



ANNO TRICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1988

No. 98 of 1988

An Act to amend the Dangerous Substances Act, 1979.

[Assented to 15 December 1988]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Dangerous Substances Act Amendment Act, 1988*.
- (2) The *Dangerous Substances Act, 1979*, is in this Act referred to as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Arrangement

3. Section 3 of the principal Act is amended by inserting after the item:

DIVISION IV—LICENCES GENERALLY

the item:

PART IIIA

IMPROVEMENT NOTICES AND PROHIBITION NOTICES

Powers of inspectors

4. Section 9 of the principal Act is amended by striking out subsections (2) and (3).

General duty

5. Section 12 of the principal Act is amended by striking out "the safety of any other person or other person's property" and substituting "the health or safety of any other person, or the safety of any other person's property".

Substitution of s. 14

6. Section 14 of the principal Act is repealed and the following section is substituted:

Offence to keep dangerous substances without a licence

14. (1) A person must not keep a prescribed dangerous substance in any premises unless the person is the holder of a licence under this Division.

Penalty:

- (a) in the case of a body corporate—a division 3 fine;

(b) in any other case—a division 6 fine or division 6 imprisonment.

(2) The regulations may exempt (either absolutely or subject to conditions or limitations) a specified person or class of persons from the requirement to be licensed under this Division.

Licence to keep dangerous substances

7. Section 15 of the principal Act is amended—

(a) by striking out subsection (2);

and

(b) by striking out subsections (5) and (6) and substituting the following subsections:

(5) The holder of a licence under this section who breaches, or fails to comply with, a condition of the licence is guilty of an offence.

Penalty: Division 6 fine.

(6) The Director may grant a licence under this section in respect of premises notwithstanding that the premises do not comply with the regulations, provided that—

(a) the Director is satisfied that the keeping of the prescribed dangerous substance in the premises would not immediately endanger the health or safety of any person, or the safety of any person's property;

and

(b) the Director in granting the licence imposes conditions designed to ensure compliance with the regulations within a specified period.

Substitution of s. 18

8. Section 18 of the principal Act is repealed and the following section is substituted:

Offence to convey dangerous substances without a licence

18. (1) A person must not convey any prescribed dangerous substance unless the person is the holder of a licence under this Division.

Penalty:

(a) in the case of a body corporate—a division 3 fine;

(b) in any other case—a division 6 fine or division 6 imprisonment.

(2) The regulations may exempt (either absolutely or subject to conditions or limitations) a specified person or class of persons from the requirement to be licensed under this Division.

Licence to convey dangerous substances

9. Section 19 of this Act is amended by inserting after subsection (3) the following subsection:

(4) The holder of a licence under this section who breaches, or fails to comply with, a condition of the licence is guilty of an offence.

Penalty: Division 6 fine.

Insertion of new Part IIIA

10. The following Part is inserted after section 23 of the principal Act:

PART IIIA**IMPROVEMENT NOTICES AND PROHIBITION NOTICES****Improvement notices**

23a. (1) Where an inspector is of the opinion that a person—

(a) is contravening a provision of this Act;

or

(b) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated,

the inspector may issue an improvement notice requiring the person to remedy the matters occasioning the contravention.

(2) An improvement notice must—

(a) state that the inspector is of the opinion that the person to whom the notice is addressed—

(i) is contravening a provision of this Act;

or

(ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated;

(b) state the grounds of the inspector's opinion;

(c) specify the provision of this Act in respect of which that opinion is held;

and

(d) specify a day by which the matters referred to in the notice must be remedied.

(3) An inspector may include in an improvement notice directions as to the measures to be taken to remedy the contravention, or to avoid further contravention, of the Act.

(4) A person who contravenes or fails to comply with an improvement notice is guilty of an offence.

Penalty: Division 4 fine.

Prohibition notices

23b. (1) For the purposes of this section, a dangerous situation is a situation involving the keeping, handling, conveying, using or disposing of a dangerous substance that is causing immediate danger to the health or safety of any person, or to the safety of any person's property.

(2) Where an inspector is of the opinion that a dangerous situation exists, the inspector may issue a prohibition notice requiring the person to whom the notice is issued to take adequate measures to avert, eliminate or minimize the danger.

(3) A prohibition notice must—

(a) identify the situation that, in the inspector's opinion, is causing the danger;

(b) state the grounds of the inspector's opinion;

and

(c) specify a period within which the danger must be averted, eliminated or minimized.

(4) An inspector may include in a prohibition notice directions as to the measures to be taken to avert, eliminate or minimize the danger to which the notice relates.

(5) Subject to this Act, a person who contravenes or fails to comply with a prohibition notice is guilty of an offence.

Penalty: Division 2 fine.

Review of notices

23c. (1) A person to whom an improvement notice or prohibition notice is issued may apply to the President of the Industrial Court to have the notice reviewed by a review committee constituted under the *Occupational Health, Safety and Welfare Act, 1986*.

(2) An application for review must be made within 14 days of the receipt of the notice.

(3) Pending the determination of an application for review under this section, the operation of the notice to which the application relates—

(a) in the case of an improvement notice—is suspended;

(b) in the case of a prohibition notice—continues.

(4) A review committee may, if it thinks fit, make an interim order suspending the operation of a prohibition notice until the matter is resolved.

(5) An order under subsection (4) must be made subject to such conditions as may be necessary to protect the health or safety of any person, or the safety of any property.

(6) Where a prohibition notice has been issued, proceedings under this section must be carried out as a matter of urgency.

(7) The provisions of the *Occupational Health, Safety and Welfare Act, 1986*, relating to the procedures and powers of a review committee under that Act extend, with necessary modifications, to proceedings on a review under this section.

Powers of committee on review

23d. (1) At the conclusion of a review under this Part, the review committee may—

(a) confirm any notice to which the review relates;

(b) confirm a notice with such modifications as the review committee thinks fit;

(c) cancel a notice;

(d) issue a different notice.

(2) Where the review committee confirms an improvement notice the operation of which has been suspended or confirms such a notice with modifications, the review committee may order the person to whom the notice was issued to comply with the notice within a period specified by the review committee.

(3) A person who contravenes or fails to comply with a notice that is confirmed or issued by the review committee within the period specified by the review committee is guilty of an offence.

Penalty: Division 4 fine.

(4) If a notice is modified or cancelled by the review committee, the person to whom the notice was issued has no right of recovery against the Crown in respect of

any loss or expenses incurred by him or her as a result of having complied with the notice as it was issued by the inspector.

Action on default

23e. (1) Where a person is required by an improvement notice or prohibition notice to take any specified measures and the person fails to comply with the notice, the inspector who issued the notice may have those measures carried out and, for that purpose, the inspector or any person authorized by the inspector may, after giving reasonable notice to the person required to take the measures, enter and take possession of any place (taking such measures as are reasonably necessary for the purpose) and do, or cause to be done, such things as full and proper compliance with the notice may require.

(2) The Crown may recover the costs and expenses reasonably incurred by an inspector or other authorized person exercising the powers under subsection (1) from the person who failed to comply with the notice, as a debt in a court of competent jurisdiction.

Action in emergency situations

23f. (1) Where an inspector considers on reasonable grounds that there is immediate danger to the health or safety of any person, or to the safety of any person's property, and that there is insufficient time to issue a notice under this Part, the inspector may, after giving such notice (if any) as may be reasonable in the circumstances, do such things as may be necessary to avert, eliminate or minimize the danger.

(2) In the exercise of powers under this section, an inspector—

(a) may at any time enter and take possession of any place (taking such measures as are reasonably necessary for the purpose);

and

(b) may be accompanied by such assistants as may be necessary or desirable in the circumstances.

(3) The Crown may recover the costs and expenses reasonably incurred by an inspector exercising the powers under this section from the person who caused the danger, as a debt in a court of competent jurisdiction.

Exemption by chief inspector

11. Section 24 of the principal Act is amended by striking out from paragraph (b) of subsection (3) "the safety of any person or property" and substituting "the health or safety of any person, or the safety of any property".

Revision of penalties

12. The principal Act is further amended in the manner set out in the schedule.

SCHEDULE

Provision Amended	How Amended
Section 9 (5)	Strike out "\$4 000" and substitute "Division 6 fine".
Section 9 (6)	Strike out "\$4 000" and substitute "Division 6 fine".
Section 9 (8)	Strike out "\$4 000" and substitute "Division 6 fine".
Section 10	Strike out "\$4 000" and substitute "Division 6 fine".
Section 11	Strike out "\$4 000" and substitute "Division 6 fine".
Section 12	(a) Strike out "\$40 000" and substitute "Division 2 fine". (b) Strike out "\$8 000 or imprisonment for two years or both" and substitute "Division 5 fine or division 5 imprisonment, or both".
Section 30 (2) (a)	Strike out "\$4 000" and substitute "a division 6 fine".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor