

LEGISLATIVE COUNCIL

Read 1° 18 September 1984

(Brought in by the Honourable Evan Walker)

A BILL

To amend the *Environment Protection Act 1970*, the *Planning Appeals Board Act 1980* and the *Environment Protection (Review) Act 1984* and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

Short title

1. This Act may be cited as the *Environment Protection (General Amendment) Act 1984*.

Commencement.

10 2. This Act shall come into operation on the day on which this Act receives the Royal Assent.

Principal Act.

3. In this Act the *Environment Protection Act 1970* is referred to as the Principal Act.

Act No. 8056.
Reprinted to No.
9803.
Subsequently
amended by Nos.
9988, 10037,
10081 and
10092.

Miscellaneous amendment of Principal Act.**4. The Principal Act shall be amended as follows:**

- (a) Immediately before section 1 there shall be inserted the following heading:

“PART I.—INTRODUCTION”;

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- (b) Section 1 (3) shall be repealed;

- (c) The heading preceding section 2 shall be repealed;

- (d) In section 4 (1) the interpretation of “Classified area” shall be repealed;

- (e) In section 4 (1) after the interpretation of “Council” there shall be inserted the following interpretation: 10

‘ “**Delegated agency**” means any protection agency to which any power or function of the Authority is delegated under section 68.’;

- (f) In section 4 for sub-sections (2) and (3) there shall be substituted the following sub-section: 15

‘ (2) Any reference in this Act to “waters” includes a reference to—

- (a) the bed and sub-soil lying beneath those waters;

- (b) the air space superjacent to those waters; and 20

- (c) an open, piped or underground drain—

but does not include a reference to a drain which conveys waste or which forms part of any works for the treatment of waste.’;

- (g) In section 7 (1) after the expression “(b)” there shall be inserted the word “shall”; 25

- (h) In section 13 (1) (c) the words “and classifications” shall be repealed;

- (i) In section 15 for the words “the members” there shall be substituted the words “the Chairman, the Deputy Chairman and the members of the Council”; 30

- (j) In section 16 (1) the expression ‘(hereafter in this Act called “State environment protection policy”)’ shall be repealed;

- (k) For section 19 there shall be substituted the following section: 35

Publication of notice of intention.

“19. (1) Before State environment protection policy for an area is declared the Authority shall on three occasions over a period of not less than 21 days publish notice of intention to declare State environment protection policy in respect of the area in a newspaper circulating in such districts 40

as the Authority considers appropriate having regard to the situation of the area.

(2) Any person likely to be affected by a proposed declaration of State environment protection policy shall be entitled to submit to the Authority any information that the person considers relevant to the protection of the area concerned.

(3) The Authority may not less than two months after publication of the last notice under sub-section (1) and having considered all the information submitted to the Authority under sub-section (2) recommend to the Governor in Council the State environment protection policy to be observed in the area concerned.”;

(l) In section 30—

(i) after the expression “section 31A” there shall be inserted the expression “or 31B”; and

(ii) after the words “residential area or” there shall be inserted the word “in”;

(m) In sections 30B (1) (b), 59A, 63A (2) and 64 for the words “protection agency” wherever occurring there shall be substituted the words “delegated agency”;

(n) In section 42A (3), paragraph (a) and the word “or” after that paragraph shall be repealed;

(o) In section 42A (4) the expression “within the meaning of the *Motor Car Act 1958*” where twice occurring shall be repealed;

(p) In section 59A after paragraph (a) there shall be inserted the following paragraph:

“(ab) to the effect that a specified person was served with a notice under this Act and failed to comply with that notice;”;

(q) In section 59AA—

(i) the expression “, summons” wherever occurring shall be repealed;

(ii) for the word “corporate” there shall be substituted the word “common”; and

(iii) in sub-section (1) (a) after the word “Chairman” there shall be inserted the words “or any other person authorized by the Authority to affix the seal”;

(r) Section 59D shall be repealed;

(s) In section 61 (3) for the expression “*Geelong Harbor Trust Act 1958*, the *Melbourne Harbor Trust Act 1958*, the *Portland Harbor Trust Act 1958*”, there shall be substituted the expression “*Portland of Geelong Authority Act 1958*, the *Port of Melbourne Authority Act 1958*, the *Port of Portland Authority Act 1958*,”;

- (t) In section 63A (2) for the expression “sub-section” there shall be substituted the expression “sub-section”;
- (u) In section 71 (1) (b) the expression “or the classification or re-classification of any segment or element of the environment” shall be repealed; and 5
- (v) In section 71 (1) (c) the words “or classification for the protection of the environment” shall be repealed.

Works approvals.

5. (1) Section 8 (1) of the *Environment Protection (Review) Act* 1984 shall be amended as follows: 10

- (a) In the proposed section 19A (2) (b) of the Principal Act for the word “emission” there shall be substituted the word “deposit”;
- (b) In the proposed section 19A (7) of the Principal Act—
 - (i) for the expression “19E” there shall be substituted the expression “19D”; and 15
 - (ii) after the word “premises” there shall be inserted the words “in respect of which there is not applicable an exemption under the regulations”;
- (c) After the proposed section 19C of the Principal Act there shall be inserted the following section: 20

Duration of works approval.

“19CA. (1) The Authority may specify in a works approval the day on which the works approval shall expire if the works in respect of which the works approval is issued have not commenced by that day to the satisfaction of the Authority. 25

(2) A works approval shall expire in any of the following cases:

- (a) If the works to which the works approval relates have not been commenced to the satisfaction of the Authority by the day specified in the works approval; 30
- (b) If a new works approval is issued in substitution for an existing works approval; 35
- (c) If a licence is issued under section 20 in respect of the premises to which the works approval relates;
- (d) If a licence is amended under section 20A and the amendment is made because of the works to which the works approval relates.”; and 40

- (d) For the proposed section 19D of the Principal Act there shall be substituted the following section:

Transitional provisions.

“19D. (1) Unless express provision is made to the contrary in this Act—

(a) any preliminary determination made under this Act as in force immediately before 1 January 1985;

(b) any licence in force immediately before 1 January 1985; and

(c) any application for the issue or the amendment of a licence made before 1 January 1985—

shall continue to have the same status, operation and effect as the preliminary determination, licence or application would have had if the *Environment Protection (Review) Act* 1984 had not been enacted.

(2) Any application for the issue or the amendment of a licence made before 1 January 1985 in respect of premises which are not schedule one premises or schedule two premises shall cease to have any effect on 1 January 1985.

(3) Where before 1 January 1985 an occupier of any premises has commenced any works requiring a works approval, the occupier may subject to this section complete the works without obtaining a works approval if the occupier notifies the Authority of the works and if required to do so by the Authority by notice in writing supplies to the Authority such plans, specifications and other information as the Authority may require within the period specified in the notice.

(4) Where before 1 January 1985—

(a) a preliminary determination to issue or amend a licence has been made under section 20 as in force immediately before 1 January 1985; or

(b) a licence has been issued or amended under section 20 as in force immediately before 1 January 1985 permitting the discharge, emission or deposit of waste from any premises—

and works in respect of the waste to which that preliminary determination or licence relates have not been commenced and as from 1 January 1985 require a works approval, the occupier may complete the works without obtaining a works approval but the Authority may by notice in writing require the occupier to supply to the Authority such plans, specifications and other information as the Authority may require within the period specified in the notice.

- (5) Where before 1 January 1985 a preliminary determination to issue a licence permitting the discharge, emission or deposit of waste from the works had not been made under section 20 as in force immediately before 1 January 1985 and an application for a licence is received by the Authority— 5
- (a) before or on 1 October 1984, the application shall be deemed to have been received on 1 October 1984 and to be an application to which section 20 (8) applies; and 10
- (b) after 1 October 1984, the application shall be deemed to have been received on 1 January 1985 and where the works have been commenced before 1 January 1985, shall be deemed to be an application to which section 20 (8) applies. 15
- (6) Where before 1 January 1985 a preliminary determination to issue a licence has been made and the Authority determines to issue the licence after 1 January 1985, section 33B (1) (b) shall be deemed to apply in respect of the issue of that licence and section 33B shall apply accordingly. 20
- (7) Where before 1 January 1985 the Authority has received an application for the amendment of a licence and a preliminary determination to amend the licence had not been made under section 20 as in force before 1 January 1985— 25
- (a) the application for the amendment of the licence shall be deemed to have been received on 1 January 1985; and
- (b) where the works have been commenced— 30
- (i) if the Authority would have given an exemption under section 19A (5) in respect of the works, section 20A (4) shall be deemed to apply in respect of the application; and
- (ii) if the Authority would not have given an exemption under section 19A (5) in respect of the works, section 20A (6) shall be deemed to apply in respect of the application. 35
- (8) Where before 1 January 1985 a preliminary determination to amend a licence has been made and the Authority determines to amend the licence after 1 January 1985, section 33B (1) (c) shall be deemed to apply in respect of the amendment of the licence and section 33B shall apply accordingly. 40
- (9) Where a works approval is not required because of the operation of sub-section (3) and the Authority receives an application for a licence in respect of those works on or 45

after 1 January 1985, the application shall be deemed to be an application to which section 20 (8) applies.

(10) Where a works approval is not required because of the operation of sub-section (3) and the Authority receives an application for the amendment of a licence in respect of those works on or after 1 January 1985, the application shall be deemed to be an application to which—

(a) section 20A (4) applies if the Authority would have given an exemption under section 19A (5) in respect of the works; or

(b) section 20A (6) applies if the Authority would not have given an exemption under section 19A (5) in respect of the works.

(11) A person who fails to comply with a notice given by the Authority under sub-section (3) or (4) shall be guilty of an offence against this Act and liable to a penalty of not more than 50 penalty units.”.

(2) Section 8 (2) of the *Environment Protection (Review) Act* 1984 shall be amended as follows:

(a) In the proposed section 46A (1) (a) of the Principal Act for the word “trade” where twice occurring there shall be substituted the word “undertaking”; and

(b) In the proposed section 46A (1) (b) of the Principal Act for the words “alter or replace” there shall be substituted the words “replace or otherwise alter”.

Licences.

6. Section 9 (1) of the *Environment Protection (Review) Act* 1984 shall be amended as follows:

(a) After the proposed section 20 (7) of the Principal Act there shall be inserted the following sub-sections:

“(7A) Where the Authority receives an application following the issue of a works approval and the applicant subsequently notifies the Authority that the works have been satisfactorily completed in accordance with the works approval, the Authority shall not later than 60 days after being notified satisfy itself as to whether or not the works have been satisfactorily completed in accordance with the works approval and—

(i) if the Authority is satisfied that the works have been satisfactorily completed, sub-section (7) shall be deemed to apply to the application and the Authority shall be deemed to have received the application on the day on which it became so satisfied; or

(ii) if the Authority is not satisfied that the works have been satisfactorily completed, the Authority shall advise the applicant accordingly.

(7B) Unless an agreement is made under section 67A, if at the expiry of the period of 60 days specified in sub-section (7A) the Authority has not made a decision as to whether or not the works have been satisfactorily completed, the Authority shall upon that expiry be deemed to be satisfied that the works have been satisfactorily completed and sub-section (7A) (i) shall apply accordingly.”;

(b) In the proposed section 20 (8) of the Principal Act for the words “is required to be obtained and has not yet” there shall be substituted the words “was required to be obtained and has not”;

(c) After the proposed section 20 (8) of the Principal Act there shall be inserted the following sub-section:

“(8A) The Authority shall not deal with an application to which sub-section (8) applies unless the applicant forwards to the Authority the fee which the Authority assesses to be the fee that would have been payable had the applicant applied for a works approval as required by section 19A.”;

(d) After the proposed section 20 (9) of the Principal Act there shall be inserted the following sub-section:

“(9A) A notice under sub-section (9) (a) (vi) may provide that if the annual licence fee is paid within such further period as is specified in the notice the notice shall not operate to revoke or suspend the licence.”;

(e) In the proposed section 20A (3) (b) (ii) of the Principal Act for the words “and the works have” there shall be substituted the words “and the works have not”;

(f) After the proposed section 20A (5) of the Principal Act there shall be inserted the following sub-sections:

“(5A) Where the Authority receives an application following the issue of a works approval and the applicant subsequently notifies the Authority that the works have been satisfactorily completed in accordance with the works approval, the Authority shall not later than 60 days after being notified satisfy itself as to whether or not the works have been satisfactorily completed in accordance with the works approval and—

(i) if the Authority is satisfied that the works have been satisfactorily completed, sub-section (5) shall be deemed to apply to the application and the Authority shall be deemed to have received the application on the day on which it became so satisfied; or

(ii) if the Authority is not satisfied that the works have been satisfactorily completed, the Authority shall advise the applicant accordingly.

(5B) Unless an agreement is made under section 67A, if at the expiry of the period of 60 days specified in sub-section (5A) the Authority has not made a decision as to whether or not the works have been satisfactorily completed, the Authority shall upon that expiry be deemed to be satisfied that the works have been satisfactorily completed and sub-section (5A) (i) shall apply accordingly.”;

(g) In the proposed section 20A (6) of the Principal Act for the words “is required” there shall be substituted the words “was required”;

(h) For the proposed section 20A (7) of the Principal Act there shall be substituted the following sub-section:

“(7) The Authority shall not deal with an application to which sub-section (6) applies unless the applicant forwards to the Authority the fee which the Authority assesses to be the fee that would have been payable had the applicant applied for a works approval as required by section 19A.”; and

(i) In the proposed section 20C of the Principal Act—

(i) For sub-sections (1) and (2) there shall be substituted the following sub-sections:

“(1) The Authority shall in considering an application for the issue or transfer of a works approval or of a licence or for the amendment of a licence have regard to the effect of the discharge, emission or deposit of the waste concerned in relation to State environment protection policy so that any—

(a) works approval;

(b) licence;

(c) amendment of a licence; or

(d) conditions subject to which any works approval or licence is issued or transferred or any licence is amended—

are consistent with State environment protection policy.

(2) The Authority may refuse to issue or transfer a works approval or a licence or to amend a licence where the Authority considers that the discharge, emission or deposit would by reason of volume, location, consistency or manner be—

(a) contrary to State environment protection policy;

(b) inconsistent with State environment protection policy; or

- (c) likely to cause or contribute to pollution.”; and
- (ii) In sub-section (3) after the word “issue” there shall be inserted the words “or transfer”.

Abatement notices.

7. (1) In section 11 (1) of the *Environment Protection (Review) Act* 1984 the proposed section 31A of the Principal Act shall be amended as follows: 5
- (a) For the words “discharged or emitted” there shall be substituted the expression “discharged, emitted or deposited”; 10
 - (b) For the words “emitted or discharged” there shall be substituted the expression “discharged, emitted or deposited”;
 - (c) For the words “emission or discharge” (where five times occurring) there shall be substituted the expression “discharge, emission or deposit”; 15
 - (d) In sub-section (1) the words “in respect of those premises” shall be repealed;
 - (e) In sub-sections (2), (5) and (7) for the words “in respect of which premises” there shall be substituted the words “on whom”; and 20
 - (f) In sub-section (6) the words “and shall continue to apply to the premises notwithstanding any change in the occupation of the premises” shall be repealed.
- (2) For section 11 (2) of the *Environment Protection (Review) Act* 1984 there shall be substituted the following sub-section: 25
- “(2) Section 41A of the Principal Act shall be repealed.”.
- (3) Section 11 (3) of the *Environment Protection (Review) Act* 1984 shall be amended as follows:
- (a) In the proposed section 47 of the Principal Act— 30
 - (i) In sub-section (1) the words “in respect of those premises” shall be repealed;
 - (ii) In sub-sections (3), (7) and (9) for the words “in respect of which premises” there shall be substituted the words “on whom”; and 35
 - (iii) In sub-section (8) the words “and shall continue to apply to the premises notwithstanding any change in the occupation of the premises” shall be repealed; and
 - (b) In the proposed section 47A (5) of the Principal Act for the words “minor works control notice” there shall be substituted the words “minor works noise control notice”. 40

(4) For section 11 (4) of the *Environment Protection (Review) Act* 1984 there shall be substituted the following sub-section:

“(4) After section 60 of the Principal Act there shall be inserted the following sections:

5 Notification of notices.

“60A. (1) The occupier of any premises on whom a notice has been served under section 28B, 31A, 31B, 47 or 47A which is still in force shall notify any person who proposes to become the occupier of that premises as to—

- 10 (a) the requirements contained in that notice; and
 (b) the steps if any which have been taken to comply with that notice.

15 (2) Where a person becomes the occupier of any premises and the previous occupier did not comply with sub-section (1) the current occupier may within 12 months of becoming the occupier recover from the previous occupier in any court of competent jurisdiction any reasonable costs incurred in complying with any requirements contained in a notice served on the current occupier which requirements were contained in a notice which had been served on that previous occupier.”.

20 Revocation of notices.

“60B. Where the Authority is satisfied that the requirements contained in a notice served under section 28B, 31A, 31B, 47 or 47A have been complied with, the Authority may revoke the notice by a notice of revocation served on the person on whom that notice was served.”.

Appeals.

8. (1) Section 12 (1) of the *Environment Protection (Review) Act* 1984 shall be amended as follows:

- 30 (a) In the proposed sections 32, 33, 33A, 33B, 33C and 36A of the Principal Act for the words “protection agency” wherever occurring there shall be substituted the words “delegated agency”;
- 35 (b) In the proposed section 32 (1) of the Principal Act after paragraph (b) there shall be inserted the following paragraph:
 “(ba) fees under this Act;”;
- 40 (c) In the proposed section 33B (1) of the Principal Act for paragraph (b) there shall be substituted the following paragraph:
 “(b) issues a licence upon an application to which section 20 (8) applies;”;

- (d) For the proposed section 36 of the Principal Act there shall be substituted the following section:

Notices not to take effect pending appeal.

“36. Notwithstanding anything to the contrary in this Act where an appeal has been made against a notice or notice of variation served under section 28B, 31A, or 47 the notice or notice of variation shall not take effect until the expiry of 30 days after the day on which the Planning Appeals Board has confirmed or varied the notice or notice of variation.”;

- (e) After the proposed section 36A of the Principal Act there shall be inserted the following section:

Appeal against fees.

“36B. (1) A person who is liable to pay a fee under this Act may within 21 days of being required to pay that fee appeal to the Planning Appeals Board on the ground that the fee has been incorrectly calculated.

(2) Nothing in sub-section (1) shall affect the liability of a person to pay a fee due under this Act within the period required under this Act.”;

- (f) In the proposed section 37 of the Principal Act for paragraphs (a), (b) and (c) there shall be substituted the following paragraphs:

“(a) direct that a works approval shall or shall not be issued or transferred or be subject to a specified condition;

(b) direct that a licence shall or shall not be issued, transferred, revoked or suspended or be amended under section 20A or be subject to a specified condition, limitation or restriction;

(c) subject to section 33C, confirm, vary or revoke any amendment of a works approval under section 19C or of a licence under section 20 (9);” and

- (g) In the proposed section 37 of the Principal Act—

(i) the word “or” after paragraph (g) shall be repealed;

(ii) in paragraph (h) for the expression “conditions.” there shall be substituted the expression “conditions; or”; and

(iii) after paragraph (h) there shall be inserted the following paragraph:

“(i) in the case of an appeal under section 36B, confirm the fee or direct that the Authority re-calculate the fee and make any refund that is appropriate.”.

- (2) In section 53A of the *Planning Appeals Board Act* 1980 for the words “protection agency” there shall be substituted the words “delegated agency”.

Transport of Waste.

9. In section 19 of the *Environment Protection (Review) Act 1984* in the proposed section 53A (1) of the Principal Act for the interpretation of "Waste" there shall be substituted the following interpretation:

- 5 "Waste" means any liquid, solid, gaseous or radio-active matter or refuse (whether hazardous or non-hazardous) which is of a type or class prescribed as waste.'

New section 67A.

- 10 10. After section 67 of the Principal Act there shall be inserted the following section:

Agreement to waive time limits.

- 15 "67A. (1) Notwithstanding anything to the contrary in this Act where this Act requires the Authority to perform any function or exercise any power within a specified period the person who would benefit from the performance of the function or the exercise of the power may agree with the Authority to the extension of the specified period by such period as may be agreed between the Authority and that person.

(2) Where an agreement is reached under sub-section (1)—

- 20 (a) the Authority may perform the function or exercise the power in all respects as if the period specified by the Act had not expired; and
- 25 (b) any right of appeal conferred by this Act against the failure of the Authority to perform the function or exercise the power within the period specified by the Act shall be held in abeyance and shall operate from the expiry of the period by which the specified period was extended."

Power to exempt by regulations.

- 30 11. In section 71 (1) (ae) of the Principal Act after the expression "persons," there shall be inserted the expression "any premises or class of premises, any operation or work carried on upon any premises,".