

# Environmentally Hazardous Chemicals Act 1985 No 14

[1985-14]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Environmentally Hazardous Chemicals Act 1985 No 14



New South Wales

An Act to provide for control of the effect on the environment of chemicals and chemical wastes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Environmentally Hazardous Chemicals Act 1985*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), 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 Definitions

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

**approved** means approved for the time being by the Authority.

**authorised officer** means a person authorised in writing by the Authority to act as an authorised officer for the purposes of this Act.

**Authority** means the Environment Protection Authority.

**chemical** means any chemical element or any chemical compound or complex, whether of known or unknown or variable or invariant composition, by whatever means created, discovered or obtained, including any such element, compound or complex that is a complex reaction product or a component of any mixture or that may be characterised as biological material, but does not include:

- (a) a physical mixture,

(b) a substance of a prescribed description, or

(c) a radioactive substance, within the meaning of the [Radiation Control Act 1990](#).

**chemical control order** means an order in force under section 22 or 23.

**Committee** means the Hazardous Chemicals Advisory Committee constituted under section 6.

**container** includes any receptacle and any covering.

**convey**, in relation to a chemical or any chemical waste, includes carry, load, unload, transfer, transmit, pump and discharge the chemical or waste.

**Court** means the Land and Environment Court.

**declared chemical waste** means a substance the subject of an order in force under section 10.

**environment** includes all aspects of the surroundings of human kind, whether natural or artificial and whether living or inanimate.

**environmentally hazardous chemical** means a chemical (other than a declared chemical waste) the subject of a chemical control order.

**licence** means a licence that is in force after having been granted under this Act, whether it is an original or a renewed licence.

**licensee** means the person to whom a licence is granted under this Act.

**occupier**, in relation to any premises, means the person in occupation or control of the premises and, in relation to a part of any premises where different parts are occupied or controlled by different persons, means the person in occupation or control of that part.

**plant** includes any equipment, apparatus, device, machine and mechanism.

**premises** includes a place (whether or not a public place) and a vessel.

**prescribed activity**, in relation to a chemical or any chemical waste, means the act of manufacturing, processing, keeping, distributing, conveying, using, selling or disposing of the chemical or waste or any act related to any such act.

**prohibited activity**, in relation to an environmentally hazardous chemical or a declared chemical waste, means a prescribed activity the carrying on of which in relation to the chemical or waste is prohibited by a chemical control order.

**public authority** means:

- (a) a public authority or local authority constituted by or under an Act, or
  - (b) a person or body prescribed for the purposes of this paragraph,
- but does not include an authority referred to in paragraph (a) which is exempted, for the purposes of this definition, by the regulations.

**public place** includes:

- (a) a public road or a public reserve, as respectively defined in the *Roads Act 1993* and the *Local Government Act 1993*, and
- (b) a place that is open to the public, or is used by the public, whether or not on payment of money or for any other consideration, whether or not the place is ordinarily so open or used and whether or not the public to whom the place is so open, or by whom the place is so used, consists only of a limited class of persons.

**regulations** means regulations made under this Act.

**vehicle** includes an aircraft.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

#### **4 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

#### **5 Relationship to other laws**

- (1) Subject to this section, where, by or under any other Act, any provision is made relating to a substance that is an environmentally hazardous chemical or a declared chemical waste, the provision so made shall be observed in addition to the provisions of this Act, the regulations and orders made under this Act, but no person is, by virtue of this subsection, liable to be punished twice for the same offence.
- (2) Where, by or under any other Act (other than the *Radiation Control Act 1990* or the *Protection of the Environment Operations Act 1997*), any provision is made relating to the protection of the environment from the effects of chemicals and chemical wastes, being a provision that is inconsistent with a provision of this Act, a regulation or an order made under this Act, the provision of this Act or the regulation or order shall prevail.
- (3) Nothing in this Act affects the operation of the *Radiation Control Act 1990* or the

*Protection of the Environment Operations Act 1997* or any regulations made under those Acts.

## **Part 2 Hazardous Chemicals Advisory Committee**

### **6 Constitution of the Committee**

- (1) There shall be a Hazardous Chemicals Advisory Committee, which shall consist of 17 members.
- (2) Schedule 1 has effect in relation to the Committee.

### **7 Functions of the Committee**

- (1) The Committee shall have the following functions:
  - (a) to facilitate the co-ordination of administrative and enforcement activities in relation to the control of chemicals,
  - (b) to advise the Authority in relation to the assessment of chemicals and the control of chemicals that are, or which the Committee considers should be dealt with as, environmentally hazardous chemicals,
  - (c) to advise the Authority on priorities to be adopted in the investigation of chemicals,
  - (d) to investigate and report to the Authority upon incidents involving the contamination of the environment by chemicals and chemical wastes,
  - (e) to carry out research into and report to the Authority upon any matter relating to legislation (whether of the State or other legislation) concerning the control of chemicals, and
  - (f) to investigate, carry out research into and report to the Authority upon any matter concerning chemicals and the environment.
- (2) The Committee shall have and may exercise such other functions as may be conferred or imposed upon it by or under this or any other Act.

## **Part 3 Assessment and control of chemicals and chemical wastes**

### **Division 1**

#### **8, 9 (Repealed)**



## **Division 2 Declared chemical wastes**

### **10 Declaration of chemical wastes**

- (1) Where the Authority is satisfied that any chemical substance (including any mixture) is or is likely to be stored in accumulating deposits or dumped or abandoned or otherwise dealt with as chemical waste, the Authority, by order published in the Gazette, may declare that substance to be a chemical waste for the purposes of this Act.
- (2) For the purposes of an order under subsection (1), a substance or mixture may be identified by reference to any one or more of the following:
  - (a) any of its known constituents,
  - (b) any of its known chemical or toxicological properties by reason of which, in the opinion of the Authority, the substance or mixture may affect the environment,
  - (c) any process of chemical manufacture or treatment in the course of which it is produced,
  - (d) any other of its qualities or its quantity, origin or situation,or may be otherwise identified.

#### **Editorial note—**

For declarations under this section see the Historical notes at the end of this Act.

### **11 Power to control declared chemical wastes**

The Authority may at any time make a chemical control order in relation to a declared chemical waste.

## **Division 3 Applications for assessment**

### **12 (Repealed)**

### **13 Application for assessment of prohibited activity**

- (1) A person who proposes to carry on any prescribed activity, being an activity that is for the time being a prohibited activity (or that would, if carried on otherwise than under the authority of, and in accordance with any conditions for the time being in force in respect of, the chemical control order concerned or a licence, be a prohibited activity), in relation to an environmentally hazardous chemical or a declared chemical waste may apply to the Authority in the approved form for assessment of that prescribed activity by the Authority.
- (2) An application under subsection (1) for assessment of a prescribed activity in relation

to a chemical or a declared chemical waste shall be accompanied by the prescribed fee and shall contain the following information:

- (a) the name of the applicant,
- (b) except as provided by paragraph (c)—the identity of the chemical,
- (c) where the application is for assessment of a prescribed activity in relation to a chemical waste the components of which, or the respective proportions of the components of which, are variable or otherwise difficult to specify—such particulars of the composition of the waste as the Authority may require,
- (d) the manner in which the prescribed activity is proposed to be carried out,

and may contain any other information the applicant wishes to include.

- (3) An application under subsection (1) for assessment of a prescribed activity may request that the disclosure of the manner in which the prescribed activity is proposed to be carried on and any data of a prescribed kind relating thereto should be restricted in accordance with this Act.

## **Division 4 Assessments**

### **14 Committee to consider chemicals, chemical wastes and activities**

- (1) The Committee shall, if requested to do so by the Authority, make a recommendation to the Authority as to the assessment and control of a chemical or prohibited activity or as to the control of a chemical or any declared chemical waste.
- (2) The Committee may at any time make a recommendation to the Authority as to the assessment and control of a chemical or of any prescribed activity carried on or proposed to be carried on in relation to a chemical.

### **15 Authority to assess chemicals and activities**

- (1) The Authority shall make an assessment of every prohibited activity the subject of an application under Division 3.
- (2) The Authority may at any time make an assessment of a chemical or of any prescribed activity carried on or proposed to be carried on in relation to any such chemical.

### **16 Request for further information**

At any stage of conducting an assessment for which an application has been made under Division 3, the Authority may, by notice served on the applicant, request such further information as it considers necessary and relevant to the assessment of the prohibited activity to which the application relates.

## **17 Authority's consideration of chemicals and activities**

- (1) In making an assessment under this Division of a chemical or of a prescribed activity carried on or proposed to be carried on in relation to a chemical or a declared chemical waste, the Authority shall consider the effect, or the likely effect, on the environment of all aspects of the carrying on of prescribed activities in relation to the chemical or, as the case may require, the likely effect on the environment of all aspects of the carrying on of the prescribed activity the subject of the assessment.
- (2) For the purposes of subsection (1), the Authority may consider, with respect to any substance which is the subject of an assessment (or, where a prescribed activity is the subject of an assessment, with respect to any substance in relation to which the activity is proposed to be carried on):
  - (a) any propensity of the substance to produce harmful effects in organisms or biological systems, whether those effects are manifested in immediate or gradual or accumulative physiological or structural damage, in the alteration of characteristics in one or more generations of human or other animal progeny or of plant life or otherwise,
  - (b) any propensity of the substance adversely to affect the soil or any other physical feature of the environment,
  - (c) the actual or likely exposure, and the actual or likely degree, rate and duration of any exposure, of organisms, biological systems or physical features of the environment to the substance in all stages of the carrying on of prescribed activities in relation to the substance or, as the case may require, any such exposure or increase on any such exposure likely to result from the carrying on of the prescribed activity the subject of the assessment,
  - (d) where adverse effects are likely to result from any exposure or increased exposure of organisms, biological systems or physical features of the environment to the substance—the adequacy, efficiency and practicality of any methods or safeguards employed or which might be employed to prevent, or reduce the degree, rate or duration of, any such exposure, and
  - (e) where, in the opinion of the Authority, the substance or the prescribed activity, as the case may be, which is the subject of the assessment has or is likely to have adverse environmental effects:
    - (i) the adequacy, efficiency and practicality of measures for the safe treatment and disposal of the substance and any associated by-product, and
    - (ii) the adequacy, efficiency and practicality of the manufacture or use of an alternative substance, or of alternative industrial or other practices relating to the substance, having regard to the purposes intended to be served by the substance or by the prescribed activity, as the case may be,

and any other matters the Authority thinks relevant to the public interest and the protection of the environment.

- (3) In making an assessment under this Division of a chemical or of a prescribed activity, the Authority may take into account any information which it considers reliable and relevant furnished to it or published by any person.
- (4) In making an assessment under this Division of a chemical, the Authority shall consider and evaluate any submissions made to it in response to a notice published under section 19 in relation to the chemical concerned as to the benefits afforded or likely to be afforded to human kind by the chemical or as to any other matter.
- (5) In making an assessment under this Division of a prescribed activity proposed to be carried on in relation to any chemical or declared chemical waste, the Authority may, in addition to any other matter it is entitled to consider, have regard to the qualifications, experience and expertise of the persons to be concerned in the carrying on of the activity.

#### **18 Consideration of information and submissions from applicant**

In making an assessment under this Division of a prohibited activity proposed to be carried on in relation to an environmentally hazardous chemical or any declared chemical waste, being an assessment the subject of an application under Division 3, the Authority shall, in addition to any matters to which it is required to have regard under section 17, have regard to any information or submission furnished or made by the applicant in or in connection with the application.

#### **19 Notice of Authority's intention**

- (1) When it intends to make an assessment of a chemical, the Authority shall cause notice of its intention to be published in the Gazette.
- (2) A notice under subsection (1) shall contain the prescribed particulars and shall invite any person so disposed to make submissions to the Authority within a time specified in the notice, being a time not shorter than the prescribed time.
- (3) A chemical control order or a determination under section 20 (d) is of no effect unless it is made after the expiry of the time specified, as referred to in subsection (2), in a notice published under subsection (1) in respect of the order or determination.

### **Division 5 Control of chemicals and chemical wastes**

#### **20 Outcome of assessment**

Upon:

- (a) making an assessment of a chemical, or

- (b) making an assessment of a prescribed activity in relation to an environmentally hazardous chemical or a declared chemical waste, being an assessment the subject of an application under Division 3,

the Authority may:

- (c) make a chemical control order, or
- (d) determine not to make any such order.

## **21 Notification of order or determination**

- (1) The Authority shall cause notice of the making of a chemical control order or of a determination under section 20 (d) to be published in the Gazette.
- (2) A notice under subsection (1):
  - (a) shall describe the chemical, chemical waste or prescribed activity to which it relates,
  - (b) shall state:
    - (i) the terms of the chemical control order made by the Authority, or
    - (ii) that the Authority has determined not to make any such order, as the case may require,
  - (c) where it states the terms of a chemical control order, shall also state:
    - (i) the date of commencement of the order, being a date not earlier than the date of expiry of the time prescribed for the purposes of section 38 (1) with respect to an appeal against the making of the order, and
    - (ii) the basis on which the Authority determined to make the order, and
  - (d) where it states that the Authority has determined not to make a chemical control order, shall also state the basis on which the Authority so determined.
- (3) Without prejudice to any other manner in which the Authority may comply with the requirement, the Authority, where it is required by this section to state the basis on which its determination was made, may make the statement by reference to the whole or a part of any document that is available to the public, being a document embodying a recommendation of the Committee or any other person or body.

### **Editorial note—**

For orders under this section see the Historical notes at the end of this Act.

## **22 Orders prohibiting activities in relation to chemicals and chemical wastes**

- (1) The Authority, where it has reasonable grounds to believe that the making of an order under this section is necessary to prevent or minimise any adverse effect on the environment that may result from the carrying on of any prescribed activity in relation to a chemical it has assessed or in relation to a declared chemical waste, may make such order as it considers appropriate to prevent or minimise that effect, being an order for or with respect to the prohibition of any such prescribed activity.
- (2) An order under this section for or with respect to the prohibition of a prescribed activity in relation to a chemical the Authority has assessed or in relation to a declared chemical waste shall not be made except upon the recommendation of the Committee or with the consent in writing of the Minister.

## **23 Order permitting prescribed activity**

The Authority, having made an assessment of a prohibited activity in relation to an environmentally hazardous chemical or a declared chemical waste, and upon the recommendation of the Committee, may make such order, if any, as it considers appropriate permitting the carrying on of that activity unconditionally or subject to such conditions as may be imposed by the order.

## **24 Scope and content of orders**

- (1) Without limiting the generality of sections 22 and 23, a chemical control order may be made:
  - (a) so as to prohibit the carrying on of:
    - (i) any prescribed activity in relation to a chemical, or
    - (ii) any prescribed activity in relation to a declared chemical waste,otherwise than under the authority of, and in accordance with any conditions for the time being in force in respect of, the chemical control order or a licence,
  - (b) so as to apply to or in respect of any type or description of chemicals, or declared chemical wastes, which the Authority has determined have the same or chemically analogous properties, and
  - (c) so as to apply to or in respect of any prescribed type or description of mixture that contains a specified chemical or declared chemical waste, whether or not the contents of any such mixture or waste can be accurately ascertained or quantified.
- (2) A chemical control order the requirements of which are inconsistent with the authority conferred by or the conditions for the time being in force in respect of a licence, in so far as the order purports to bind the licensee and to the extent of the inconsistency, shall be of no effect while the licence or condition, as the case may be, is in force.

## **25 Order to take effect from date specified**

- (1) A chemical control order shall, subject to section 42, take effect on and from the date specified, in the notice first published under section 21 (1) incorporating the terms of the order, as the date of commencement of the order.
- (2) With the consent of the Minister, a chemical control order may be expressed to be an emergency order for the purposes of section 42.

## **26 Orders to be observed**

A person who, in contravention of a chemical control order, carries on a prescribed activity in relation to a chemical or a declared chemical waste is guilty of an offence against this Act.

## **27 Supply of certain later information by applicants for assessment**

- (1) Where any information about any chemical waste comes to the knowledge of a person who is or was an applicant under section 13 for assessment of a prescribed activity in relation to the waste, being information that contradicts or modifies any information furnished by the person in or in connection with the person's application for assessment, the person must forthwith supply the Authority with particulars of the new information.
- (2) A person who fails to supply information as required by subsection (1) is guilty of an offence against this Act.

## **Part 4 Licensing**

### **28 Granting of licences**

- (1) A person who proposes to carry on any prescribed activity with respect to an environmentally hazardous chemical or a declared chemical waste, being an activity which, by reason of a chemical control order, may lawfully be carried on only under the authority of a licence, may apply to the Authority for a licence authorising the carrying on of that activity by an application:
  - (a) lodged in the manner and in the form approved in respect of the application, and
  - (b) accompanied by the fee prescribed in respect thereof.
- (2) The Authority may cause notice of an application under subsection (1) to be published in the Gazette.
- (3) A notice under subsection (2):
  - (a) shall contain the prescribed particulars of the application to which it relates, and
  - (b) shall invite any person so disposed to make submissions as to how the application

should be determined.

(4) The Authority:

- (a) may grant an application under subsection (1) for a licence, either subject to conditions specified in the licence or unconditionally, or
- (b) may refuse to grant any such application.

(5) The Authority may at any time before determining an application under subsection (1), by notice served on the applicant, request the applicant to furnish such further particulars (including plans and specifications, where appropriate) as may be specified in the notice.

## **29 Short-term licences**

- (1) An applicant may, in an application under section 28 for an original licence or a renewed licence, request that the licence be granted or renewed, as the case may be, for a specified period, being a period of less than 1 year.
- (2) The Authority 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.

## **29A Transfer of licences**

- (1) A person may apply to the Authority for the transfer to the person of a licence.
- (2) The application must be accompanied by:
  - (a) an instrument executed by the current holder of the licence signifying assent to the transfer, and
  - (b) the prescribed transfer fee.
- (3) The Authority may cause notice of the application to be published in the Gazette.
- (4) A notice under subsection (3):
  - (a) is to contain the prescribed particulars of the application, and
  - (b) is to invite any person so disposed to make submissions as to how the application should be determined.



- (5) The Authority may grant the application or may refuse to do so.
- (6) If it thinks fit the Authority may under section 32 (1), at the time of granting an application under this section, attach further conditions to the licence concerned or revoke or vary any conditions for the time being attached to it.
- (7) The Authority may at any time before determining an application under this section, by notice served on the applicant, request the applicant to furnish such further particulars (including plans and specifications, where appropriate) as may be specified in the notice.
- (8) A licence transferred to a person operates as a licence granted to the person for the remainder of its term or renewed term.

### **30 Duration of licences**

- (1) Subject to this Part:
  - (a) an original licence remains in force for the period specified by the Authority in the licence, commencing with the date of its grant, and
  - (b) a renewed licence remains in force for the period specified by the Authority in the renewed licence, commencing with the date so specified.
- (2) In the case of a licence applied for as referred to in section 29, a period specified for the purposes of subsection (1) shall not exceed 1 year.

### **31 Revocation or suspension of licences**

- (1) The Authority may, by notice in writing served on the holder of a licence, revoke the licence or suspend it for such portion of its unexpired term as it thinks fit, if the holder of the licence:
  - (a) has committed an offence against this Act or the regulations, or
  - (b) has contravened any provision of a chemical control order relating to the chemicals or chemical wastes the subject of the licence.
- (2) Except as provided by section 34 (5), a licence is not, nor is any condition attached to a licence, in force for the purposes of this Act during any period for which the licence is suspended.

### **32 Licence conditions**

- (1) The Authority may during the currency of a licence, by service of a notice to that effect on the holder of the licence, attach further conditions to the licence or revoke or vary any conditions for the time being attached to the licence.
- (2) A person to whom a licence has been issued and who contravenes a condition in force

in respect of the licence is guilty of an offence against this Act.

## **Part 5**

### **33-36 (Repealed)**

## **Part 6 Appeals**

### **37 Order for assessment**

- (1) Where the Authority has failed to notify, within the prescribed time after the lodging of an application under Division 3 of Part 3, the terms of a chemical control order made by it or its determination not to make any such order as provided by section 21, in respect of the prohibited activity the subject of the application, the applicant may appeal to the Court.
- (2) In determining an appeal under this section, the Court:
  - (a) may order the Authority:
    - (i) to make a chemical control order, or
    - (ii) to make a determination not to make any such order,with respect to the prohibited activity to which the appeal relates, and to do so within a time specified in the order of the Court, or
  - (b) may make no order.
- (3) In determining an appeal under this section, the Court is entitled to consider any request for information made to the appellant under section 16 and the result of any such request.
- (4) The Authority shall, as the case may require, carry into effect any order of the Court made under subsection (2).

### **38 Appeal against order or outcome of assessment**

- (1) A person who objects to a chemical control order or to a determination made by the Authority under section 20 (d) may, within the time prescribed, appeal to the Court:
  - (a) on the ground that the basis on which the order or determination was made was erroneous, or
  - (b) on the ground that, having regard to all the circumstances of the case:
    - (i) the Authority (where it made a chemical control order) ought not to have made any such order or ought to have made some other order, or
    - (ii) the Authority (where it determined not to make any such order) ought to have

made a chemical control order.

(2) In determining an appeal under this section, the Court:

- (a) may confirm any chemical control order made by the Authority against which the appeal was brought,
- (b) may revoke any such order and make no further order,
- (c) may revoke any such order and may make any order the Authority might have made under section 22 or 23 with respect to the chemical or chemical waste concerned, or
- (d) where the appeal was brought against the Authority's determination not to make any such order—may make any order the Authority might have made under section 22 or 23 with respect to the chemical or chemical waste concerned.

(3) An order of the Court under subsection (2) (c) or (d):

- (a) shall take effect on and from a date specified by the Court, and
- (b) shall otherwise operate as if it were a chemical control order.

### **39 Appeal with respect to licence**

(1) A person aggrieved:

- (a) by the Authority's refusal of the person's application for a licence or renewal or transfer of a licence,
- (b) by the imposition by the Authority of a condition on a licence granted to the person,
- (c) by the variation by the Authority of a condition for the time being attached to a licence, or
- (d) by the revocation or suspension of the person's licence,

may, within the time prescribed, appeal to the Court.

(2) In determining an appeal under this section, the Court:

- (a) may order the Authority to grant the appellant a licence or renewal or transfer of a licence unconditionally or subject to such conditions as the Court may specify,
- (b) may order that the conditions for the time being attached to a licence shall not be varied or shall be varied in the manner specified by the Court,
- (c) may, by order, rescind the revocation or suspension of a licence, or

(d) may make no order,  
as the Court thinks fit.

- (3) In determining an appeal under this section, the Court is entitled to consider any request for particulars made to the appellant under section 28 (5) and the result of any such request.
- (4) The Authority shall, as the case may require, carry into effect any order of the Court made under subsection (2).

#### **40 Appeal with respect to direction**

- (1) A person to whom a direction has been given, by a notice served on the person under section 35 (1), to take action within a time specified, as referred to in section 35 (2) (a), in the notice, and who is aggrieved by the direction may, within the time prescribed for the purposes of this subsection, appeal to the Court.
- (2) A person to whom a direction has been given, by a notice served on the person under section 35 (1), to take action forthwith as referred to in section 35 (2) (b), and who is aggrieved by the direction on the grounds that:
- (a) the contamination of the premises to which the direction relates was not the result of the carrying on of any prescribed activity by the person or on the person's behalf, and
- (b) at the time the person became the occupier of the premises, the person did not know and had no reason to suspect that the premises were becoming or had become contaminated as specified in the notice by which the direction was given,
- may, within the time prescribed for the purposes of this subsection, appeal to the Court.
- (3) In determining an appeal under this section, the Court:
- (a) may confirm the direction,
- (b) may revoke the direction and give no further direction, or
- (c) may revoke the direction and give any other direction the Authority might have given under section 35.
- (4) A direction given by the Court under subsection (3) (c):
- (a) shall take effect on and from a date specified by the Court, and
- (b) shall otherwise operate as if it were a direction given by the Authority under section 35.

#### **41 Appeal to be final**

The decision of the Court in an appeal under this Part shall be final and binding on the appellant and the Authority.

#### **42 Effect of appeal**

- (1) A chemical control order (other than an order made as the outcome of an assessment undertaken pursuant to an application under Division 3 of Part 3), the revocation or suspension of a licence or the imposition or variation of a condition of a licence, or a direction given under section 35, that is the subject of an appeal under this Part shall have no effect before the Court's determination of the appeal or until the appeal is withdrawn.
- (2) Subsection (1) does not apply to or in respect of a chemical control order expressed, pursuant to section 25 (2), to be an emergency order for the purposes of this section.

### **Part 7 Miscellaneous**

#### **43 Power to require information**

- (1) The Authority may, by notice in writing served on any person, being:
  - (a) the occupier of any premises in or upon which any prescribed activity is carried on in relation to a chemical or any chemical waste is created, kept, treated or disposed of, or
  - (b) the owner of any plant, vehicle or vessel used for the carrying on of any prescribed activity in relation to a chemical or for the creation, keeping, conveyance, treatment or disposal of any chemical waste or any person in whose care, custody or control any such plant, vehicle or vessel is for the time being,require that person to furnish, in such manner as is specified in the notice, to the Authority within 14 days or such longer period as is specified in the notice, such information:
  - (c) relating to any aspect of any such prescribed activity in relation to the chemical or, as the case may be, of any such creation, keeping, conveyance, treatment or disposal of a chemical waste, or
  - (d) relating to any such plant, vehicle or vessel,as it requires by the notice.
- (2) A person shall not, without reasonable excuse, neglect or refuse to comply with any requirement made under subsection (1).

Maximum penalty: 50 penalty units.

- (3) Any statement made to the Authority pursuant to a requirement made under subsection (1) shall not be admissible in evidence in any proceedings against any natural person for any offence, not being the offence of neglecting or refusing to comply with any requirement made under that subsection.

#### 44 Disclosure of information

- (1) Except as provided by section 319 (3)–(5) of the *Protection of the Environment Operations Act 1997*, a person is guilty of an offence against this Act if the person discloses any information relating to any manufacturing or other industrial or commercial secrets or working processes and obtained in connection with the administration or execution of this Act or the regulations, unless the disclosure of information is:
- (a) made, otherwise than in contravention of subsection (4), in connection with the administration or execution of this Act or the regulations,
  - (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.
- (3) (Repealed)
- (4) Except as provided by section 319 (3)–(5) of the *Protection of the Environment Operations Act 1997*, where an application under Division 3 of Part 3 for an assessment of a chemical or a prescribed activity contains a request of the kind referred to in section 12 (4) or 13 (3), in any publication, whether in writing or not, purporting to be made for the purposes of the administration or execution of this Act or the regulations:
- (a) any description of the chemical or of the manner in which it is proposed to carry on the prescribed activity, as the case may be, shall be in such terms, and
  - (b) any data of the kind prescribed for the purposes of section 12 (4) or 13 (3), as the case may be, shall be limited to such particulars,
- as may be agreed between the applicant and the Authority, having regard to:
- (c) the applicant's desire for confidentiality,
  - (d) the purpose of this Act, and

(e) the public interest,

or, in default of any such agreement, in such terms or with such limitations as may be settled by the Court on the application of the Authority and having regard to the like matters.

#### **45 Powers of authorised officers**

(1) Subject to subsection (2), an authorised officer may enter:

- (a) any premises used as a factory or any premises in or upon which an industry or trade is being carried on, at any time during which any manufacturing, industrial or trade process is being carried on in or upon the premises,
- (b) any premises in or upon which the authorised officer reasonably suspects that an offence against this Act or the regulations is being or is likely to be committed, at any time, and
- (c) any other premises, at any reasonable time,

with such assistants as the authorised officer considers necessary and if need be by the use of reasonable force, and may therein:

- (d) examine any equipment or any plant or vehicles,
- (e) make such examination and inquiry and such tests as the authorised officer considers necessary to ascertain whether the provisions of this Act or the regulations or of any requirement, direction, order or notice made or given under or pursuant to this Act or the conditions in force and attached to any licence or exemption under this Act are being or have been complied with,
- (f) take such photographs as the authorised officer considers necessary in connection with the administration of this Act,
- (g) subject to subsection (3), take without payment, for the purpose of examination or testing, samples of any substance that the authorised officer suspects on reasonable grounds to be an environmentally hazardous chemical or a declared chemical waste in respect of which an offence against this Act or the regulations has been or is being committed and, in exercising the power conferred by this paragraph, open any container or cause any container to be opened,
- (h) subject to subsection (3), seize and remove any substance that the authorised officer suspects on reasonable grounds to be an environmentally hazardous chemical or a declared chemical waste in respect of which an offence against this Act or the regulations has been or is being committed and any container in which the substance is being kept or conveyed,
- (i) take without payment, for the purpose of examination or testing, samples of any

soil, water, vegetation or other thing from the premises, where the authorised officer suspects on reasonable grounds that the premises have become contaminated, within the meaning of Part 5, by being used for or in connection with the carrying on of any prescribed activity in relation to a chemical or a declared chemical waste,

- (j) stop or detain a vehicle for such time as is reasonably necessary for the authorised officer to exercise any power conferred by this subsection,
  - (k) for the purposes of paragraph (h), direct the occupier of any place where the substance is seized, or the owner of the substance, to retain it in that place, or in a place under the control of the occupier or owner that will, in the opinion of the authorised officer, least endanger the environment, and
  - (l) give directions for or with respect to the detention of any substance or container that has been removed under paragraph (h).
- (2) Subsection (1) does not empower an authorised officer to enter any dwelling or any land used in connection with any dwelling or to do anything within any dwelling or in or on any such land otherwise than under the authority of a search warrant issued under section 46.
- (2A) An authorised officer who suspects on reasonable grounds that an environmentally hazardous chemical or a declared chemical waste is being conveyed by or is situated in a container being conveyed by a motor vehicle in a public place may:
- (a) if the vehicle is moving, direct that it be stopped,
  - (b) take without payment, for the purpose of examination or testing, samples of any substance being so conveyed,
  - (c) detain the vehicle for such time as is necessary to take the samples,
  - (d) if the authorised officer suspects on reasonable grounds that the substance and any vehicle or container being used to convey it has been or is being used in connection with an offence against this Act or the regulations, seize and remove the substance and the vehicle or container,
  - (e) for the purposes of paragraph (d), direct the occupier of any place where the substance is seized, or the owner of the substance, to retain it in that place, or in a place under the control of the occupier or owner that will, in the opinion of the officer, least endanger the environment, and
  - (f) give directions for or with respect to the detention of any substance, vehicle or container that has been removed under paragraph (d).
- (3) An authorised officer is not empowered:



- (a) under subsection (1) (g) or (2A) (b)—to take a sample of any substance, or
  - (b) under subsection (1) (h) or (2A) (d)—to remove any substance or container, that appears to the authorised officer to be in the custody of a person unless the authorised officer makes out and tenders to the person a receipt in or to the effect of the prescribed form.
- (4) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to be offending against this Act or the regulations to state the person's full name and place of abode.
- (5) Every authorised officer shall be provided with a certificate of appointment and, on applying for admission to any premises which the officer is empowered by this Act to enter, shall, if requested to do so, produce the certificate to the occupier of the premises.
- (6) The Authority may, by notice in writing served on the occupier of any premises, require the occupier to provide such assistance and facilities as are specified in the notice within such time and in such manner as are specified in the notice, for the purpose of enabling an authorised officer to exercise the functions of an authorised officer under this Act.
- (7) 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, when exercising the powers of an authorised officer under this Act,
  - (b) who, in purported compliance with a requirement made under subsection (4), states a name that is not his or her name or a place of abode that is not his or her place of abode, or
  - (c) who, being the occupier of any premises:
    - (i) refuses to permit or to assist an authorised officer to perform or carry out the acts, matters or things, or any of the acts, matters or things, which an authorised officer is authorised to perform or carry out, or
    - (ii) refuses to comply with a requirement made under subsection (6),
- is guilty of an offence against this Act and liable to a penalty not exceeding 50 penalty units.

#### **46 Search warrant**

- (1) (Repealed)
- (2) An authorised officer under this Act may apply to an issuing officer for a search

warrant if the authorised officer has reasonable grounds for believing that a provision of this Act, the regulations or a chemical control order has been or is being contravened in or on any dwelling or land used in connection with any dwelling.

- (3) An issuing officer to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant, when accompanied by a member of the police force:
  - (a) to enter the dwelling or land and therein to exercise the powers specified in section 45 (1), and
  - (b) to search the dwelling and land for evidence of a contravention of this Act, the regulations or a chemical control order.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) In this section:

**issuing officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### **47 Forfeiture**

- (1) Where a person is convicted of an offence against this Act or the regulations, the court may order forfeiture to the Crown of:
  - (a) all or any part of the chemical or chemical waste in respect of which the offence was committed, or
  - (b) any container of that chemical or waste,if the court finds it to be the property of the person so convicted and, upon the making of the order, the chemical, waste or container becomes the property of the Crown.
- (2) Subject to section 48, on application made by or on behalf of the Minister in the prescribed manner, a Local Court may order forfeiture to the Crown of any substance or container that has been seized by an authorised officer under section 45 (1) (h) and, upon the making of the order, the substance or container becomes the property of the Crown.

#### **48 Retention and disposal of seized property**

- (1) In this section, **prescribed period**, in relation to any substance or container seized under section 45 (1) (h), means the period of 6 months commencing from the time of seizure of the substance or container or any other period fixed by a Local Court in relation to the substance or container upon application made by or on behalf of the

Minister in the prescribed manner.

- (2) During the prescribed period any substance or container seized under section 45 (1) (h):
  - (a) may be retained, or
  - (b) unless during the period the substance or container has been forfeited to the Crown under section 47, may be returned to the person from whom it was seized.
- (3) A substance or container seized under section 45 (1) (h) shall, at the expiration of the prescribed period, be returned to the person from whom it was seized, or to the person who appears to the Authority to be its owner, unless:
  - (a) it was, during that period, forfeited to the Crown under section 47, or
  - (b) the Authority causes a notice to be advertised in the prescribed manner before the expiration of the prescribed period to the effect that application will be made on a specified day for forfeiture to the Crown of the substance or container.
- (4) Where a notice is advertised under subsection (3), the substance or container to which the advertisement relates shall, forthwith after the application referred to in the advertisement has been withdrawn or determined, be returned to the person from whom it was seized, or to the person who appears to the Authority to be the owner, unless the substance or container has been forfeited to the Crown.

#### **49 Disposal of forfeited property**

- (1) Any substance or container forfeited to the Crown shall be disposed of as the Minister directs.
- (2) Where any substance or container is disposed of under subsection (1) by way of sale, the proceeds shall be paid into the Treasury and be carried to the Consolidated Fund.

#### **50 Service of instruments**

- (1) Any notice or other instrument issued, made or given for the purposes of this Act 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 with some person apparently of or above the age of 16 years for the person to whom it is addressed, or
  - (c) by post.
- (2) Any such notice or instrument addressed to a licensee at the place last entered in the records of the Authority as the licensee's place of abode or business shall be deemed

to be properly addressed for the purpose of section 76 of the *Interpretation Act 1987*.

**51 (Repealed)**

**52 Registers**

- (1) The Authority shall cause to be kept and maintained:
  - (a) a register of substances that are for the time being declared chemical wastes,
  - (b) a register of chemical control orders for the time being in force, and
  - (c) a register of licences.
- (2) A register kept under this section shall contain such other particulars, if any, as may be prescribed.
- (3) The Authority shall:
  - (a) make any such register, or a true copy thereof, available for inspection by the public at its office during office hours, and
  - (b) furnish any person, upon payment of the prescribed fee, with such extracts from the register or other information concerning the contents of the register as the person may reasonably require.

**53 Offences by corporations**

- (1) Where a corporation contravenes, whether by act or omission, any provision of this Act, a regulation or a chemical control order, or any condition of a licence, 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 or the same condition, as the case may be, unless the person satisfies the court that:
  - (a) the corporation contravened the provision or condition without the knowledge of the person,
  - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision or condition,
  - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation, or
  - (d) the corporation would not have been found guilty of the offence by reason of its being able to establish a defence available to it under this Act or the regulations.
- (2) A person who is a director of a corporation or who is concerned in the management of a corporation may, by virtue of subsection (1), be proceeded against and be convicted of an offence in respect of a contravention referred to in that subsection, whether or not the corporation has been proceeded against or been convicted in respect of the

contravention.

- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or a regulation on any corporation by which an offence arising under the provision is actually committed.

#### **54 Penalties**

Except as may be otherwise provided by this Act, any person guilty of an offence against this Act shall be liable:

- (a) where the offence was committed by a corporation—to a penalty not exceeding 1,250 penalty units, or
- (b) where the offence was committed by any other person—to a penalty not exceeding 600 penalty units.

#### **55-57 (Repealed)**

#### **58 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without affecting the generality of subsection (1), a regulation may:
- (a) require the payment of fees in connection with applications, licences and renewals of licences and any service provided by the Authority under this Act or the regulations,
- (b) require persons of any specified class or description who are notified in the prescribed manner to furnish, as prescribed, information of a kind specified in the notification, being information concerning a chemical or any chemical waste so specified or any particular activity carried on in relation thereto or any plant, vehicle or vessel used in connection with the carrying on of any such activity,
- (c) make provision for or with respect to the calling of, and the conduct of business at, meetings of the Committee,
- (d) exempt persons, or persons of a prescribed class, either absolutely or subject to conditions or in prescribed circumstances or for prescribed periods of time, from any provision of this Act or the regulations or of any order made under this Act, and
- (e) impose a penalty not exceeding 200 penalty units for any contravention of a regulation.
- (3) A regulation may:

- (a) apply differently according to such factors as are specified in the regulations,
- (b) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body.
- (c) (Repealed)

## 59 Liability of certain persons

No matter or thing done by:

- (a) the Authority,
- (b) any person acting under the direction of the Authority, or
- (c) any member of the Committee or any sub-committee appointed under this Act,

shall, if the matter or thing was done bona fide for the purpose of executing this Act, subject any member of the Authority or any person so acting or any such committee or sub-committee member personally to any action, liability, claim or demand whatever.

## Schedule 1 Provisions relating to the Committee

(Section 6 (2))

### 1 Definitions

In this Schedule:

**Authority's nominee** means a member nominated by the Authority.

**member** means a member of the Committee.

### 2 Membership of the Committee

Of the members:

- (a) two shall be persons nominated by the Authority, being members of the Board of the Authority or members of the staff of the Authority,
- (b) one shall be an officer of the Department of Environment and Planning for the time being nominated by the Minister for Planning and Environment,
- (c) one shall be an officer of the Department of Health for the time being nominated by the Minister for Health,
- (d) one shall be an officer of the Department of Industrial Relations for the time being nominated by the Minister for Industrial Relations,
- (e) one shall be an officer of the Department of Agriculture for the time being nominated by the Minister for Agriculture and Fisheries,

- (f) one shall be a person nominated by the Waste Recycling and Processing Corporation,
- (f1) one shall be a person nominated by the Water Board,
- (g) one shall be an officer of New South Wales Fire Brigades for the time being nominated by the Minister administering the *Fire Brigades Act 1989*,
- (h) one shall be an officer of the Department of Fair Trading for the time being nominated by the Minister for Fair Trading,
- (i) one shall be a person nominated by Australian Business Limited,
- (j) one shall be a member of Unions NSW for the time being nominated by that body,
- (k) one shall be a person selected by the Minister to represent major users of chemicals in New South Wales,
- (l) one shall be a person selected by the Minister from persons for the time being nominated by the Local Government Association of New South Wales or the Shires Association of New South Wales, or by both of those Associations,
- (m) one shall be a person nominated by the Minister to represent groups of persons concerned in environmental protection, and
- (n) two shall be persons nominated by the Minister from among persons having such professional or technical qualifications as the Minister may for the time being consider appropriate.

### **3 Nominations for membership**

A nomination for the purposes of this Schedule:

- (a) shall be made in writing addressed, except in the case of a nomination by the Authority or the Minister, to the Minister,
- (b) may in like manner be withdrawn:
  - (i) except as provided by subparagraph (ii), by the person or body who or which made the nomination, or
  - (ii) in prescribed circumstances, by a person authorised by the regulations, and
- (c) shall continue in force until withdrawn in accordance with paragraph (b).

### **4 Alternate members**

- (1) The regulations may provide for the nomination, appointment and voting rights of alternate members of the Committee to act during the illness or absence of members.
- (2) The provisions of this Act shall apply (with such modifications, if any, as may be

provided by the regulations) to and in respect of alternate members of the Committee in the same way as those provisions apply to and in respect of members.

## **5 Presiding member**

- (1) The Authority shall in writing appoint one of the Authority's nominees to be the chairperson of the Committee.
- (2) The chairperson of the Committee may be referred to as the chairman or chairwoman, as the case may require.
- (3) The chairperson shall preside at all meetings of the Committee attended by the chairperson and, in the absence of the chairperson from any meeting the members present shall appoint one of their number to preside at the meeting.

## **6 Procedure**

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Schedule and the regulations, be as determined by the Committee.

## **7 Filling of vacancy in office of member**

In the event of the office of any member becoming vacant a person shall be nominated to fill the vacancy in accordance with this Schedule.

## **8 Vacancies**

A member shall be deemed to have vacated office:

- (a) if the member dies,
- (b) if the member's nomination for the purposes of this Schedule is withdrawn,
- (c) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
- (d) if the member 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 7 of that Act,
- (e) if the member is convicted of an offence against this Act or the regulations, or is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable,
- (f) if the member resigns the office by instrument in writing addressed to the Minister, or



(g) if the member is removed from office under clause 9 (5).

## **9 Disclosure of pecuniary interests**

(1) A member who has a direct or indirect pecuniary interest:

(a) in a matter that is being considered, or is about to be considered, at a meeting of the Committee, or

(b) in a thing being done or about to be done by the Committee,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

(2) A disclosure by a member at a meeting of the Committee that the member has some specified interest relating to a specified company or other body or a specified person shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Committee shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Authority from time to time.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines:

(a) be present during any deliberation of the Committee, or take part in any decision of the Committee, with respect to that matter, or

(b) exercise any functions under this Act with respect to that thing,

as the case may require.

(5) A member who acts in contravention of this clause may be removed from office by the Minister.

(6) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Committee or the exercise by the Committee of any function under this Act.

## **10 Sub-committees**

(1) The Committee may establish sub-committees for the purpose of advising the Committee upon such matters within the scope of the Committee's functions as may be referred to the sub-committees by the Committee.

- (2) A person may be appointed to a sub-committee whether or not the person is a member of the Committee.
- (3) A sub-committee shall investigate, and shall report upon and make recommendations to the Committee concerning, such matters relating to the exercise of the Committee's functions as may be referred to it by the Committee.

#### **11 Remuneration of members**

Every person who is a member of the Committee or of any sub-committee thereof shall be entitled to receive such travelling expenses, and every such person (other than the members referred to in clause 2 (a)-(h)) shall be entitled to receive such fees for attending meetings and transacting business of the Committee or sub-committee and such fees for making inspections, if any, for the purposes of this Act, as the Minister may from time to time determine in respect of that person.

#### **12 Effect of certain other Acts**

Where by or under any other Act provision is made requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of the office, or prohibiting the person from engaging in employment outside the duties of the office, that provision shall not operate to disqualify the person from holding that office and also the office of a member of the Committee or any sub-committee thereof.