as amended by this Act; and
- (c) an application the subject of a decision by the Commission, being an application for approval under section 16 of the Clean Air Act, 1961, as in force at any time before the appointed day, section 19 of the Clean Waters Act, 1970, as so in force, or section 27 of the Noise Control Act, 1975, as so in force, shall be treated by the Court as an application under the Principal Act, as amended by this Act, for a pollution control approval.

Regulations.

8. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding the foregoing clauses of this Schedule.
