

**STATE POLLUTION CONTROL COMMISSION
(AMENDMENT) ACT 1987 No. 187**

NEW SOUTH WALES



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STATE POLLUTION CONTROL COMMISSION (AMENDMENT)
ACT 1987 No. 187

NEW SOUTH WALES



Act No. 187, 1987

An Act to amend the State Pollution Control Commission Act 1970 so as to assist the enforcement of laws aimed at preventing pollution of the environment. [Assented to 4 December 1987]

See also Clean Air (Amendment) Act 1987, Clean Waters (Amendment) Act 1987, Environmentally Hazardous Chemicals (Amendment) Act 1987, Noise Control (Amendment) Act 1987.

State Pollution Control Commission (Amendment) 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the State Pollution Control Commission (Amendment) Act 1987.

Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Principal Act

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

Amendment of Act No. 95, 1970

4. The Principal Act is amended as set out in Schedule 1.

Savings and transitional provisions

5. Schedule 2 has effect.

SCHEDULE 1—AMENDMENTS

(Sec. 4)

(1) Section 5 (**Interpretation**)—

(a) Definition of “licence”—

Omit the definition, insert instead:

“licence” means a licence granted under this Act for the purposes of a Pollution Control Act and in force;

(b) Definition of “Pollution Control Acts”—

After the definition of “pollution”, insert:

“Pollution Control Acts” means—

(a) this Act;

(b) the Clean Air Act 1961;

(c) the Clean Waters Act 1970;

(d) the Environmentally Hazardous Chemicals Act 1985; and

(e) the Noise Control Act 1975;

(c) Definition of “pollution control approval”—

After “Act” insert “for the purposes of a Pollution Control Act”.

SCHEDULE 1—AMENDMENTS—*continued***(d) Section 5 (2)—**

At the end of section 5, insert:

(2) In this Act, a reference to a licence includes a reference to a renewed licence.

(2) Section 16 (Delegation)—**Section 16 (3A)—**

After section 16 (3), insert:

(3A) A condition of a delegation or authorisation may permit or require the exercise or performance of such of the powers, authorities, duties and functions as may be conferred or imposed on the Commission by or under this or any other Act as in force from time to time.

(3) Section 17H—

Omit the section, insert instead:

Conditions requiring monitoring by licensees

17H. (1) The conditions of a licence may require the holder of the licence to supply to the Commission, when required by those conditions, particulars certified by that holder (or by another person approved by the Commission) as correct and which relate—

(a) to the doing or completion of anything required to be done by those conditions; or

(b) to the operation or maintenance of premises, plant or equipment to which the licence relates.

(2) Without affecting the generality of subsection (1), conditions of a licence may require the supply of particulars derived from monitoring—

(a) the operation of plant or equipment; or

(b) ambient conditions prevailing at or near the premises, plant or equipment,

to which the licence relates, and the provision and maintenance of appropriate measuring and recording devices.

(4) Section 17J (Application for pollution control approval)—**Section 17J (1A)—**

After section 17J (1), insert:

(1A) An application under section 17J may, with the consent of the Commission, be varied by the applicant before it is dealt with under section 17K.

*State Pollution Control Commission (Amendment) 1987***SCHEDULE 1—AMENDMENTS—*continued*****(5) Section 17K (Pollution control approvals)—****(a) Section 17K (3) (b)—**

Omit the paragraph, insert instead:

- (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 shall not be carried out—
 - (i) except at a location described in the approval; or
 - (ii) except in such stages as are described in the approval, as are commenced only after compliance with requirements described in the approval and as are carried out in accordance with other requirements so described.

(b) Section 17K (4A)—

After section 17K (4), insert:

(4A) A pollution control approval for the carrying out of work expires—

- (a) 2 years; or
- (b) if the Commission is satisfied on reasonable grounds that that period should be extended—3 years,

after the granting of the application for the approval, unless the work has been substantially commenced within that period.

(6) Section 17L—

Omit the section, insert instead:

Conditions requiring monitoring by holders of approvals

17L. The conditions of a pollution control approval may require the holder of the approval to supply to the Commission, when required by those conditions, particulars certified by that holder (or by another person approved by the Commission) as correct and which relate to the doing or completion of anything—

- (a) authorised to be done by the approval; or
- (b) required to be done by those conditions.

(7) Part IIIA, Division 4—

After Division 3 of Part IIIA, insert:

DIVISION 4—*Miscellaneous***Request for further details about applications**

17O. The Commission may, by written notice served on—

- (a) an applicant for a licence; or

SCHEDULE 1—AMENDMENTS—*continued*

(b) an applicant for a pollution control approval, require the applicant to supply 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.

Effect of false or misleading particulars supplied by licensees etc.

17P. (1) A holder of a licence or a pollution control approval who supplies particulars for the purposes of a condition referred to in section 17H or 17L is guilty of the offence of contravening a condition of the licence or approval if any of the particulars is false or misleading in a material respect.

(2) Any particulars so supplied to the Commission shall not, if the holder objects (when supplying them) to doing so on the ground that they might tend to incriminate the holder, be admissible in evidence in any prosecution of that holder for any offence, except an offence created by subsection (1).

(8) Section 18 (Technical Advisory Committee)—**(a) Section 18 (1)—**

Omit “which shall consist of the Director, and seventeen”, insert instead “, which shall consist of the Director (or, in the Director’s absence, a member or officer of the Commission nominated by the Director) and 18”.

(b) Section 18 (2) (k1)—

After section 18 (2) (k), insert:

(k1) one shall be a representative of the Soil Conservation Service of New South Wales nominated by the Commissioner of that Service;

(c) Section 18 (5)—

After “Director”, insert “(or, in the Director’s absence, the member of the Committee nominated by the Director)”.

(d) Section 18 (6)—

Omit the subsection.

(9) Section 22 (Meetings of Technical Advisory Committee and other committees)—**Section 22 (2) (a)—**

Omit “nine”, insert instead “9, including the Director or the member of the Committee nominated by the Director”.

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SCHEDULE 1—AMENDMENTS—continued**(10) Section 22A—**

Before section 23, insert:

Definitions

22A. In this Part—

“licence” includes a licence granted under the Environmentally Hazardous Chemicals Act 1985;

“local authority” means the council of a city, municipality or shire.

(11) Section 26—

Omit the section, insert instead:

Disclosure of information

26. (1) Except as provided by subsections (3) and (4), a person is guilty of an offence against this Act and liable to a penalty not exceeding \$4,000 if the person discloses any information about any manufacturing or other industrial or commercial secrets or working processes, being information obtained in connection with the administration or execution of any of the Pollution Control Acts (the Environmentally Hazardous Chemicals Act 1985 excepted) or a regulation made under any of those Acts (that Act excepted), unless the disclosure of information is—

- (a) made, otherwise than in contravention of a provision of any of those Acts, in connection with the administration or execution of any such Act or regulation;
- (b) made with the prior permission of the Minister;
- (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974.

(2) The Minister may grant the permission referred to in subsection (1) (b) only if the Minister is satisfied that to do so would be in the public interest.

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(3) An officer of the Commission authorised in writing by the Commission for the purposes of this section may communicate any matter which comes to the knowledge of the officer in the exercise of any power, authority, duty or function under any of the Pollution Control Acts or a regulation made under any such Act—

- (a) to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to pollution, chemicals or chemical wastes or to the protection of the environment; or
- (b) to any person, when communication of the matter to that person is reasonably related to the prevention of harm that may be, or the amelioration of harm that has been, caused to the public, to any person or property or to the environment.

(4) The Commission may disclose the following information by publishing it in such manner as it considers appropriate:

- (a) particulars of licences and pollution control approvals and the conditions to which they are subject;
- (b) any of the particulars supplied to the Commission under section 17H or 17L by the holder of a licence or a pollution control approval;
- (c) the particulars of any notice given under—
 - (i) section 17 or 20 of the Clean Air Act 1961;
 - (ii) Part V of the Noise Control Act 1975;
 - (iii) section 35 of the Environmentally Hazardous Chemicals Act 1985; or
 - (iv) any prescribed provision of any Pollution Control Act or of any regulation made under any such Act.

(5) Subsection (4) does not authorise the Commission to disclose any information about manufacturing or other industrial or commercial secrets obtained from any premises except with the consent of the occupier of those premises.

(12) Section 27 (**Proof of certain matters**)—

(a) Section 27 (c)–(c3)—

Omit section 27 (c), insert instead:

- (c) the appointment of any member or any officer of the Commission, the Technical Advisory Committee, the Clean Waters Advisory Committee or the Hazardous Chemicals Advisory Committee;

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- (c1) the appointment of any member or servant of a local authority;
- (c2) the appointment of the Secretary or any officer or employee of the Department of Health;
- (c3) the appointment of the General Manager or any officer or employee of the Maritime Services Board;

(b) Section 27 (2)—

At the end of section 27, insert:

(2) In any legal proceedings by the Commission, no proof shall be required (until evidence is given to the contrary) of the fact that a person is, or at any relevant time was, the occupier of any land to which the proceedings relate.

(13) Sections 27A, 27B—

Omit section 27A, insert instead:

Evidence of documents and certificate evidence

27A. (1) Any instrument purporting—

- (a) to be an instrument issued, made or given for the purposes of a Pollution Control Act (including any instrument referred to in subsections (2)–(5)); and
- (b) to have been signed by the Minister, the Director, a member of the Commission, the Secretary of the Department of Health, an authorised officer, an officer or employee of the Maritime Services Board authorised by the General Manager of that Board to sign it, a member or servant of a local authority or any other person authorised by a Pollution Control Act to issue, make or give the instrument,

is admissible in any proceedings under a Pollution Control Act and shall, in the absence of evidence to the contrary, be deemed to be such an instrument and to have been so signed.

(2) A document certified by the Director or an authorised officer to be a true copy of an instrument, being an instrument purporting—

- (a) to be issued, made or given for the purposes of a Pollution Control Act; and
- (b) to have been signed by the Minister, the Director, a member of the Commission, the Secretary of the Department of Health or an authorised officer,

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

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(3) A certificate signed by the Director or an authorised officer and certifying any one or more of the following:

- (a) that an instrument, a copy of which is set out in or annexed to the certificate, being an instrument purporting—
 - (i) to be issued, made or given for the purposes of a Pollution Control Act; and
 - (ii) to have been signed by the Minister, the Director, a member of the Commission, the Secretary of the Department of Health or an authorised officer, 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 particular licence so specified, a licence of a kind so specified or a licence in respect of premises, plant or equipment 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 licence was, at a time so specified, revoked or suspended for a period so specified;
- (e) that a condition attached to a licence was, at a time so specified, revoked or varied in the manner so specified or 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, at a time or during a period so specified, 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;
- (i) that a person was, or was not, at a time or during a period so specified, an officer of the Commission, the Department of Health or the Maritime Services Board or a servant of a local authority;
- (j) that an exemption was, or was not, given under a Pollution Control Act or a regulation made under any such Act in relation to any matter so specified;
- (k) that any such exemption was, or was not, at a time or during a period so specified, in force or subject to conditions so specified;

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- (l) that any such exemption was, or was not, or that any such conditions were, or were not, varied or revoked at a time so specified;
- (m) that any consent necessary for bringing proceedings for an offence against a Pollution Control Act or a regulation made under any such Act has been duly given;
- (n) that an order, a copy of which is set out in or annexed to the certificate, was for the purposes of section 21F, 24 or 24A of the Clean Air Act 1961 published in a manner so specified and on a day so specified;
- (o) that premises are within an area to which an order under section 24 or 24A of the Clean Air Act 1961 applies, a copy of which order is set out in or annexed to the certificate;
- (p) that a requirement was, or was not, made under section 17 or 20 of the Clean Air Act 1961 by the Commission in relation to any matter so specified;
- (q) that a register kept under a Pollution Control Act shows that premises so specified were, at a time or during a period so specified, within a specified classification referred to in regulations made under any such Act;
- (r) that a notice, a copy of which is set out in or annexed to the certificate, was for the purposes of section 12 of the Clean Waters Act 1970 published in the Gazette or a newspaper specified in the certificate on a day so specified;
- (s) that a drain was or was not specified in a licence as a drain from which pollutants may be discharged into any waters; or
- (t) that premises are within a part of the State to which a proclamation under section 17 of the Noise Control Act 1975 relates, a copy of which proclamation is set out in or annexed to the certificate,

is admissible in any proceedings under a Pollution Control Act and shall be *prima facie* evidence of the matters so certified.

- (4) A certificate signed by an authorised officer—

- (a) setting out the result of any test carried out for the purposes of a Pollution Control Act or any regulations made under any such Act; and

SCHEDULE 1—AMENDMENTS—*continued*

(b) at the discretion of the authorised officer who signed the certificate, describing the manner in which the test was carried out,

is admissible in any proceedings under a Pollution Control Act and is *prima facie* evidence of the matters so set out and described.

(5) A certificate signed by an authorised officer—

(a) setting out—

(i) the result of any analysis of a substance carried out for the purposes of a Pollution Control Act or any regulations made under any such Act; and

(ii) that the analysis was carried out by a specified authorised officer; and

(b) at the discretion of the authorised officer who signed the certificate, describing the manner in which the analysis was carried out,

is admissible in any proceedings under a Pollution Control Act and is *prima facie* evidence of the nature of the substance analysed and of the matters so set out and described.

(6) In this section—

“authorised officer”, in relation to signing or certifying an instrument, includes—

(a) an officer of the Commission authorised by the Director; and

(b) an officer of the Department of Health authorised by the Secretary of that Department,

to sign or certify the instrument;

“instrument” includes a notice, an order and a written direction.

Evidence of occupation of premises and ownership of equipment

27B. (1) In proceedings for an offence against a Pollution Control Act, a certificate under section 27A that is admitted in evidence and that certifies that a person was, at a time or during a period, the holder of a licence or a pollution control approval for premises shall be accepted by the court as evidence of the truth of an allegation, in the information relating to the offence, that—

(a) the person was, at that time or during that period, the occupier of those premises; and

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(b) the premises were, at that time or during that period, scheduled premises, within the meaning of the Pollution Control Act specified in the certificate,

unless the contrary is proved or unless it is proved that the person was not, at that time or during that period, the holder of a licence or an approval for those premises.

(2) In proceedings for an offence against a Pollution Control Act, a certificate under section 27A that is admitted in evidence and that certifies that a person was, at a time or during a period, the holder of a licence for equipment shall be accepted by the court as evidence of the truth of an allegation, in the information relating to the offence, that—

(a) the person was, at that time or during that period, the owner of that equipment; and

(b) the equipment was, at that time or during that period, scheduled equipment, within the meaning of a Pollution Control Act specified in the certificate,

unless the contrary is proved or unless it is proved that the person was not, at that time or during that period, the holder of a licence for that equipment.

(3) In proceedings for an offence against a Pollution Control Act, evidence that a register kept under any such Act shows that premises were, at a time or during a period, within a classification specified in the register shall be accepted by the court as evidence of the truth of an allegation, in the information relating to the offence, that the premises were, at that time or during that period, within that classification, unless the contrary is proved.

(4) In this section—

“information” includes an application referred to in section 41 of the Land and Environment Court Act 1979.

(14) Sections 30B, 30C—

After section 30A, insert:

Offences by corporations

30B. (1) If a corporation contravenes, whether by act or omission, a provision of—

(a) any of the Pollution Control Acts; or

(b) a regulation made under any such Act,

each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

SCHEDULE 1—AMENDMENTS—*continued*

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against any such Act or regulation.

(4) In this section—

“Pollution Control Acts” does not include the Environmentally Hazardous Chemicals Act 1985.

Prosecutions in the name of the Commission

30C. If a person can prosecute an offence against a Pollution Control Act as a member, officer or employee of the Commission, the person may prosecute in the name of the Commission.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 5)

Variation of certain applications

1. Section 17J (1A) of the Principal Act, as amended by this Act, applies to an application made under section 17I of that Act before the commencement of that subsection but which was not dealt with under section 17K of that Act before that commencement.

Saving of conditions attached to pollution control approvals

2. A condition attached under section 17K (3) (b) of the Principal Act to a pollution control approval before the commencement of Schedule 1 (5) shall be deemed to have been attached under section 17K (3) (b) of that Act, as amended by this Act.

Expiration of pollution control approvals

3. Section 17K (4A) of the Principal Act, as amended by this Act, does not apply to a pollution control approval the application for which was granted before the commencement of that subsection.

Requests for further details about applications

4. (1) Section 17O of the Principal Act, as amended by this Act, applies to an applicant for a licence or a pollution control approval even though the application was made before the commencement of that section.

(2) A notice served under section 17H or 17L of the Principal Act before the commencement of Schedule 1 (7) shall be deemed to have been served under section 17O of that Act, as amended by this Act.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Evidence of documents and certificate evidence**

5. (1) Sections 27A and 27B of the Principal Act, as amended by this Act, apply in respect of—

- (a) an instrument purporting to have been issued, made or given;
- (b) an instrument or document signed or certified; and
- (c) a certificate signed,

for the purposes of a Pollution Control Act, whether before or after the commencement of Schedule 1 (13).

(2) The provisions of section 27A (4) and (5) of the Principal Act, as amended by this Act, apply to a test and an analysis carried out for the purposes of a Pollution Control Act, or regulations made under any such Act, whether before or after the commencement of Schedule 1 (13).

(3) In this clause—

“Pollution Control Act” has the same meaning as in the Principal Act, as amended by this Act.