

# Environment Protection (Amendment) Bill (No 2)

## EXPLANATORY MEMORANDUM

The Bill makes a number of unrelated amendments to the *Environment Protection Act 1970* and the *Magistrates (Summary Proceedings) Act 1975* to enhance the efficiency and effectiveness of the Environment Protection Authority and related police operations in protecting the environment. The major issues addressed are the establishment of an on-the-spot fine procedure for some offences under the Principal Act and giving members of the police force limited powers of entry into residential premises to investigate the emission of noise.

### NOTES ON CLAUSES

*Clause 1* states the main purpose of the Act.

*Clause 2* provides that section 23 is deemed to have come into operation on 10 December 1985 [the date of Royal Assent of the *Environment Protection (Industrial Waste) Act 1985*] and for the remainder to come into operation on a day or days to be proclaimed.

*Clause 3* identifies the *Environment Protection Act 1970* as the Principal Act.

*Clause 4 (1)* inserts new provisions to establish an on-the-spot fine procedure for the offences prescribed in a new Schedule to the Principal Act inserted by *Clause 4 (2)*. An infringement notice may be served by any person who has been appointed by the Authority to take proceedings for offences against the Principal Act and, in the case of infringements involving the police, a member of the police force. The infringement notice must contain certain specified particulars and can be withdrawn within 28 days. If the prescribed penalty has been paid before the notice is withdrawn, a refund must be made. If the notice has not been withdrawn, payment of the prescribed penalty will exiate the infringement and no further proceedings may be taken. If the prescribed penalty is not paid within the time allowed and court proceedings are instituted, any resulting conviction will not be regarded as a prior conviction in any proceedings for a subsequent offence.

*Clause 4 (3)* amends the *Magistrates (Summary Proceedings) Act* to enable the infringements to be dealt with under the alternative court procedure and to enable summonses for all offences under the Principal Act and the regulations to be served by registered post.

*Clause 5* strengthens existing controls over domestic noise by giving members of the police force a limited power of entry into residential premises to investigate the emission of noise. The power is subject to the obtaining of a court order upon application by a member of or above the rank of senior constable. The order may only be given if the court officer to whom the application is made is satisfied that no other measure would be effective to abate the unreasonable noise.

*Clause 6* amends paragraph (c) of the definition of "waste" in section 4 (1) of the Principal Act to cover a situation where waste matter is sold without having been recycled, reprocessed, recovered or purified.

*Clause 7* amends the provisions of the Principal Act dealing with the processing of applications for a works approval, licence or licence amendment. Where comments on the application take the form of a petition from a number of persons requesting to be notified of the outcome, the Authority will be able to respond by publishing notification in a newspaper circulating generally throughout Victoria as well as notifying a nominated spokesperson or, if there is none, any one of them.

*Clause 8* amends section 20 of the Principal Act to allow the Authority to issue a licence where part only of works permitted under a works approval has been satisfactorily completed.

*Clause 9* corrects an anomaly in section 20 of the Principal Act so as to allow third party comment (and therefore appeal) on licence applications for premises which were previously exempt from licensing but which became scheduled premises requiring a licence under the new system as from 1 January 1985. Because no works approval was required for the continuing operation of the industry, section 20 (6) of the Principal Act obliged the Authority to respond to the application without the opportunity for third party comment.

*Clause 10* makes the provision in the Principal Act dealing with the processing of licence amendment applications where no works approval was required identical with its counterpart in the case of a licence application where no works approval was required.

*Clause 11* amends the general defence provision in the Principal Act to exclude emergencies arising from the defendant's own negligence or action.

*Clause 12* makes a number of amendments to existing provisions of the Principal Act which are designed to strengthen the Authority's motor vehicle programme. Where a member of the police force observes that the exhaust from a vehicle being used on a highway does not comply with prescribed standards or where the member has lawfully stopped a vehicle and finds that it is not equipped with the prescribed pollution control devices, the member is able to provide a statement to that effect which can be used in court. A copy of the statement is to be served with the summons together with any other police statements that the vehicle was lawfully stopped and was being used on a highway.

*Clause 12 (3)* also contains consequential amendments to the Principal Act which were overlooked by the *Road Safety Act 1986*.

*Clause 13* amends section 47 of the Principal Act to allow a noise control notice to be served where the Authority is satisfied that a proposed use of premises in an area where no limits have been prescribed is likely to cause unreasonable noise.

*Clause 14* extends the operation of section 48B of the Principal Act to also apply to the owner of a noisy, unregistered motor vehicle which is used on a highway.

*Clause 15* makes failure to lodge an annual return relating to prescribed industrial waste as required by section 54B an offence.

*Clause 16* makes a number of housekeeping amendments to section 55AC of the Principal Act concerning the approved motor vehicle testers programme. In addition, a defence is provided to a charge of failing to comply with a notice where the vehicle will not be used after the specified date except to obtain a certificate of compliance.

*Clause 17* makes a housekeeping amendment to section 57A of the Principal Act dealing with the contents of authorized officers' reports.

*Clause 18* makes some minor changes and additions to the existing provision dealing with *prima facie* proofs.

*Clause 19* inserts into section 61 of the Principal Act a provision containing a deemed address for service of notices arising out of the driving or use of a motor vehicle or ownership of a motor vehicle or motor boat.

*Clause 20* corrects an anomaly arising from the substitution of a new section 62 by the *Environment Protection (Industrial Waste) Act 1985* and relieves the Authority of the obligation to ascribe a cause in recovering pollution abatement costs incurred by it.

*Clause 21* substitutes a new section 71 (3) of the Principal Act to enable certain regulations made under the Principal Act to incorporate any document and not just standards.

*Clause 22* corrects certain typographical and other editorial errors in the Principal Act.

*Clause 23* clarifies an amendment made to section 55 (3) of the Principal Act by the Environment Protection (Industrial Waste) Act dealing with the powers of an authorized officer.

*Clause 24* contains an appropriate transitional provision to ensure compatibility of terminology with the consequential amendments to be made to the Principal Act by the *Road Safety Act 1986*.

