

# Environment Protection (Review) Bill

## NOTES ON CLAUSES

### PRELIMINARY

*Clause 1* is the usual citation clause.

*Clause 2* identifies the Environment Protection Act 1970 as the Principal Act.

*Clause 3* provides for the various provisions of the Act to come into operation on a day or respective days to be fixed by proclamation.

### Extra-Territorial Powers

*Clause 4* extends the operation of the Principal Act to the discharge of waste to the River Murray from premises situated in Victoria.

### DEFINITIONS

*Clause 5* makes a number of amendments to the interpretation section of the Principal Act. Certain existing definitions are altered or deleted and new definitions inserted. Whilst most of the changes are designed to achieve greater consistency and clarity or are of a machinery nature, a number warrant individual comment—

“beneficial use”

The term is redefined to include any use which is declared in a State environment protection policy to be a beneficial use.

“land” and “soil”

The definitions of these terms are deleted and the word “soil” as it appears in the definition of “element” of the environment, replaced with the word “land”.

“Pollutant” “Pollution” “Polluted”

A definition of the term “polluted” is inserted and the definitions of “pollutant” and “pollution” deleted. The principal Act contains four descriptions of what amounts to pollution and an additional definition “pollutant”. This has been a source of considerable confusion.

“Noise”

A definition of this term is inserted so that “noise” includes vibration.

“Groundwater”

A definition of this term is inserted and all references to “underground and artesian water” in the Principal Act are replaced with a reference to groundwater.

“Waters”

A new section is introduced to expressly provide that the definition of “waters” embraces any open or enclosed drain which discharges untreated waste to the environment. The definition of “element” and the “environment” are amended to refer to waters, rather than water, to achieve greater consistency.

### RESTRUCTURING

*Clause 6* provides for the restructuring of the Authority and the Environment Protection Council. The Authority is reconstituted as a body corporate with only one member, the Chairman. Provisions are made for the appointment of a Deputy Chairman and a person to act as the Deputy Chairman. The Environment Protection Council is replaced with a new body, the Environment Council, which consists of no more than twelve Ministerial appointees. The functions of the new Council are set out.

## STATE ENVIRONMENT PROTECTION POLICY

*Clause 7* amends section 18 to enable certain additional matters to be prescribed in an attainment program of a State environment protection policy.

### WORKS APPROVALS

*Clause 8* inserts 6 new sections into the Principal Act for the purpose of introducing a works approval system in respect of scheduled premises from or upon which significant discharges of waste occur, and a works notification system in respect of scheduled premises from which substantial noise is emitted.

#### *Works Requiring an Approval*

Section 19A requires an occupier of scheduled premises to obtain the approval of the Authority prior to carrying out any works which will result in an alteration of the discharge of waste to the environment. Provision is made where a licence is on foot for the Authority to exempt any works which will result in a discharge which has no adverse effect on the environment or third persons.

#### *Procedural Matters*

Section 19B sets out the requirements to be observed by a person making an application for a works approval and the obligations of the Authority when dealing with the application. The referral and advertizing requirements are similar to those which exist in relation to licence applications but there is no obligation upon the Authority to make a preliminary determination. The power of the Health Commission to veto the grant of an application is preserved, as is the ability of the Authority to convene a conference of interested persons. A statutory maximum time limit of 6 months is specified for the Authority to try to act upon an application.

#### *Amendment of a Works Approval*

Section 19C empowers the Authority to amend a works approval in certain specified circumstances.

#### *Notices*

Where the occupier of a premises has constructed works or installed plant without obtaining a works approval and where no exemption applies, the Authority is empowered by section 19D to order the removal of those works or plant.

#### *Transitional Provisions*

Section 19E is a transitional provision and exempts an occupier from obtaining a works approval in certain specified circumstances. A works approval is not required where any works have been commenced prior to the proclamation of the Act, provided that the occupier of the premises upon which the works are being carried out, notifies the Authority of the works and furnishes such plans and specifications as required by the Authority. Where at the commencement of the Act a licence has been issued or amended or a preliminary determination made in respect of the issue or amendment of a licence, a works approval is not required in respect of any works carried out which will result in a discharge for which limits have been prescribed in that licence as issued or amended, or in that preliminary determinations. The Act also substantially amends the licensing provisions of the Principal Act to take account of the works approval system. Section 19E contains a number of additional provisions to ensure that any application for the issue of a licence made prior to the commencement of the Act is appropriately dealt with. Such provisions are necessary to safeguard third party appeal rights and to ensure that any matter which should be made available for public comment is made available.

#### *Notification of Works*

Section 46A requires the occupier of scheduled premises to notify the Authority prior to carrying out any works which will result in an increase in the noise emitted from those premises. Provision is also made for the Authority to require the occupier of scheduled premises to undertake a study of the effect of the proposed noise emissions.

## LICENSING

*Clause 9* substantially amends the licensing provisions of the Principal Act. A number of new sections are inserted to replace sections 20 to 27 inclusive.

### *Requirement to Obtain a Licence*

The new section 20 prohibits the discharge of wastes into the environment from scheduled premises, except in accordance with the terms and conditions of a licence. A transitional provision is inserted to ensure that an existing licence in respect of non-scheduled premises remains in force until the licence fee falls due.

### *Amendment, Revocation or Suspension of a Licence*

Section 20 empowers the Authority to amend, vary, revoke or suspend a licence. A number of additional grounds upon which the Authority may exercise its discretion to revoke or suspend are spelt out and a mechanism is provided whereby the Authority may 'vary' a licence to effect changes which do not alter the licence holders substantive rights. Second party appeal rights are not conferred in respect of such 'variations'. The new section 20A introduces a mechanism whereby a licence holder may apply for the amendment of a licence.

### *Procedural Matters*

Depending on whether or not the applicant for a new licence or for the amendment of an existing licence has complied with the provisions relating to work approvals, different obligations are placed on the Authority in its dealing with the application. Where an applicant has obtained a works approval or has been exempted from the requirement to obtain a works approval, the Authority is required to act upon the application within 60 days. Where an applicant has failed to obtain a works approval in circumstances where an approval is required, the same referral and advertising requirements applicable to an application for a works approval apply to that application. The Authority is not required to make a preliminary determination in respect of the application and the time within which the application must be acted upon is six months. Where the Authority proposes, upon its own initiative, to amend a licence the Authority is not obliged to advertize or seek comment upon the proposed amendment.

### *Conferences*

The new section 20B empowers the Authority to hold conferences. This section is essentially the same as section 20B of the Principal Act with the exception that the Authority is directed to take into account the discussions and resolutions of any conference and any recommendations made by its convener.

### *Consideration of State Environment Protection Policy*

A new section 20C is inserted which incorporates in part the provisions of section 20 (8) and (9) of the Principal Act. The Authority is required to take into account any existing State environment protection policy when considering an application for the issue of a works approval or a licence or an amendment of a licence. Further provision is made for the Authority to prescribe more stringent standards than those contained in a policy where local environmental conditions require a higher level of protection than would otherwise be provided, or the pollution control technology required to achieve a higher level of protection is "commonly available" in the industry. Provision is also made to enable the Authority to amend a licence for the purpose of achieving consistency with any new or amended policy, and to allow a reasonable time for compliance.

### *Conditions Attached to a Works Approval or Licence*

The new section 21 sets out the type of conditions which may be specified in a works approval or licence.

### *Requests for Information*

The new section 22 incorporates in part the provisions of section 22 of the Principal Act but further empowers the Authority to require an applicant to participate

in and, where appropriate, to bear the cost of a study designed to assess the likely effect of any discharge to the environment. Noncompliance with a requirement made by the Authority extends the period of time in which the Authority is required to act on the application.

#### *Registers*

The new section 23 directs the Authority to keep registers of works approvals and licences.

#### *Surrender of Licence.*

The new section 23A deals with the surrender of a licence.

#### *Fees*

The new section 24 deals with fees and specifies the maximum fees which may be prescribed in respect of licences and works approvals. Provision is also made for the refund of fees.

#### *Transfers of Licences and Works Approvals*

Those provisions of the Principal Act which deal with the transfer of a licence are consolidated into a new section 25. This section also provides a mechanism whereby a works approval may be transferred.

#### *Duration of a Licence*

The new section 26 removes an ambiguity in section 26 of the Principal Act and provides that a licence remains in force until revoked, suspended or surrendered.

#### *Offence Provision*

The new section 27 makes it an offence to discharge waste into the environment from scheduled premises except in accordance with the terms and conditions of a licence. Certain deeming provisions, recently inserted into section 27 of the Principal Act are repeated.

#### *Section 30*

The new section 30 largely restates, with greater clarity, section 30 of the Principal Act but further provides that proceedings may be taken where offensive odours are emitted from licensed premises and are found to be offensive in a residential area.

#### *Temporary Discharges*

A new section 30A is inserted to provide a mechanism whereby a person may obtain the approval of the Authority to discharge wastes for certain specified purposes. This section incorporates in part the provisions of section 20AA of the Principal Act but also embraces discharges from non-scheduled premises to meet a temporary emergency and discharges resulting from the commissioning of plant and equipment.

#### *Emergency Discharges*

A new section 30B is inserted to protect the person who discharges waste in an emergency, in order to avoid danger to "life or limb", from being convicted of an offence.

## SEWER INFLOWS

*Clause 10* inserts two new sections to enable the Authority to regulate sewer inflows. By means of an abatement notice, the Authority is empowered to make requirements in respect of sewer inflows which are the cause of, or are a significant contributing factor to, a sewerage authority being unable to comply with the conditions of its licence. The Authority is also empowered to make requirements in respect of a discharge to a sewer which does not comply with a standard prescribed by the Authority. The power to obtain the necessary information upon which to act is also conferred.

## NOTICES

*Clause 11* inserts a number of new sections with the object of replacing the existing notice system for the abatement of air pollution and expanding the existing notice system for the control of noise.

### *Pollution Abatement Notices*

A new section 31A is inserted to enable the Authority to make requirements in specified circumstances in respect of discharges to land and into waters as well as to the atmosphere. The procedure for issuing a pollution abatement notice has been streamlined by the removal of the requirement to serve a preliminary notice. In addition, the Authority is empowered to address a wider range of matters than those capable of being dealt with in air pollution abatement notice at the present time.

### *Noise Control Notices*

A new section 47 is inserted to enable the Authority to make requirements in respect of noise emissions from any premises, other than residential premises. The circumstances in which requirements may be made have been widened and the procedure for issuing a notice, streamlined.

### *Requirements Binding Occupier*

The requirements contained in a pollution abatement or noise control notice will remain in force notwithstanding any change in the occupation of the premises. A new section 60A is inserted to enable a certificate to be provided to a prospective purchaser setting out any requirements which have been made in respect of any premises.

### *Minor Works Notices*

Two new sections are inserted to enable the Authority to make requirements, in respect of which no rights of appeal are conferred, where the cost of complying with such requirements does not exceed \$5 000. A minor works notice may be served in those circumstances in which a pollution abatement or a noise control notice can be served.

## APPEALS

*Clause 12* inserts a new Part IV into the Principal Act which consolidates all provisions dealing with the jurisdiction of the Planning Appeals Board, remedies certain minor deficiencies in the existing provisions dealing with appeals, provides for a number of additional appeal rights and modifies third party appeal rights to take account of the new works approval system.

### *Second Party Appeals*

In addition to those rights already existing, second party appeal rights are conferred in respect of the refusal by the Authority to grant a works approval or an application for the amendment of a licence; the failure of the Authority to grant such an application within the time allowed; any condition subject to which a works approval is granted or amended, or a works approval or licence transferred; any condition subject to which an application for the amendment of a licence is granted; any condition contained in a pollution abatement notice, an abatement notice or a notice requiring the removal of works; and any requirement placed on that person to Second party appeal rights against Authority initiated alterations to a licence are restricted to amendments which effect the licensee's substantive rights. The matters which may be taken into account by the Planning Appeals Board when determining an appeal against an abatement notice are specified.

### *Third Party Appeals*

Upon the grounds specified, third parties may appeal against the issue of a works approval, the removal of the suspension of a licence and the issue of a licence, or the

grant of an application for the amendment of a licence, where the licence holder has failed to obtain a works approval. Third party appeal rights are not conferred in respect of Authority initiated amendments to a licence.

#### *Time Limits*

All second and third party appeals must be lodged within 21 days from the date that the decision being appealed against was made. All notices which are subject to appeal do not take effect until this 21 day period has elapsed and, in the case of an appeal being lodged, until the appeal has been determined. A third party appeal against a decision involving a works approval or licence has the effect of putting that decision in abeyance from the date that the appeal was lodged.

#### *Amendments*

In respect of any appeal against the amendment of a works approval or licence, the Planning Appeals Board is directed to only consider and take into account those matters directly related or consequential to the amendment. A new provision is inserted into the *Planning Appeals Board Act 1980* to enable the Board to amend an application for a works approval or licence.

### POLLUTION OF WATERS

*Clause 13* inserts two new sections to replace the provisions of sections 38 and 39 of the Principal Act. The new section 38 restates, in a paraphrased form, that all discharges to waters must comply with State environment protection policy and any standard prescribed by the Principal Act.

#### *Offence Provision*

The new section 39 deals with the pollution of waters. Sub-section (1) describes in general terms those acts which constitute either an offence of causing or permitting pollution to occur, sub-section (2) deems that certain acts constitute the offence of causing pollution and sub-sections (3) and (4) specify certain other acts which constitute pollution. The new sub-section (2) removes any doubt as to which of the offences specified in sub-section (1), the matters detailed therein relates.

### POLLUTION OF THE ATMOSPHERE

*Clause 14* inserts two new sections to replace the provisions of sections 40 and 41 of the Principal Act. The new section 40 restates, in a paraphrased form, that all discharges to the atmosphere must comply with State environment protection policy and any standards prescribed by the Principal Act.

#### *Offence Provisions*

The new section 41 deals with pollution of the atmosphere. Sub-section (1) describes generally, in similar terms as the new section 39 (1), those acts which constitute an offence of causing or permitting pollution and sub-section (2) deems that certain acts constitute the offence of causing pollution.

### MOTOR CAR AND MOTOR BOAT EMISSIONS

*Clause 15* inserts one new section and amends certain other provisions of the Principal Act which deal with motor car and motor boat emissions. Sections 43A, 48B and 48C create various offences and are amended to provide that it is the registered owner who is liable where his motor car or motor boat does not comply with any standards prescribed by the regulations. The new section 55D enables a court to accept a registration certificate as *prima facie* evidence of the facts stated therein. Sections 48B and 48C are also amended to extend the period in which a motor car or a motor boat should be tested in order to determine compliance with noise and emission standards. Section 55C (2) is amended to extend the period in which the Authority is obliged to retest a vehicle to determine compliance with noise emission standards. Section 54A (1) is amended to enable the Authority to obtain information relating to noise emissions from motor car manufacturers and distributors.

## POLLUTION OF LAND

*Clause 16* inserts two new sections which deal with land pollution. All references to soil have been removed. The new section 44 provides, in terms similar to sections 38 and 40 that all discharges to land must be consistent with State environment protection policy and comply with any prescribed standards.

### *Offence Provisions*

The new section 45 is consistent with sections 39 and 41 and specifies those acts which constitute an offence of causing or permitting pollution to occur and those acts in respect of which pollution will be deemed to have been caused.

## NOISE EMISSION LABELS

*Clause 17* amends those provisions of sections 48D, 55 and 55B which deal with noise emission labelling and noise control devices. As provided in clause 30 certain amendments are made to the regulation making powers for the purpose of extending the range of items which may be required to exhibit a label and the type of information which may be prescribed in relation to a label. Sections 48D (3) and 55 are amended to take account of these changes to the regulations making powers. Further, a new sub-section is inserted in section 55B to enable the Authority to obtain items in order to determine compliance with any requirements prescribed in relation to labelling or noise control devices and a new sub-section is inserted into section 48D to make it an offence to offer for sale any noise control device which when fitted to a vehicle in accordance with the fitting instructions still leaves the vehicle capable of emitting noise that fails to comply with the prescribed standard.

## LITTER

*Clause 18* amends section 50 to enable the Authority to direct the occupier of premises to remove any litter deposited upon those premises and to provide that any costs and expenses incurred by a person in removing litter may be recovered by that person from the offender as a debt due to that person. At present any costs recovered by a person must be paid into the Consolidated Fund.

## TRANSPORT OF WASTE

*Clause 19* introduces a permit system for the vehicular transport of solid or liquid non-hazardous waste.

## FURNISHING OF INFORMATION

*Clause 20* amends section 54 and 54A to achieve greater consistency with other provisions of the Principal Act. These sections empower the Authority to require the furnishing of information.

## POWERS OF AUTHORIZED OFFICERS

*Clause 21* amends section 55 of the Principal Act.

### *Powers of entry*

Various deficiencies in section 55 (1) of the Principal Act are removed by the insertion of a new sub-section which empowers an authorized officer to enter premises and to do any act or thing, including the taking and removal of samples, which in his opinion is necessary for the proper administration of the Act. The new sub-section applies to any premises from or on which wastes have been, are being or are likely to be discharged, any premises from which noise is likely or emitted and any premises upon which an industry or trade is being conducted. The officer may be accompanied by any person or persons whose assistance the officer may require. Such a provision is necessary to enable the Authority to engage contractors to undertake, under supervision, "clean up" measures where the Authority has not the resources to carry out such works itself. A new sub-section is also inserted to enable

an officer to enter any premises and take and remove samples of any fuel being offered for sale for use in a vehicle or ship.

#### *Drilling of Bores*

Four new sub-sections are inserted for the purpose of empowering an officer to enter upon any lands and drill a bore in order to take samples of groundwater and make geological studies. Such a power is necessary to enable the Authority to assess the effect of a proposed discharge to land and to monitor the effect of a discharge. Appropriate provision is made for the giving of notice and for the occupier of the lands to claim compensation in respect of any damage caused. The officer may be accompanied by any person or persons whose assistance the officer may require.

#### *Names and Addresses*

A new sub-section is inserted to empower an authorized officer to require any person who appears to be the occupier of premises to furnish to the officer the name and address of any person who is in occupation of those premises or who is in control of any plant or process carried on upon those premises. This power is intended to abrogate the common law privilege against self-incrimination.

### OFFICERS OF THE AUTHORITY

*Clause 22* inserts four new sections to replace sections 57, 57A, 59 and 59A of the Principal Act for the purpose of consolidating and clarifying the provisions of the Principal Act dealing with the appointment and powers of officers of the Authority. The new section 57 provides for the appointment of authorized officers; the new section 57AA provides for the appointment of and specifies the functions of analysts, noise control officers and pollution control officers; and the new section 59 provides for the appointment of persons to take proceedings for offences against the Act. Section 63 (1) of the Principal Act is amended to ensure that proceedings may only be taken by a person who has been authorized by the Authority. The new section 59A consolidates and rationalizes the provisions of sections 59 and 59A of the Principal Act and deals with the various certificates which may be produced in a court. Provision is also made for the court to accept the report of a pollution control officer as to the results of a stack test.

### EXECUTION OF DOCUMENTS

*Clause 23* inserts a new provision which deals with the execution of documents and judicial notice of documents purported to be executed by the Authority or an officer of the Authority.

### SERVICE OF DOCUMENTS

*Clause 24* amends various provisions of the Principal Act with the object of consolidating and rationalizing requirements governing the service of notices. A new sub-section is inserted to replace section 61 (1) to enable personal service to be effected by leaving a copy of a notice with any person over sixteen years of age who is either employed at, or an inmate, of the premises. A new sub-section (1A) is inserted to deal with service upon a company.

### ABATEMENT OF POLLUTION

*Clause 25* replaces section 62 of the Principal Act and inserts two new sections with the object of enhancing the ability of the Authority to remove or abate pollution.

#### *Action by the Authority*

Section 62 is replaced with a new section to empower the Authority to take pollution or noise abatement measures in a wider range of circumstances. The Authority may take such measures or cause such measures to be taken as the Authority considers necessary to remove any pollutants which have or are being discharged, to abate or reduce the emission of noise or to remove the likelihood of pollution occurring. Provision is made for the Authority to recover any costs and expenses incurred from the person who has caused the pollution or upon whose premises a condition of pollution exists.



### *Directions by the Authority*

Two new sections are inserted to enable the Authority to give appropriate directions. The new section 62A empowers the Authority to direct any person who has caused pollution or any person upon whose premises a condition of pollution exists, to undertake such measures as the Authority considers necessary to "clean up" the pollution. Any costs and expenses incurred by a person who did not cause the pollution may be recovered as a debt due to that person. In cases of emergency, when in the opinion of an authorized officer there is or is likely to be imminent danger to "life or limb" or to the environment, the new section 62B, empowers the officer to direct any person to remove the pollution or remove the likelihood of pollution occurring. Any costs and expenses incurred in complying with such a direction by any person who is not the offender, are to be reimbursed by the Authority. An officer is exempted from liability in respect of any damage caused as a result of a direction given in good faith.

### SECTION 63 (2)

*Clause 26* amends section 63 (2) to provide that where any part of the environment is polluted as a result of a discharge from commercial or industrial premises then the occupier of those premises is deemed to have caused the discharge unless he can establish that the discharge was unrelated to the commercial or industrial undertaking. The circumstances where the Authority can prove that a particular polluting discharge emanated from certain premises, but is not in a position to prove that the occupier of the premises caused or permitted the polluting discharge to occur.

### PROCEEDINGS FOR OFFENCES

*Clause 27* inserts a new section 63A to extend the period in which proceedings may be taken in respect of alleged offences involving land pollution, pollution of groundwater and non-compliance with the provisions relating to works approvals. The time limit is extended from one year to three years and, by order of the Minister, may be further extended.

### REMEDIAL ACTION

*Clause 28* amends section 66 to enable a protection agency to take "clean up" measures where a condition of pollution exists, whether or not a person has been convicted of an offence in respect of that pollution. In the event of a conviction being obtained the agency is empowered to recover costs and expenses from the offender.

### DELEGATION

*Clause 29* concerns the power of the Authority and a protection agency to delegate its functions and amends the Principal Act in two respects.

#### *Delegations to Protection Agencies*

Section 68 is amended to empower the Authority to delegate any of its powers and functions to a protection agency and to correct a minor deficiency in that section.

#### *Delegations to Officers*

A new section 68A is inserted to enable the Authority to delegate any of its powers and functions, other than the power of delegation, to any officer or employee of the Authority. A protection agency is similarly empowered to sub-delegate any of its powers and functions under the Principal Act. Provision is made for the Authority or protection agency to revoke or give directions in respect of any such delegation to perform any of its functions whether or not a particular function has been delegated. Certain other incidental matters, such as the execution of documents by a delegate are dealt with.

## REGULATION MAKING POWERS

*Clause 30* effects a number of changes to the regulation making powers as set out in the Principal Act.

### *Fees*

The regulation making powers dealing with fees are expanded to deal with all fees payable under the Principal Act.

### *Scheduled Premises*

A new regulation making power is inserted to enable any premises or class of premises to be prescribed as schedule one, schedule two or schedule three premises. A definition of each type of scheduled premises is inserted into the Principal Act and in the light of these definitions, any premises from which waste is discharged to the atmosphere may be prescribed as a schedule one premises; any premises from or upon which waste is discharged to land or from which waste is discharged into waters, may be prescribed as schedule two premises; and any premises from which noise is emitted may be prescribed as schedule three premises. The works approval system and the new licensing requirements introduced by the Act apply only to schedule one and schedule two premises. The works notification system introduced by section 46A applies only to schedule three premises.

### *Exemptions*

A new regulation making power is inserted to enable any person or class of persons or any type of waste to be exempted from all or any of the provisions of the Principal Act. It is envisaged that this regulation making power will be utilized to exempt certain classes of premises from the new works approval system. In some cases it may also be appropriate that certain premises are exempted from the licensing requirements but not from the requirement to obtain a works approval.

### *Noise Emission Labelling*

The regulation making powers dealing with noise emission labelling are amended to widen the range of items which may be required to exhibit a label and the type of information which may be required to be contained in a label. All references to noise emission categories are deleted as this is no longer seen as an appropriate criteria to use for the purpose of prescribing the information to be contained in a label.

### *Discharges to Waters*

Similar regulation making powers as exist in relation to discharges to the atmosphere are inserted in relation to discharges into waters. Section 71 (1) (*gc*) which deals with the monitoring of discharges to the atmosphere is amended to embrace discharges into waters and several new paragraphs are inserted into subsection (1) to enable the prescription of ambient standards for receiving waters and end-of-pipe limits for wastes discharged into waters; the regulation of plant and equipment so as to prevent the pollution of waters and the prescription of process to be used for the treatment of waste so as to prevent the pollution of waters.

### *Vehicular Transport of Waste*

Several new regulations making powers are inserted to enable certain matters to be prescribed for the purpose of the introduction of the new permit system for the vehicular transport of waste.