

CLEAN AIR (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 92, 1974.

An Act to make further provisions relating to the prevention and minimising of air pollution; to vary the composition and functions of the Air Pollution Advisory Committee; for these and other purposes to amend the Clean Air Act, 1961, and the Local Government Act, 1919; to validate certain matters; and for purposes connected therewith. [Assented to, 11th December, 1974.]

BE

Clean Air (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by No. 92, 1974
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:—

1. This Act may be cited as the "Clean Air (Amendment) Short
title.
Act, 1974".

2. (1) This section and section 1 shall commence on Commence-
ment.
the date of assent to this Act.

(2) Section 5 (14) shall commence on the day
appointed and notified under section 2 of the New South
Wales Planning and Environment Commission Act, 1974,
or shall be deemed to have commenced on that day if the
date of assent to this Act is later than that day.

(3) Except as provided in subsections (1) and (2),
the several provisions of this Act shall commence on such
day or days as may be appointed by the Governor in respect
thereof and as may be notified by proclamation published in
the Gazette.

3. (1) The Clean Air Act, 1961, is amended— Amend-
ment of
Act No.
69, 1961.

(a) by omitting section 1 (3) and by inserting instead Sec. 1.
(Short
title,
commence-
ment
and
division
of Act.)
the following subsection :—

(3) This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–5.

PART II.—AIR POLLUTION ADVISORY COM-
MITTEE—ss. 6–8.

PART III.—SCHEDULED PREMISES—ss. 9–17.

DIVISION 1.—*Licensing provisions*—ss. 9–
13.

DIVISION 2.—*Other provisions*—ss. 14–17.

PART

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PART IV.—PREMISES OTHER THAN SCHEDULED
PREMISES—*ss.* 18–21.PART IVA.—MOTOR VEHICLES—*ss.* 21A–21G.PART V.—GENERAL PROVISIONS—*ss.* 22–35.

SCHEDULE.

Sec. 4.

(b) by omitting section 4 and by inserting instead the following section :—

Effect of
this Act on
other
Acts.

4. (1) Subject to subsection (2), nothing in this Act affects any of the provisions of any other Act, or any regulations, ordinances or by-laws thereunder, or takes away any powers vested in any person or body by any other Act, or any regulations, ordinances or by-laws made under any other Act.

(2) Where the provisions of this Act are inconsistent with any of the provisions of any other Act or any regulation, ordinance or by-law made under any other Act (other than the State Pollution Control Commission Act, 1970, or any regulation thereunder), the provisions of this Act shall prevail.

(3) Where the provisions of any regulation made under this Act are inconsistent with any of the provisions of any regulation, ordinance or by-law made under any other Act (other than a regulation made under the State Pollution Control Commission Act, 1970), the provisions of the regulation made under this Act shall prevail.

Sec. 5.
(Inter-
pretation.)

(c) (i) by omitting from section 5 (1) the words “unless the context” and by inserting instead the words “except in so far as the context”;

(ii)

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(ii) by omitting the definition of "Control equipment" in section 5 (1) and by inserting instead the following definition:—

"Control equipment" means—

- (a) any apparatus used for separating any air impurities from the gas medium in which they are carried;
- (b) any automatic device used for securing the more efficient operation of any fuel burning equipment;
- (c) any device used for indicating or recording air pollution or for giving warning of excessive air pollution; and
- (d) any other device used for the purposes of limiting air pollution,

and includes any apparatus or device which, though not so used, is, or would, if properly maintained and operated, be, capable (without modification) of being so used, but does not include a prescribed anti-pollution device.

(iii) by omitting the definition of "Fuel burning equipment" in section 5 (1) and by inserting instead the following definition:—

"Fuel burning equipment" means—

- (a) any machine, engine, generator, vessel, dredge, railway locomotive or crane;
- (b) any furnace, boiler, fireplace, oven, retort, kiln, incinerator, open fire or chimney; or

(c)

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(c) any other apparatus, device, mechanism or structure,

in the operation of which fuel or other combustible material is or is to be used or which is or is to be used in or in connection with the burning of fuel or other combustible material, but does not include a motor vehicle.

(iv) by omitting the definition of "Industrial plant" in section 5 (1) and by inserting instead the following definition :—

"Industrial plant" means—

(a) any plant or equipment used for the manufacturing, processing, handling, moving, storing or disposing of materials (including raw materials, materials in the process of manufacture, manufactured materials, by-products and waste materials) in or in connection with any trade, industry or process; or

(b) any plant or equipment of a prescribed class or description, but does not include fuel burning equipment or a motor vehicle.

(v) by inserting in the definition of "Premises" in section 5 (1) after the word "place" the words "and vessel";

(vi) by omitting section 5 (3) (b);

Sec. 6.
(Air
Pollution
Advisory
Com-
mittee.)

(d) (i) by omitting from section 6 (1) the word "twelve" and by inserting instead the word "thirteen";

(ii)

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- (ii) by omitting from section 6 (2) (b) the word "eleven" and by inserting instead the word "twelve";
- (iii) by omitting section 6 (2) (b) (ii) and by inserting instead the following subparagraph:—
- (ii) one shall be nominated by the Minister for Local Government;
- (iv) by inserting after section 6 (2) (b) (viii) the following subparagraph :—
- (ix) one shall be a member of the Health Commission of New South Wales nominated by that Commission or an officer of that Commission so nominated.
- (v) by inserting in section 6 (6) (a) after the word "member" the words "(other than the member referred to in subsection (2) (b) (ii))";
- (vi) by inserting after section 6 (6) (a) the following paragraph:—
- (a1) If any casual vacancy occurs in the office of the member referred to in subsection (2) (b) (ii), the Governor may appoint a person to hold office for the balance of his predecessor's term of office.
- (vii) by omitting from section 6 (6) (b) the words "such appointment" and by inserting instead the words "appointment under this subsection";

(viii)

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(viii) by omitting section 6 (8) (c) and by inserting instead the following paragraph :—

(c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

(ix) by omitting from section 6 (9) (a) the words “may be prescribed” and by inserting instead the words “the Minister may from time to time determine in respect of that member”;

(x) by omitting from section 6 (9) (b) the words “, or any Act amending that Act”;

(xi) by omitting from section 6 (10) the words “as amended by subsequent Acts,”;

(xii) by omitting from section 6 (10) the words “any such Act” and by inserting instead the words “that Act”;

Sec. 7.
(Sub-committees.)

(e) (i) by omitting from section 7 (4) (a) the words “may be prescribed” and by inserting instead the words “the Minister may from time to time determine in respect of that member”;

(ii) by omitting from section 7 (4) (b) the words “, or any Act amending that Act”;

Sec. 8.
(Functions of Committee.)

(f) (i) by omitting from section 8 (1) the word “Minister” and by inserting instead the word “Commission”;

(ii) by omitting section 8 (3);

Sec. 10.
(Scheduled premises to be licensed.)

(g) by omitting section 10 (b) and by inserting instead the following paragraph:—

(b) who after the provisions of this Division were applied to any part of the State, but before the commencement of section 3 (1) (g) of the Clean Air (Amendment) Act,

1974,

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1974, commenced to use any premises within that part as scheduled premises and who within the prescribed period after his so commencing made or makes application for a license in respect of those premises;
or

- (h) (i) by omitting section 11 (1) and (2) and by inserting instead the following subsections :— (Licenses.)

(1) An application for a license or for the renewal or transfer of a license shall be made to the Commission on an application form that has been provided by the Commission and that is in or to the effect of the prescribed form, and shall be accompanied by the prescribed fee.

(2) The Commission—

(a) may grant any application for a license or for the renewal or transfer of a license, either subject to conditions or unconditionally; or

(b) may refuse any such application.

(2A) The Commission may, during the currency of a license, by a notice in writing served on the holder of the license—

(a) revoke the license or suspend it for such period expiring not later than the date of expiry of the license as it thinks fit;

(b) revoke or vary any condition attached to the license; or

(c) attach new conditions to the license.

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(ii) by inserting after section 11 (4) the following subsections :—

(5) In exercising its powers under subsection (2) or (2A), the Commission shall have regard to the extent of the air pollution being or likely to be caused by the applicant at the premises to which the application relates.

(6) The refusal of an application, the revocation or suspension of a license, the revocation or variation of any condition attached to a license, or the attaching of a new condition to a license, under this section, shall not have any 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 District Court confirms the decision.

(7) The Commission may require an applicant for a license to furnish to the Commission such information and such plans and specifications as the Commission considers necessary and relevant to the application.

Sec. 13.
(Ins.)

- (i) (i) by omitting from section 13 (1) the words "one thousand dollars" and by inserting instead the matter "\$3,000";
- (ii) by omitting from section 13 (3) the words "upon the recommendation of the Committee";
- (iii) by omitting from section 13 (4) the words "one thousand dollars" wherever occurring and by inserting instead the matter "\$3,000";

(j)

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- (j) by inserting at the end of section 14 the following subsections :—

Sec. 14.
(Occupiers
to maintain
and operate
equipment,
etc.)

(2) The occupier of any scheduled premises who operates any fuel burning equipment or industrial plant in or on those premises in such a manner as to cause or increase air pollution from those premises is guilty of an offence if the air pollution so caused or increased, or any part thereof, is caused by reason of his failure—

- (a) to maintain that equipment or plant in an efficient condition; or
(b) to operate that equipment or plant in a proper and efficient manner.

(3) The occupier of any scheduled premises who processes, handles, moves or stores any materials in such a manner as to cause or increase air pollution from those premises is guilty of an offence if the air pollution so caused or increased, or any part thereof, is caused by reason of his failure to process, handle, move or store those materials in a proper and efficient manner.

(4) Subsections (2) and (3) have effect notwithstanding anything contained in section 15 or any exemption from the provisions of section 15 granted by the Minister.

(5) In subsection (3), "materials" includes raw materials, materials in the process of manufacture, manufactured materials, by-products and waste materials.

- (k) (i) by omitting from section 15 (1) the words "the prescribed point" and by inserting instead the words "any point specified in or determined in accordance with the regulations";

Sec. 15.
(Prescribed
standards
of air
impurities
not to be
exceeded—
scheduled
premises.)

- (ii)

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(ii) by omitting from section 15 (2) the words
 “, or operate any fuel burning equipment or
 industrial plant,”;

Sec. 15A.

(1) by inserting after section 15 the following
 section :—

Emission of
 odours from
 scheduled
 premises.

15A. (1) The occupier of any scheduled premises shall not, unless he is in special circumstances exempted from the provisions of this section by the Minister, cause, permit or allow the emission of any odour from those premises.

(2) A person shall not be convicted of an offence arising under subsection (1) unless it is established that the odour was detected or perceived outside the premises referred to in that subsection by an authorised officer relying solely on his sense of smell.

(3) A person is not guilty of an offence arising under subsection (1) if he satisfies the court—

(a) that, having regard to the nature and location of the area in which the odour was detectable, it was not likely that there would be any persons in that area at the time when the odour was detectable, other than persons associated with the management or operation of the scheduled premises;

(b)

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(b) that the odour was not associated with or aggravated by any trade, industry or process conducted, or any fuel burning equipment or industrial plant operated, in or on the scheduled premises; or

(c) that the odour was emitted from a motor vehicle.

(4) Subsection (1) does not apply to the occupier of any scheduled premises—

(a) who, at the commencement of section 3 (1) (1) of the Clean Air (Amendment) Act, 1974, is the occupier of those premises and who, within six months after that commencement, makes application for those premises to be exempted by the Minister from this section;

(b) who, at the time when the provisions of this Division are, after that commencement, applied to the part of the State in which those premises are situated, is the occupier of those premises and who, within six months after that time, makes application for those premises to be exempted by the Minister from this section; or

(c) who has made application under section 11 (4) for the transfer to him of a license in respect of those premises and who, within six months after he became the occupier of those premises, makes application for those premises to be exempted by the Minister from this section,

until his application for exemption has been finally determined.

(5) Subsection (1) has effect notwithstanding anything in section 15 or any exemption from the provisions of section 15 granted by the Minister.

(6)

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(6) A reference in this section to an odour includes a reference to an odorous air impurity.

Sec. 16.

(m) by omitting section 16 and by inserting instead the following section :—

Certain work not to be carried out on scheduled premises except with approval of Commission.

16. (1) The occupier of any scheduled premises—

(a) shall not—

(i) alter the method of operation of, or the type of fuel used in the operation of, any trade, industry or process, or fuel burning equipment or industrial plant, in or on those premises;

(ii) alter the type of materials that are the subject of any trade, industry or process in or on those premises; or

(iii) install, alter or replace any fuel burning equipment or industrial plant in or on those premises,

if by so doing he is likely to cause or increase air pollution from those premises;

(b) shall not erect, or alter the height of, any chimney through which air impurities may be emitted from those premises; or

(c) shall not carry out any work in or on those premises that constitutes the beginning of, or any subsequent step in, any work of—

(i) the nature referred to in paragraph (a) (iii), if, were the installation, alteration or replacement completed, it would be likely that he would cause or increase air pollution from those premises; or

(ii)

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- (ii) the nature referred to in paragraph No. 92, 1974
(b),

except in accordance with an approval in writing given by the Commission or in accordance with a notice under section 17.

(2) The occupier of any premises—

(a) shall not—

- (i) in or on any premises carry out any work that would cause those premises to be scheduled premises;
or

- (ii) on any land construct any building designed for use for a purpose that would cause the land or building to be scheduled premises; or

- (b) shall not carry out any work in or on those premises that constitutes the beginning of, or any subsequent step in, any work of the nature referred to in paragraph (a),

except in accordance with an approval in writing given by the Commission.

(3) An application for an approval under this section shall be in or to the effect of the prescribed form and accompanied by—

- (a) the prescribed fee;
- (b) details of the trade, industry or process proposed to be carried on in or on the premises or proposed premises, together with details of the methods intended to be adopted so as to control air pollution that may be associated with the subject-matter of the application; and

(c)

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(c) evidence that any necessary approval required under the Local Government Act, 1919, has been obtained.

(4) Different fees may be prescribed for the purposes of subsection (3) according to any prescribed factors.

(5) The Commission—

(a) may grant any application under this section, either subject to conditions or unconditionally; or

(b) may refuse any such application.

(6) Without affecting the generality of subsection (5), the Commission may—

(a) refuse an application under this section, having regard to the site on which any work that is the subject of the application is to be carried out; or

(b) attach to an approval under this section 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 on a site specified or referred to in the approval.

(7) The Commission may revoke any condition attached to an approval under this section.

(8) Where the occupier of any scheduled premises installs or replaces any fuel burning equipment or industrial plant in contravention of subsection (1), the Commission may, by notice in writing, require him to remove the equipment or plant within such time as may be specified in the notice.

(9)

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(9) A notice under subsection (8) shall No. 92, 1974
not have any 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 notice has been made under this Act, until the District Court confirms the decision.

(10) Proceedings in respect of an offence arising under this section and committed after the commencement of this subsection may be commenced at any time within three years after the offence was committed.

(11) For the purposes of subsections (1) (c) and (2) (b), it is immaterial whether or not the work referred to therein, being work of the nature referred to in subsection (1) (a) (iii) or (b) or (2) (a), was or is completed.

(12) In proceeding for an offence arising under subsection (1) or (2), it is not necessary that it be established that the offence was committed on a particular day or on particular days, provided it is established that the offence was committed during a particular period.

(13) The Commission may require an applicant for approval under this section to furnish to the Commission such information and such plans and specifications as the Commission considers necessary and relevant to the application.

- (n) (i) by omitting from section 17 (1) (b) the word "or" where lastly occurring;
- (ii) Sec. 17.
(Commission may require work on scheduled premises.)

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(ii) by inserting at the end of section 17 (1) (c) the following word and paragraph :—
; or

(d) install fuel burning equipment or industrial plant, or use fuel of a specified type, in or on such premises, where the Commission is satisfied that the use of that equipment or plant, or fuel, will reduce the emission of air impurities from such premises;

(iii) by omitting section 17 (3);

(iv) by inserting at the end of section 17 the following subsection :—

(4) A notice under subsection (1) shall not have any 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 District Court confirms the decision.

Sec. 19.
(Prescribed standards of air impurities not to be exceeded—unscheduled premises.)

(o) by omitting from section 19 (1) the words “the prescribed point” and by inserting instead the words “any point specified in or determined in accordance with the regulations”;

(p)

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- (p) by inserting after section 20 (4) the following subsection :—

No. 92, 1974
Sec. 20.
(Control of trades, industries, processes, fuel burning equipment and industrial plant.)

(5) A notice under subsection (1) or, except to the extent to which it is given in relation to a requirement to operate control equipment, a notice under subsection (3) shall not have any force—

(a) until the time limited for appealing against the decision of the local authority or the Commission, as the case may require, has expired; and

(b) where within that time an appeal against the decision has been made under this Act, until the District Court confirms the decision.

- (q) by omitting from section 21 the words “, as amended by subsequent Acts”;
- Sec. 21.
(Mines and open cut workings.)

- (r) by omitting section 21D;
- Sec. 21D.
(Penalties for offences under sections 21B and 21c.)

- (s) (i) by omitting from section 21E (b) (i) the word “and” where lastly occurring;
- Sec. 21E.
(Defences to prosecutions for offences under section 21B or 21c.)

- (ii) by inserting after section 21E (b) (ii) the following subparagraphs :—

(iii) that the air impurities emitted, as referred to in section 21B, from that motor vehicle were not visible; and

(iv) in the case only of an offence arising under section 21B (a)—that that motor vehicle was, at the time of the commission of the offence, or had, at any earlier time, been registered under the Motor Traffic Act, 1909.

(t)

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Sec. 21G.

Power to
require
owner of
motor
vehicle
to furnish
information.

(t) by inserting after section 21F the following section :—

21G. (1) The Commission, by notice in writing served on the owner of a motor vehicle, may require the owner to furnish, in such manner as may be specified in the notice, to it within fourteen days or such longer period as may be specified in the notice, such information (including plans and specifications, where appropriate) as to the motor vehicle (including information as to any prescribed anti-pollution device fitted to the motor vehicle) as it requires by the notice.

(2) Any statement made to the Commission pursuant to any requirement made pursuant to this section shall not, if the person making the statement objected, at the time of making it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against him for any offence, not being the offence of neglecting or failing to comply with any requirement made pursuant to this section.

(3) A person shall not neglect or fail to comply with any requirement made pursuant to this section.

Penalty for an offence under this subsection :
\$1,000.

Sec. 23.

Power to
require
occupier
of premises
to furnish
information.

(u) by omitting section 23 and by inserting instead the following section :—

23. (1) The Commission, by notice in writing served on the occupier of any premises, and a local authority, by notice in writing served on the occupier of any premises (not being scheduled premises), may require that occupier to furnish, in such manner as may be specified in the notice, to

it

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it within fourteen days or such longer period as No. 92, 1974
 may be specified in the notice, such information
 (including plans and specifications, where
 appropriate) as to any control equipment, fuel
 burning equipment or industrial plant in or on
 those premises, the fuel or waste burned therein
 or thereon and any work that has been or is being
 carried out therein or thereon and that is likely
 to cause or increase air pollution as it requires by
 the notice.

(2) Any statement made to the Commis-
 sion or a local authority pursuant to any
 requirement made pursuant to this section shall
 not, if the person making the statement objected,
 at the time of making it, to doing so on the ground
 that it might tend to incriminate him, be admissible
 in evidence in any prosecution against him for any
 offence, not being the offence of neglecting or
 failing to comply with any requirement made
 pursuant to this section.

(3) A person shall not neglect or fail to
 comply with any requirement made pursuant to
 this section.

Penalty for an offence under this subsection :
 \$1,000.

(v) by omitting from section 24 the word
 "Committee" wherever occurring and by inserting
 instead the word "Commission";

Sec. 24.
 (Power to
 prohibit
 use of
 fuel, fuel
 burning
 equipment
 or
 industrial
 plant in
 certain
 areas or to
 prohibit
 open
 burning.)

(w)

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Sec. 25.
(Power to prohibit trades, industries, processes, etc., in certain circumstances.)

- (w) (i) by omitting from section 25 the word "Committee" and by inserting instead the word "Commission";
- (ii) by inserting in section 25 after the word "health" the words "or is causing or is likely to cause such discomfort or inconvenience to any persons not associated with the management or operation of any trade, industry or process in or on such premises as warrants the making of an order under this section";
- (iii) by inserting at the end of section 25 the following subsection :—

(2) The occupier of premises upon whom an order under subsection (1) has been served shall not neglect or fail to comply with the direction contained in the order.

Penalty for an offence under this subsection : \$10,000, and, in addition, \$5,000 for each day the offence continues.

Sec. 25A.

- (x) by inserting after section 25 the following section :—

Removal of pollutants.

25A. (1) Where pollution has been or is being caused by the emission of air impurities by any person, any statutory body or local authority may and shall, if directed to do so by the Commission, take such action as is necessary to remove, disperse, destroy or mitigate the pollution and may recover all costs and expenses incurred by it in connection with the removal, dispersal, destruction or mitigation of the pollution from that person.

(2) Any such costs and expenses may be recovered as a debt in a court of competent jurisdiction.

(y)

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(y) (i) by omitting from section 26 (1) (a) (ii) the words "section sixteen of this Act or a person on whom a notice under section seventeen of this Act" and by inserting instead the words "section 16 or a person on whom a notice under section 16 (8) or 17";

No. 92, 1974
Sec. 26.
(Appeals.)

(ii) by omitting from section 26 (1) (a) the words "exercising jurisdiction in the district in which the premises, building or land concerned are or is situated";

(iii) by inserting after section 26 (1) (c) the following paragraph:—

(d) An appeal under this subsection may only be made before the expiration of—

- (i) the prescribed period; or
- (ii) where the regulations do not prescribe a period—twenty-one days,

after the day on which notice of the decision appealed against, or the notice appealed against, was served on the appellant, as the case may require.

(z) by omitting section 27 and by inserting instead the following section :—

27. (1) An authorised officer may enter—

Powers of
authorised
officers.

- (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;
- (b) any premises, not being a dwelling-house or the land used in connection therewith, in which he reasonably suspects that air pollution has been, is being or is likely to be caused, at any time; and
- (c) any other premises, at any reasonable time,

and

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and may therein—

- (d) examine any control equipment, fuel burning equipment or industrial plant, or any plant, equipment, work or other thing emitting or likely to emit air impurities;
- (e) take and remove samples of any air impurity that is being, or is likely to be, or of a kind that is usually, emitted from those premises;
- (f) take and remove such samples and make such examination and inquiry and such tests as he considers necessary to ascertain whether the provisions of this Act or of any requirement or direction made under or pursuant to this Act or the conditions in force and attached to any license or approval under this Act are being or have been complied with; and
- (g) take such photographs as he considers necessary in connection with the administration of this Act.

(2) An authorised officer may—

- (a) by notice in writing, require—
 - (i) the occupier of any premises in which air pollution is being or is usually being caused to produce to that authorised officer any reports, books, plans, maps or documents relating to the emission from the premises of air impurities or relating to any manufacturing, industrial or trade process carried on in or on those premises; or
 - (ii) any local authority or statutory body to produce to that authorised officer any reports, books, plans, maps or documents in the custody or possession of the local authority or

statutory

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statutory body relating to any control equipment, fuel burning equipment or industrial plant, or any plant, equipment, work or other thing that emits or may emit air impurities, No. 92, 1974

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

- (b) require a person whom he suspects on reasonable grounds to be offending against this Act to state his full name and his place of abode.

(3) Every authorised officer shall be provided with a certificate of his appointment, and on applying for admission to any premises where he is empowered by this Act to enter, shall, if requested to do so, produce the certificate to the occupier of the premises.

(4) The holder of a prescribed office may, by notice in writing served on the occupier of any premises, require the occupier to provide such assistance and facilities (whether of the same kind as, or of a different kind from, those prescribed pursuant to section 34 (1) (e)) as are specified in the notice within such time and in such manner as are specified therein, for the purpose of enabling an authorised officer to exercise his powers under this Act.

(5) Any person—

- (a) who wilfully delays or obstructs an authorised officer, or fails to comply with any requirement made by an authorised officer, in the exercise of his powers under this Act;
- (b) who, in purported compliance with a requirement under subsection (2) (b), states a name that is not his name or a place of abode that is not his place of abode; or

(c)

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

(i) refuses to permit or to assist an authorised officer to do, perform or carry out the matters or things, or any of the matters or things, which he is authorised to do, perform or carry out;

(ii) refuses to provide such assistance and facilities as may be prescribed for the purpose of enabling an authorised officer to exercise his powers under this Act; or

(iii) refuses to comply with a requirement under subsection (4),

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

Sec. 28.
(Exemptions.)

(aa) by inserting at the end of section 28 the following subsection:—

(2) Where the regulations prescribe the manner in which an application for an exemption referred to in subsection (1) is to be made, the exemption shall be applied for in that manner.

Sec. 29.
(Service of notices, orders and other instruments.)

(ab) by omitting from section 29 the words “under section seventeen or twenty, or order under section twenty-five, of this Act” and by inserting instead the words “, order or other instrument issued, made or given for the purposes of this Act”;

Sec. 30.

(ac) by omitting section 30 and by inserting instead the following section :—

Evidence.

30. (1) In this section—

“information” includes an application referred to in section 4 of the Supreme Court (Summary Jurisdiction) Act, 1967;

“instrument” includes a notice or order.

(2)

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(2) Any instrument purporting to be an instrument issued, made or given for the purposes of this Act (including subsection (4) or (5)) and to have been signed by the Minister, the Director or any other member of the Commission, an officer of the Commission authorised generally or specially by the Commission to do so, or a member or servant of a local authority duly authorised to do so, shall be 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) Proof shall not, in the absence of evidence to the contrary, be required of the appointment of any member or officer of the Commission or of any servant of a local authority.

(4) A document certified by the Director of the Commission or by an officer of the Commission authorised generally or specially by the Commission 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 Minister, the Director or any other member of the Commission or an officer of the Commission authorised generally or specially by the Commission 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.

(5) A certificate signed by the Director of the Commission or by an officer of the Commission authorised generally or specially by the Commission

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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 Minister, the Director or any other member of the Commission or an officer of the Commission authorised generally or specially by the Commission to do so,

was issued, made or given on a day specified in the certificate;

(b) that an order, a copy of which is set out in the certificate, was for the purposes of section 21F published in a manner so specified and on a day so specified;

(c) that an order, a copy of which is set out in the certificate, was for the purposes of section 24 published in the Gazette on a day so specified;

(d) that premises are within an area to which an order under section 24 applies, a copy of which order is set out in the certificate;

(e) that a person was, or was not, at a time or during a period so specified, the holder of a license in respect of premises so specified;

(f) that a license was, or was not, at a time or during a period so specified, subject to conditions so specified;

(g) that a license was, at a time so specified, revoked, or suspended for a period so specified;

(h) that a condition attached to a license was, at a time so specified, revoked or varied;

(i) that a new condition was, at a time so specified, attached to a license;

(j)

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- (j) that an approval was, or was not, given under section 16 in relation to any matter so specified; No. 92, 1974
- (k) that an approval under section 16 was, or was not, subject to conditions so specified;
- (l) that a requirement was, or was not, made under section 17 or 20 by the Commission in relation to any matter so specified;
- (m) that an exemption was, or was not, granted by the Minister under this Act in relation to any matter so specified;
- (n) that an exemption granted by the Minister under this Act was, or was not, at a time or during a period so specified, in force;
- (o) that an exemption granted by the Minister under this Act was, or was not, at a time or during a period so specified, subject to conditions so specified;
- (p) that an exemption granted by the Minister under this Act was, at a time so specified, revoked;
- (q) that the conditions attached to an exemption granted by the Minister under this Act were, at a time so specified, revoked or varied;
- (r) that a register kept under this Act shows that premises so specified were, at a time or during a period so specified, within a classification referred to in the regulations and so specified; or
- (s) that a person was, or was not, at a time or during a period so specified, an authorised officer by virtue of his being authorised by the Commission,

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

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(6) In proceedings for an offence against this Act, a certificate under subsection (5) that is admitted in evidence and that certifies that a person was, at a time or during a period specified in the certificate, the holder of a license in respect of premises so specified shall be accepted by the court as evidence of the truth of an allegation, in the information in respect of the offence, that—

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

(b) those premises were, at that time or during that period, scheduled premises,

unless the contrary is proved or unless it is proved that that person was not, at that time or during that period, the holder of a license in respect of those premises.

(7) In proceedings for an offence against this Act, evidence that a register kept under this Act shows that premises were, at a time or during a period, within a classification referred to in the regulations and specified in the register shall be accepted by the court as evidence of the truth of an allegation, in the information in respect of the offence, that those premises were, at that time or during that period, within that classification, unless the contrary is proved.

(8) Without affecting the generality of section 5 (14) of the Clean Air (Amendment) Act, 1974, a reference in subsections (2), (3), (4) (b) and (5) (a), (1) and (s) to the Commission includes a reference to the Health Commission of New South Wales.

Sec. 31.
(Unjustified
disclosure
of
informa-
tion.)

(ad) by inserting in section 31 after the words "against this Act" the words "and liable to a penalty not exceeding \$1,000";

(ae)

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(ae) (i) by omitting section 32 (2); No. 92, 1974

Sec. 32.

(ii) by omitting section 32 (3) and by inserting (Penalty.)
instead the following subsection :—

(3) Any person guilty of an offence against this Act shall, where no other penalty is expressly provided, be liable—

(a) where the offence was committed by a corporation—to a penalty not exceeding \$10,000 and, in the case of a continuing offence, to a further penalty not exceeding \$2,000 for each day the offence continues; or

(b) where the offence was committed by any other person—to a penalty not exceeding \$1,000 and, in the case of a continuing offence, to a further penalty not exceeding \$200 for each day the offence continues.

(af) by inserting after section 32 the following Sec. 32A.
section :—

32A. Where any person has been convicted of an offence against this Act arising under section 17 or 20 or of an offence in respect of the failure to comply with a condition attached to a license or with a condition subject to which an approval is granted by the Commission under section 16, the court by which he is convicted—

Power to order contravention to be remedied.

(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)

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(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 shall be liable to a penalty not exceeding \$5,000 for every day that the non-compliance continues after that time.

Sec. 33.

(ag) by omitting section 33 and by inserting instead the following section :—

Proceedings for offences.

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

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

(3) Subsection (2) does not apply to the institution—

(a) by a member or officer of the Commission of proceedings for an offence if the proceedings are instituted with the consent of the Commission or with the written consent of such member or officer of the Commission as may be authorised by the Commission for the purposes of this paragraph; or

(b) by a servant of a local authority of proceedings for an offence if—

(i) the offence was committed in respect of or in relation to premises other than scheduled premises; and

(ii)

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- (ii) the proceedings are instituted with the consent of the local authority or with the written consent of such member or servant of the local authority as may be authorised by the local authority for the purposes of this paragraph,

not being proceedings against the Crown, or a person acting on behalf of the Crown, or a statutory body.

(4) If proceedings in respect of an offence against this Act 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, \$2,000 (including any daily penalty) or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

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

(6) Proceedings in the Supreme Court in its summary jurisdiction in respect of an offence against this Act may, except as provided in section 16, only be commenced within six months after the offence was committed.

- (ah) (i) by omitting from section 34 (1) (e) the word "prescribed";
- (ii) by inserting in section 34 (1) (f4) after the word "prohibiting" the words ", or providing for the suspension of,";

(iii)

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(iii) by inserting after section 34 (1) (f4) the following paragraphs :—

(f5) prohibiting or regulating—

- (i) the sale or distribution for sale;
- (ii) the offering or exhibition for sale; or
- (iii) the having in possession for sale or for distribution for sale, of fuels of a prescribed class or description that are to be used, or are capable of being used, in the operation of motor vehicles;

(f6) exempting any persons or class of persons, or any premises or class of premises, from any specified provision or provisions of this Act, in such circumstances, if any, and subject to such conditions, if any, as may be specified in the regulations;

(iv) by omitting section 34 (2);

(v) by inserting before section 34 (3) the following subsection :—

(2A) A regulation may be made so as to authorise any matter or thing to be from time to time determined, applied or regulated by any person or body specified in the regulation.

(vi) by inserting after section 34 (3) the following subsections :—

(3A) Without affecting the generality of the foregoing provisions of this section, a regulation may authorise or require a person or body to suspend the registration of a motor vehicle that does not comply with the regulations.

(3B)

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(3B) While the registration of a motor vehicle is suspended by or under the regulations, the vehicle shall be deemed, for the purposes of this Act, the Motor Traffic Act, 1909, and any other Act, not to be registered under the Motor Traffic Act, 1909. No. 92, 1974

(3C) Nothing in this section or the regulations affects any power or duty (conferred or imposed by or under any other Act) of the Commissioner for Motor Traffic or any other person or body to cancel or suspend the registration of a motor vehicle, the registration of which is suspended by or under the regulations.

(vii) by omitting section 34 (4) and (5) and by inserting instead the following subsections :—

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

- (a) by a corporation—a penalty not exceeding \$5,000 and, in the case of a continuing offence, a further penalty not exceeding \$1,000 for each day the offence continues; or
- (b) by any other person—a penalty not exceeding \$500 and, in the case of a continuing offence, a further penalty not exceeding \$100 for each day the offence continues.

(5) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(2)

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- No. 92, 1974** (2) The Clean Air Act, 1961, as amended by section
 Further amendment of Act No. 69, 1961. Sec. 10. (Scheduled premises to be licensed.) 3 (1) (g), is amended—
 (a) by inserting in section 10 (a) after the words “such scheduled premises;” the word “or”;
 (b) by omitting section 10 (b).
- Further amendment of Act No. 69, 1961. Sec. 15A. (Emission of odours from scheduled premises.) 3 (1) (1), is amended by omitting section 15A (4) (a).
- Amendment of Act No. 41, 1919. Sec. 313. (Subjects for consideration.) 4. The Local Government Act, 1919, is amended—
 (a) by omitting from section 313 (o) the word “prescribed” where firstly occurring and by inserting instead the words “specified in or determined in accordance with the regulations”;
 (b) by omitting from section 313 (o) the words “so prescribed” and by inserting instead the words “prescribed under that Act”.
- Savings and transitional provisions. 5. (1) The person referred to in section 6 (2) (b) (ii) of the Clean Air Act, 1961, and holding office immediately before the commencement of section 3 (1) (d) (iii) as a member of the Air Pollution Advisory Committee shall be deemed to have been appointed under section 6 (2) (b) (ii) of that Act, as amended by this Act.
 (2) A member of the Air Pollution Advisory Committee referred to in section 6 (2) (b) (ii) or (ix) of the Clean Air Act, 1961, as amended by this Act, and holding

office

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office after the commencement of section 3 (1) (d) (iii) and (iv) and before 1st May, 1977, shall, subject to that Act, as so amended—

- (a) hold office until (and including) 30th April, 1977; and
- (b) be eligible for reappointment.

(3) Any license in force, or application pending, under section 11 of the Clean Air Act, 1961, immediately before the commencement of section 3 (1) (h) shall be deemed to be a license in force, or an application pending, under section 11 of that Act, as amended by this Act, as the case may be.

(4) Nothing in section 11 (6) of the Clean Air Act, 1961, as amended by this Act, applies to the revocation or suspension of a license, the revocation or variation of any condition, or the attaching of a new condition to a license, under section 11 of that Act, before the commencement of this subsection.

(5) Any approval in force, or application pending, under section 16 of the Clean Air Act, 1961, immediately before the commencement of section 3 (1) (m) shall be deemed to be an approval in force, or an application pending, under section 16 of that Act, as amended by this Act, as the case may be.

(6) Nothing in section 17 (4) or 20 (5) of the Clean Air Act, 1961, as amended by this Act, applies to a notice under section 17 or 20 of that Act served before the commencement of this subsection.

(7) Nothing in section 21E (b) (iii) and (iv) of the Clean Air Act, 1961, as amended by this Act, applies in relation to an offence committed before the commencement of section 3 (1) (s).

(8)

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(8) Any notice given under section 23 of the Clean Air Act, 1961, and in force immediately before the commencement of section 3 (1) (u) shall be deemed to have been given under section 23 of that Act, as amended by this Act.

(9) An order made under section 24 or 25 and in force immediately before the commencement of section 3 (1) (v) and (w) (i) shall be deemed to have been made under section 24 or 25 of that Act, as amended by this Act, as the case may be.

(10) Section 26 (1) (d) of the Clean Air Act, 1961, as amended by this Act, does not apply to or in respect of a decision or notice made or served before the commencement of section 3 (1) (y) (iii).

(11) A certificate issued under section 30 of the Clean Air Act, 1961, before the commencement of section 3 (1) (ac) shall be deemed to have been issued under section 30 of that Act, as amended by this Act.

(12) The consent of the Minister given under section 32 (2) of the Clean Air Act, 1961, before the commencement of section 3 (1) (ae) (i) in relation to an offence shall, in relation to that offence, be deemed to have been given by the Minister under section 33 of that Act, as amended by this Act.

(13) Nothing in this Act affects the penalty that may be imposed under any provision of the Clean Air Act, 1961, on conviction for an offence committed against that Act before the commencement of any amendment of that provision made by this Act.

(14)

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(14) Any act, matter or thing done or omitted to be done before the commencement of this subsection by, to or in respect of the Health Commission of New South Wales or a member or officer thereof, under or for the purposes of the Clean Air Act, 1961, shall, to the extent that but for the enactment of the New South Wales Planning and Environment Commission Act, 1974, that act, matter or thing would after that commencement have had any force or effect or been in operation, be deemed to have been done or omitted to be done by, to or in respect of the State Pollution Control Commission or a member or officer thereof, whichever of them is, after that commencement, appropriate in relation to the doing of or omission to do that act, matter or thing.
