

Environment Protection (Industrial Waste) Bill

EXPLANATORY NOTES

The principal object of this Bill is to introduce new management powers to deal with industrial waste and certain chemicals which may be a hazard to the environment and to humans. The Bill also strengthens existing controls over noise pollution and addresses a number of housekeeping matters.

Part 2 of the Bill amends the *Environment Protection Act 1970*. The main thrust of this Part is to enable the Environment Protection Authority to regulate the transport, treatment, disposal, storage and reprocessing of industrial wastes. It also introduces a notification system in respect of notifiable chemicals. These are chemicals which are recognized as being technically difficult or expensive to dispose of and have been prescribed to be "notifiable chemicals". Existing abatement, clean up and emergency powers have been extended to deal with industrial wastes and situations presenting a hazard to the environment.

Part 3 of the Bill amends the *Melbourne and Metropolitan Board of Works Act 1958* to assign to the Board responsibility for establishing and operating facilities for the storage, treatment and disposal of industrial waste. Provision is made for the establishment of a Waste Management Fund.

NOTES ON CLAUSES

PART 1: PRELIMINARY

Purpose

Clause 1 sets out the purpose of the Bill.

Commencement

Clause 2 provides for the Act to come into operation on the day or days to be proclaimed.

PART 2: AMENDMENT TO THE ENVIRONMENT PROTECTION ACT 1970

Principal Act

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

Exclusions

Clause 4 provides that the Principal Act shall not apply to certain substances, apparatus or discharges and is designed to avoid overlap with certain controls imposed under the *Health Act 1958*.

Definitions

Clause 5 amends section 4 (1) of the Principal Act by amending the definitions of "Analysis" and "Waste" and by inserting new definitions of "Environmental hazard", "Industrial waste", "Industrial waste management policy", "Notifiable chemical", "Permit", "Policy" and "Schedule four premises". All are self evident on reading and all relate to the Authority's new waste management functions. A minor housekeeping amendment is made to section 4 (2).

Functions and Duties of Authority

Clause 6 amends section 13 of the Principal Act which spells out the functions and duties of the Authority. The changes reflect the Authority's new responsibilities in relation to the management of industrial waste.

Industrial Waste Management Policy

Clause 7 enables Industrial Waste Management Policies to be prepared and declared. Policies will address issues where the industrial community needs clear guidance and provide a basis for the Authority's licensing and approval powers. Provision is made for Policies to deal with, amongst other things, the disposal of industry waste, the routes and methods by which industrial waste is to be transported, the recycling of industrial waste, the storage of industrial waste, and the use and disposal of notifiable chemicals.

Works Approvals

Clause 8 (1) extends the existing works approval requirements to cover works and processes for the reprocessing, treatment, disposal or storage of prescribed industrial wastes on Schedule four premises. Clause 8 (2) repeals certain transitional provisions in the Principal Act which were necessary when the works approval system was introduced.

Licensing

Clause 9 extends the existing licensing provisions to cover Schedule four premises used for the reprocessing, storage, disposal and treatment of prescribed industrial wastes.

Matters to be Considered by Authority

Clause 10 requires the Authority to take into account Industrial Waste Management Policy as well as State Environment Protection Policy when issuing a works approval or licence. Section 20c (5) of the Principal Act is also amended to empower, rather than oblige, the Authority to allow a licensee a reasonable time to comply with a new or amended Policy and to ensure that where an extension of time is allowed, the appropriate time is specified as a condition of the licence. This will ensure that rights of appeal are available to the licensee.

Conditions of a Licence

Clause 11 enables the Authority to require, as a condition of a licence, that an acceptable policy of insurance is maintained, or bond or other security is lodged with the Authority to cover any future costs incurred in cleaning up the site or taking pollution abatement or waste control measures.

Fees

Clause 12 prescribes the fees payable in respect of a "waste management" licence. The maximum fee allowed is \$16 000 which is consistent with existing fees for other licences.

Offences

Clause 13 creates several new offence provisions. It is an offence to use Schedule four premises to handle prescribed industrial waste without a licence or while a licence is suspended. It is an offence to handle industrial waste in such a manner as to cause non-compliance with Industrial Waste Management Policy or any regulations, or to cause an environmental hazard. Further, it is an offence to dump or abandon industrial waste at unlicensed premises, or if at licensed premises, without the knowledge or consent of the licensee.

Liability of Licence Holder

Clause 14 makes certain consequential amendments to take account of the new "waste management" licence and an amendment to section 41 of the Principal Act dealing with the discharge of odours.

Notifiable Chemicals

Clause 15 introduces a notification system for “notifiable chemicals”. An occupier of premises who proposes to use the premises to conduct any operation involving more than the prescribed quantity or concentration of a notifiable chemical is required to notify the Authority of the proposed use and to provide the Authority with information, including details of the methods proposed for the disposal of wastes arising from the use of the chemical. The occupier is also required to comply with any relevant Industrial Waste Management Policy. Failure to notify the Authority, to supply any information required or to comply with a Policy will attract a maximum penalty of \$10,000. A transitional provision is included to deal with occupiers currently handling a notifiable chemical.

Section 31A and 31B Notices

Clause 16 extends the existing pollution abatement notice system to cover industrial waste management matters. Provision is made for a notice to be served where the use or proposed use of premises has or is likely to cause an environmental hazard, non-compliance with Industrial Waste Management Policy, the regulations or any conditions of a permit or licence.

Appeals

Clause 17 amends the provisions of Part IV of the Principal Act dealing with appeals to take account of the new “waste management” licences and works approvals and changes to the permit system for the transport of waste.

Pollution of Atmosphere

Clause 18 amends section 41 (1) of the Principal Act in so far as it deals with pollution of the atmosphere caused by the discharge of offensive odours. The amendment is not a substantive one but is designed to ensure that the deeming provisions of section 63 (2) can be used to assist the Authority in proving that where odour is emitted from certain premises the occupier of those premises caused the emission to occur.

Unreasonable Noise from Residential Premises

Clause 19 contains a new section to replace the existing provisions of the Principal Act dealing with noise from residential premises. The new section strengthens existing controls in a number of ways—

- (a) the definition of residential premises is extended to embrace noise emitted from outbuildings and from the garden as well as from within the house or flat, and to embrace noise from residential building sites;
- (b) the sources from which noise can be emitted is widened; and the items which can be prescribed is widened;
- (c) any person who allows unreasonable noise to be emitted is guilty of an offence as well as the person who caused the noise to be emitted;
- (d) certain noise is deemed to be unreasonable noise;
- (e) if called to residential premises by an aggrieved neighbour, a police officer is empowered to give directions for the abatement of the noise.

Noise from Entertainment Venues

Clause 20 imposes new controls over noise from non residential premises where music is performed or played. It enables a police officer to give certain directions for the abatement of noise when called to premises by a neighbour aggrieved by noise being emitted from the premises. A direction may only take effect between midnight and 8 o'clock the following morning.

“Spotting” certificates

Clause 21 forms part of the new measures designed to implement the program for the road side testing of noisy motor vehicles. When a vehicle has been lawfully stopped by the police to enable a test to be performed, the officer involved is able to provide a certificate, which can be used in court, that the vehicle was being used on a highway.

Labelling of Packaging

Clause 22 is a housekeeping amendment and deals with the labelling of goods.

Transport of Prescribed Waste and Transport Certificates

Clause 23 amends Part IXA of the Principal Act which requires the owner of a vehicle transporting prescribed waste to obtain a permit. The amendments are designed—

- (a) to make the permit system more compatible with the licensing system by providing mechanisms for the transfer, surrender, revocation and amendment of a permit;
- (b) to enable a permit to be issued for a limited time;
- (c) in the case of a company which transports waste, to ensure that each vehicle used requires a permit;
- (d) to restrict the permit requirements to vehicles used on a highway;
- (e) in the case of municipal councils transporting waste, to restrict the permit system to vehicles carrying *prescribed industrial waste*; and
- (f) to require the Authority to process an application for a permit within 21 days.

Clause 23 also provides for the introduction of a transport certificate. Where prescribed industrial waste is removed from any premises it must be accompanied by a completed certificate which specifies the amount and type of the waste. The Regulations will spell out the respective obligations of the generator, the transporter and the person who receives the waste, as outlined in the Industrial Waste Management Strategy.

Annual Returns

Clause 24 requires an occupier of premises who handles prescribed industrial waste to lodge with the Authority an annual return containing information relating to the amount, type and quality of waste being handled. Information provided by annual returns will provide the data base on which the Authority can devise appropriate waste management strategies.

Powers of authorized officers

Clause 25 (1) amends section 55 of the Principal Act to extend the powers of authorized officers in relation to industrial waste.

Clause 25 (2) implements the road-side testing program for noisy vehicles. It empowers an authorized officer to test noisy motor vehicles lawfully stopped by a police officer and enables the police officer to provide a certificate, which may be used in court, that a vehicle was lawfully stopped.

Testing of Vehicles and Ships

Clause 26 makes some minor changes to existing provisions dealing with the proofs required in proceedings relating to vehicles and ships which do not comply with the Principal Act.

Approved Testers

Clause 27 inserts several new provisions to enable noisy motor vehicles to be tested by selected muffler fitters. Provision is made for a muffler fitter to be appointed an "approved tester" and for the Authority to require a noisy vehicle detected on a highway to be tested by any approved tester selected by the owner.

Sale of Certain Motor Vehicles

Clause 28 is a housekeeping amendment designed to ensure that where any vehicle is sold in contravention of the Act, the validity of the Contract of Sale is not affected.

Reports and Certificates

Clause 29 makes a number of changes to the provisions of the Principal Act dealing with the appointment of officers to carry out specialized tasks and the preparation and use of certificates and reports prepared by those officers. The amendments rectify a number of deficiencies in these provisions and by so doing simplify the categories of specialized officers which may be appointed and the provisions relating to the use of reports and certificates in court. Provisions relating to “analysts” remain with slight modification but authorized officers are empowered to carry out all the tasks previously assigned to noise control and pollution control officers. These categories of officers are removed.

Instruments and Analytical Techniques

Clause 30 inserts new evidentiary provisions concerning the use of instruments or monitoring or other equipment, and the use of analytical techniques employed by analysts or authorized officers.

Offences Relating to False Information

Clause 31 makes it an offence to knowingly or negligently provide incorrect or misleading information or to conceal information in various circumstances.

Abatement, Clean-up and Emergency Powers

Clause 32 widens the scope of sections 62, 62A and 62B of the Principal Act to deal with waste management matters. The amendments enable the Authority to take action itself, to require action to be taken or to give directions in an emergency situation where—

- (a) industrial waste or a potentially hazardous chemical has been dumped or abandoned; or
- (b) such a waste or substance is being handled in such a manner as to give rise to an environmental hazard.

Affidavits of Service

Clause 33 amends section 61 of the Principal Act which deals with the service of notices. It inserts new evidentiary provisions similar to those contained in section 10 (d) and (e) of the Magistrates (Summary Proceedings) Act.

Court Orders

Clause 34 enables a court to order a person convicted of an offence against the Act to take action to prevent the continuance or recurrence of the offence, in respect of a wider range of circumstances.

Injunctions

Clause 35 inserts a new provision, similar to that contained in the *Town and Country Planning Act 1961*, to enable the Authority to seek an injunction to compel compliance or restrain non-compliance with the requirements of the Act.

Offences by Corporations etc.

Clause 36 inserts a new section similar to that contained in section 46 of the *Dangerous Goods Act 1985*. It provides that where an offence is committed by a corporation, an officer of the corporation may also be found guilty in certain circumstances. Provision is also made for statements made by a company officer to be admissible as evidence in proceedings against the corporation.

Delegation

Clause 37 is a housekeeping amendment which deals with the Authority's powers of delegation.

Regulations

Clause 38 provides several new regulation making powers which are consequential upon other amendments dealing with the management and control of industrial waste and notifiable chemicals.

Incorporation of Matters by Reference

Clause 39 is a housekeeping amendment designed to enable regulations, and Policies made under the Act to incorporate by reference matters provided for in other documents or subordinate legislation.

Consequential Amendment of Other Legislation

Clause 40 makes certain consequential amendments to the *Planning Appeals Board Act 1980*.

PART 3: AMENDMENTS TO THE MELBOURNE AND METROPOLITAN BOARD OF WORKS ACT 1958

Principal Act

Clause 41 identifies the *Melbourne and Metropolitan Board of Works Act 1958* as the Principal Act.

Trade Waste

Clause 42 amends section 184A to deal with trade waste agreements, the entry and inspection of trade premises and the acceptance of trade wastes arising outside of the metropolis into the Board's sewers.

Part XII—Waste

Clause 43 inserts a new Part XII into the Principal Act to empower the Board of Works to store, treat and dispose of wastes other than those wastes normally handled by municipal councils.

Definitions

Section 313 contains definitions.

Functions of the Board

Section 314 specifies various functions that may be undertaken by the Board in its waste storage treatment and disposal role, such as research and development of processes; the design, construction and operation of facilities; and refining, combining and advising in relation to waste.

Powers of the Board

Section 315 sets out the Board's general power to do all things necessary to perform its functions under section 314 amongst which are the abilities to inspect, investigate, sample, test and analyse wastes; enter into contracts and agreements concerning wastes; and to charge for the use of facilities or services of the Board.

By-laws

Section 316 empowers the Board to make by-laws concerning the analysing of wastes, the terms and conditions of agreements, and other matters. Such by-laws may incorporate standards.

Waste Management Fund

Section 317 empowers the Board to establish a separate Fund, called the Waste Management Fund, for the purposes of its waste storage treatment and disposal role.

Borrowing Powers

Section 318 allows the Board to borrow up to a maximum of \$100 000 000.

Borrowings with the exception of temporary financial accommodation require the approval of the Treasurer and all borrowings are guaranteed by the Government.

Debentures and Inscribed Stock

Section 319 allows the Board to raise money for its waste role by the issue of debentures or inscribed stock.

Trusts

Section 320 provides that except in specified circumstances, the Board is not to receive notices of trusts in relation to any debenture issued under this Part.

Investment

Section 321 enables the Board to invest any moneys raised pursuant to its waste role in Government and like securities and to invest other moneys of the Board in the Industrial Waste Management Fund's loans and securities.

Offences

Section 322 specifies breaches, and penalties for breaches, of this Part or by-laws made under it.

Costs Recovery

Section 323 allows the Board to recover costs incurred by it in remedying any contravention, and gives the court a discretion, having regard to the seriousness and consequences of any case, to impose a penalty of double the costs.

Injunctions

Section 324 expressly empowers the Board to apply for an injunction to restrain any contravention of, or compel the compliance with, this Part, or any by-laws or agreements made under this Part.

Remainder of Principal Act to apply

Section 325 is a machinery provision that makes the rest of the Principal Act applicable to this Part where appropriate.

