



CLEAN AIR ACT, 1984

No. 26 of 1984

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ELIZABETHAE II REGINAE

A.D. 1984

No. 26 of 1984

An Act to minimize and control air pollution, and for other related purposes.

[Assented to 10 May 1984]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

1. This Act may be cited as the "Clean Air Act, 1984".

Short title.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

Commencement.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of any specified provisions of this Act until a day fixed by the proclamation, or a day to be fixed by subsequent proclamation.

3. In this Act, unless the contrary intention appears—

Interpretation.

"air pollution" means the emission into the air of any impurity:

"authorized officer" means a person appointed as an authorized officer under this Act:

"chimney" means any structure designed or used for the purpose of emitting impurities from any premises into the air:

"the Committee" means the Clean Air Advisory Committee established under Part II:

"control equipment" means any device that controls, limits, measures, records or indicates air pollution:

"council" means a council constituted under the Local Government Act, 1934:

"the Department" means the Department of Environment and Planning:

“the Director-General” means the Director-General of the Department:

“domestic incinerator” means an incinerator that—

(a) has a capacity of less than 0.25 cubic metres;

and

(b) is used for burning the refuse from less than three private households:

“fuel-burning equipment” means any machine, engine, apparatus or structure in which, or in the operation of which, combustible material is burned, but does not include a motor vehicle:

“impurity” means solid or liquid particles of any kind and any gas, and includes an odour:

“licence” means a licence granted under Part III:

“motor vehicle” means any machine, however propelled, that is designed or used for the purpose of transporting goods, materials or persons, but does not include a crane, a vessel or a railway locomotive:

“occupier”, in relation to premises, means a person who has, or is entitled to, possession or control of the premises:

“premises” means any land, building or structure, and includes a crane, vessel or railway locomotive:

“prescribed activity” means any industry, operation or process that is declared by the regulations to be a prescribed activity for the purposes of this Act:

“prescribed matters” means—

(a) prevailing weather patterns and meteorological conditions;

(b) the topography of all relevant land;

(c) current technological processes for controlling air pollution and minimizing the harmful effects of air pollution;

(d) the availability of those technological processes, and the suitability of the premises in question for the implementation of those processes;

(e) the likely effect of the air pollution in question on persons, animals, plants and property:

“the Senior Judge” means the person holding, or acting in, the office of Senior Judge under the Local and District Criminal Courts Act, 1926:

“the Tribunal” means the Air Pollution Appeal Tribunal established under Part V:

“vessel” means any ship, boat or other water craft.

Non-application
of this Act.

4. (1) This Act does not apply to, or in relation to, the process, or an appliance used in the process, of preparing food or beverages in a private household.

(2) Apart from sections 38 and 39 and Part VI, this Act does not apply to, or in relation to—

(a) a domestic incinerator;

or

(b) the burning of garden refuse by a fire in the open on the premises of a private household.

5. This Act binds the Crown.

Act binds Crown.

PART II

THE CLEAN AIR ADVISORY COMMITTEE

6. (1) There shall be a committee entitled the "Clean Air Advisory Committee".

Constitution of the Committee.

(2) The Committee shall consist of ten members, appointed by the Governor, of whom—

(a) one shall be an officer of the Department nominated by the Minister;

(b) one shall be a person who has qualifications or experience in chemical engineering nominated by the Minister;

(c) one shall be a person who has qualifications or experience in fuel technology nominated by the Minister;

(d) one shall be a person who has qualifications or experience in meteorology nominated by the Minister;

(e) one shall be a person who has qualifications or experience in the field of air pollution control nominated by the Minister;

(f) one shall be a person nominated by the Minister of Health;

(g) one shall be a person nominated by the Minister after consultation with the Local Government Association of South Australia;

(h) one shall be a person nominated by the Minister after consultation with the Chamber of Commerce and Industry (S.A.) Incorporated;

(i) one shall be a person nominated by the Minister after consultation with the United Trades and Labor Council;

and

(j) one shall be a person nominated by the Minister after consultation with a conservation group from time to time selected by the Minister.

(3) No more than four members of the Committee may be officers of the Public Service of the State.

(4) The Governor may appoint one of the members to be the Chairman of the Committee.

7. (1) The Governor may appoint a suitable person to be the deputy of a member of the Committee.

Deputies.

(2) Where a member is for any reason absent or unable to act in his capacity as a member of the Committee, his deputy may act as a member of the Committee.

Term of office of appointed members.

8. (1) A member of the Committee shall be appointed for such term, not exceeding five years, as the Governor determines and specifies in the instrument of his appointment.

(2) Upon the expiration of the term of office of a member of the Committee, he shall be eligible for re-appointment.

Removal of appointed members from office, vacancies, etc.

9. (1) The Governor may remove a member of the Committee from office on the ground of—

(a) mental or physical incapacity to carry out satisfactorily the duties of his office;

(b) dishonourable conduct;

or

(c) neglect of duty.

(2) The office of a member of the Committee shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by giving notice in writing to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (1).

(3) Upon the office of a member of the Committee becoming vacant, a person shall be appointed to that office in accordance with this Act.

Allowances and expenses.

10. A member of the Committee shall be entitled to receive such allowances and expenses as the Governor may from time to time determine.

Conduct of business.

11. (1) The Chairman or, in his absence, his deputy, shall preside at any meeting of the Committee.

(2) In the absence of both the Chairman and his deputy from a meeting of the Committee, the members present shall elect one of their number to preside at the meeting.

(3) Six members shall constitute a quorum of the Committee, and no business shall be transacted at any meeting of the Committee unless a quorum is present.

(4) A decision carried by the votes of a majority of the members present at a meeting shall be a decision of the Committee.

(5) The person presiding at a meeting of the Committee shall, in the event of an equality of votes, have a second, or casting, vote.

(6) Subject to this Act, the business of the Committee shall be conducted in a manner determined by the Committee.

Validity of acts of the Committee.

12. An act or proceeding of the Committee shall not be invalid by reason of a vacancy in the membership of the Committee or of a defect in the appointment of a person to the Committee.

Functions of the Committee.

13. The functions of the Committee are—

- (a) to assist the Minister in establishing and keeping under review objectives, guidelines, procedures and standards for the purposes of this Act;
 - (b) to monitor the administration and operation of this Act;
 - (c) to make any recommendations to the Minister it thinks fit in relation to the administration and operation of this Act and the making of regulations under this Act, and in relation to air pollution control generally;
 - (d) to report to the Minister on any matter referred to the Committee by the Minister;
- and
- (e) to perform such other functions as may be prescribed.

PART III

LICENSING OF PRESCRIBED ACTIVITIES

DIVISION I—APPROVALS FOR BUILDING WORK IN RELATION TO PROPOSED PRESCRIBED ACTIVITIES

14. (1) Subject to subsection (2), a person shall not commence, or cause to be commenced—

- (a) the construction of any premises in which he, or some other person, proposes to carry on a prescribed activity;
- (b) the alteration or extension of any premises for the purposes of a prescribed activity proposed to be carried on in those premises by that person, or some other person;

Construction, alteration or extension of premises in which a prescribed activity is to be carried on must be approved by the Minister.

or

- (c) the installation or alteration of plant or equipment for the purposes of a prescribed activity proposed to be carried on by that person, or some other person,

unless the written approval of the Minister has first been obtained.

(2) Subsection (1) does not apply in relation to—

- (a) a prescribed activity in respect of which a person holds a licence under this Act;
- or
- (b) the construction, alteration or extension of premises for which a planning authorization is required under the Planning Act, 1982.

(3) An application for approval must be made in a manner and form determined by the Minister and must be accompanied by the prescribed fee.

(4) An applicant shall furnish the Minister with such information, plans, specifications, papers or documents relevant to the application as the Minister may require.

(5) The Minister may refuse to give an approval under this section only if he is satisfied that the air pollution likely to be caused as a result of carrying on the prescribed activity—

(a) would be in contravention of this Act;

or

(b) would be likely to be injurious to public health, to cause serious discomfort or inconvenience to members of the public or to cause undue injury or damage to animals, plants or property.

(6) Where the Minister refuses an application for approval, he shall give written notice to the applicant of his reasons for so doing.

(7) An approval given under this section may be subject to such conditions (if any) as the Minister thinks fit and specifies in the approval.

(8) The Minister may revoke, vary or waive compliance with any condition of an approval given under this section.

(9) A person who has been given an approval under this section subject to conditions shall, in carrying out the approved works, comply with those conditions.

(10) The Minister shall, in exercising any of his powers under this section, take into consideration the prescribed matters and such other matters as he considers relevant.

DIVISION II—LICENCES

Prohibition of carrying on a prescribed activity without a licence.

15. After the expiration of the period of three months from the commencement of this Act, a person shall not carry on a prescribed activity on any premises unless he holds a licence under this Act to carry on that activity on those premises.

Application for licence.

16. (1) A person may apply to the Minister for a licence under this Act.

(2) An application for a licence—

(a) must be made in a manner and form determined by the Minister; and

(b) must be accompanied by the prescribed fee.

(3) An applicant must furnish the Minister with such information, plans, specifications, papers or documents relevant to the application as the Minister may require.

Grant of licence.

17. (1) The Minister may grant to an applicant a licence to carry on any prescribed activity specified in the licence on the premises designated in the licence.

(2) Upon granting a licence, the Minister shall forward to the applicant a licence in the prescribed form.

Refusal of licence.

18. (1) Subject to this section, the Minister may refuse to grant a licence only if he is satisfied that the air pollution likely to be caused as a result of carrying on the prescribed activity—

(a) would be in contravention of this Act;

or

(b) would be likely to be injurious to public health, to cause serious discomfort or inconvenience to members of the public, or to cause undue damage or injury to property, plants or animals.

(2) Subject to subsection (3), the Minister may not refuse an application for a licence if the applicant has been given an approval under Division I in respect of the premises the subject of the application.

(3) The Minister may refuse an application for a licence where the applicant has failed to comply with the conditions of an approval given to him under section 14 in respect of the premises the subject of the application.

(4) Where the Minister refuses an application for a licence, he shall give written notice to the applicant of his reasons for so doing, and shall refund the licence fee to the applicant.

19. Notwithstanding any other provision of this Act, a person who was carrying on a prescribed activity immediately prior to the commencement of this Act shall, upon application for a licence in accordance with this Act, be entitled to be granted a licence.

Prescribed activities in existence at commencement of Act entitled to a licence.

20. The Minister shall, in exercising any of his powers under section 17 or 18, take into consideration the prescribed matters and such other matters as he considers relevant.

Matters to be considered in granting or refusing a licence.

21. (1) All licences shall expire on a common expiry day fixed by the Minister for the purposes of this section.

Renewal of licences.

(2) Subject to this Act, a licence shall remain in force from the day on which it is granted until the expiry day fixed under subsection (1) and thereafter may be renewed for successive periods of one year.

(3) An application for renewal must be made in a manner and form determined by the Minister and must be accompanied by the prescribed fee.

(4) The Minister may, if he thinks fit, determine an application for renewal notwithstanding that it is delivered to him out of time.

(5) Where an application for renewal is made in accordance with this Act, the Minister shall renew the licence of the applicant.

22. The holder of a licence may at any time surrender his licence to the Minister.

Surrender of licences.

23. Where the holder of a licence—

(a) has been found guilty of an offence against this Act;

(b) has obtained the licence improperly;

or

(c) has failed to comply with a condition of the licence,

the Minister may, by notice in writing addressed to the holder of the licence, revoke the licence, or suspend the licence for such period as he thinks fit and specifies in the notice.

Revocation or suspension of licence.

24. (1) A licence under this Act may be transferred in accordance with this section.

Transfer of licences.

(2) Upon application for the transfer of a licence being made in a manner and form determined by the Minister, and the prescribed fee being

paid by the person to whom the licence is to be transferred, the Minister shall transfer the licence to that person.

The register.

25. (1) The Minister shall cause a register of holders of licences to be kept.

(2) The register shall contain the name and address of each holder of a licence, the conditions (if any) of his licence, information as to the revocation, suspension or surrender of any licence, and such other information as may be prescribed.

(3) The Minister shall make the register available for inspection by any person.

DIVISION III—CONDITIONS OF LICENCES

Holder of licence must not carry out certain works without the approval of the Minister.

26. (1) Every licence shall be subject to the condition that the holder of the licence shall not, in the course of carrying on the prescribed activity the subject of the licence—

- (a) alter the technical methods of operation of the activity from the methods specified in the licence;
- (b) change the type of fuel used from the type specified in the licence;
- (c) change the type of any materials processed from the type specified in the licence;
- (d) install, alter, replace or remove any chimney in the premises;
- (e) alter or extend the premises, or install, alter, replace or remove any fuel-burning equipment, or any other plant or equipment, in or on the premises, where to do so would be likely to cause or increase air pollution from the premises, or cause the emission into the air of different impurities from the premises,

unless the written approval of the Minister has first been obtained.

(2) An application for approval under subsection (1) must be made in a manner and form determined by the Minister.

(3) An applicant shall furnish the Minister with such information, plans, specifications, papers or documents relevant to the application as the Minister may require.

(4) An approval given under this section may be subject to such conditions (if any) as the Minister thinks fit and specifies in the approval.

(5) Where the Minister refuses an application for approval, he shall give written notice to the applicant of his reasons for so doing.

(6) The Minister may revoke, vary or waive compliance with a condition of an approval given under this section.

(7) The holder of a licence who has been given an approval under this section subject to conditions shall, in carrying out the approved action, comply with those conditions.

Licence may be subject to other conditions.

27. A licence may be granted subject to such other conditions (if any) as the Minister thinks fit and specifies in the licence.

Duty to comply with conditions of licence.

28. The holder of a licence shall comply with the conditions of his licence.

29. The Minister may, by notice in writing addressed to the holder of a licence—

Variation, etc., or imposition, of conditions of licence.

- (a) vary, revoke or waive compliance with, a condition of the licence;
- or
- (b) impose any condition he thinks fit.

30. The Minister shall, in exercising any of his powers under this Division, take into consideration the prescribed matters and such other matters as he considers relevant.

Matters to be considered by Minister in exercising his powers under this Division.

PART IV

GENERAL AIR POLLUTION CONTROL PROVISIONS

31. The occupier of any premises shall not cause, suffer or permit air pollution in or from those premises through—

Occupier of premises must not cause air pollution through certain emissions.

- (a) failure to maintain fuel-burning equipment, control equipment or any other plant or equipment in an efficient condition;
- (b) failure to operate fuel-burning equipment, control equipment or any other plant or equipment in a proper and efficient manner;
- (c) failure to carry out maintenance of fuel-burning equipment, control equipment or any other plant or equipment in a proper and efficient manner;
- or
- (d) failure to process, handle, move or store goods or materials in or on the premises in a proper and efficient manner.

32. (1) Subject to this section, the occupier of premises shall not cause, suffer or permit air pollution of a prescribed kind or class from those premises except in accordance with the prescribed standards.

Air pollution of certain kind must not exceed prescribed standards.

(2) Subject to this section, where the occupier of premises is carrying on an activity on those premises that is likely to cause, or is causing, air pollution (not being air pollution to which subsection (1) applies), he shall take such action as is reasonably practicable in the circumstances to prevent or minimize that air pollution.

(3) The Minister may, if he thinks special reasons exist for doing so, exempt a person from a provision of this section by notice in writing addressed to the person.

(4) An exemption given under this section may be for such period of time and subject to such conditions (if any) as the Minister thinks fit and specifies in the notice.

(5) The Minister may, by further notice in writing, vary the conditions of or revoke an exemption given under subsection (3).

33. (1) Subject to this section, after the expiration of the period of three months from the commencement of this Act, the occupier of premises shall not cause, suffer or permit the emission of an excessive odour from those premises.

Excessive odours must not be emitted from any premises.

(2) An odour emitted from premises is excessive if—

(a) a complaint is made to the Department by a member of the public alleging that the odour is offensive or causes discomfort;

(b) it is detected outside the premises by an authorized officer relying solely on his sense of smell;

and

(c) in the opinion of the authorized officer, the odour—

(i) is offensive, or causes discomfort, to a degree or an extent that members of the public ought not reasonably be expected to tolerate;

and

(ii) is of a strength that exceeds to a significant extent the level at which the odour is normally emitted (if at all) from the premises.

(3) It shall be a defence for a person charged with an offence under this section to prove that the emission of the odour could not, by the exercise of reasonable diligence, have been prevented.

(4) The Minister may, if he thinks special reasons exist for doing so, exempt any person from this section by notice in writing addressed to the person.

(5) An exemption given under this section may be for such period of time and subject to such conditions (if any) as the Minister thinks fit and specifies in the notice.

(6) The Minister may, by further notice in writing, vary the conditions of or revoke any exemption given under subsection (4).

(7) This section does not apply in relation to an odour arising from an operation or process carried on outside the metropolitan area or a township, being an operation or process—

(a) of a winery;

or

(b) related to animal husbandry or poultry farming.

(8) In this section—

“the metropolitan area” means the part of the State that is comprised of—

(a) Metropolitan Adelaide as defined in Part IV of the Development Plan under the Planning Act, 1982;

and

(b) the areas of the City of Adelaide and the Municipality of Gawler;

“township” means township as defined in the Local Government Act, 1934.

Duty to provide and use chimneys for the dispersal of pollution.

34. (1) The Minister may, by notice in writing addressed to the occupier of premises in or on which there is fuel-burning equipment, or any other plant or equipment, that causes, or is likely to cause, air pollution, direct the occupier—

- (a) to provide in or on the premises such number of chimneys of such design and dimensions as may be specified in the notice;
- or
- (b) to alter any chimney in or on the premises in such manner as may be specified in the notice.
- (2) A person to whom a notice under subsection (1) has been given shall comply with the notice.
- (3) The Minister may, by further notice in writing addressed to the occupier, vary or revoke a notice given under this section.
- (4) Where a chimney has been provided (whether pursuant to a direction of the Minister or otherwise) for the purpose of dispersing the impurities from a particular source within any premises, the occupier of the premises shall not cause, suffer or permit the emission of those impurities into the air otherwise than through that chimney, unless the written approval of the Minister has first been obtained.
- (5) An approval given under subsection (4) may be subject to such conditions (if any) as the Minister thinks fit and specifies in the approval.
- (6) Where the Minister refuses an application for approval, he shall give written notice to the occupier of the premises of his reasons for so doing.
- (7) An occupier of premises who has been given an approval under subsection (4) subject to conditions shall, in carrying out the approved action, comply with those conditions.

35. (1) Where air pollution from any premises has occurred, is occurring or, in the opinion of the Minister, is likely to occur, the Minister may, by notice in writing addressed to the occupier of the premises and issued after consultation with the occupier or a genuine attempt on the part of the Minister to consult with the occupier, require him—

Minister may require certain action to be taken to prevent or mitigate air pollution.

- (a) to install such fuel-burning equipment, control equipment or other plant or equipment, or replace or make such alterations to any existing fuel-burning equipment, control equipment or other plant or equipment, as may be specified in the notice;
- (b) to use such fuel in the operation of any fuel-burning equipment as may be specified in the notice;
- (c) to discontinue an operation or activity, or to carry out an operation or activity in a manner specified in the notice;
- (d) to operate, or stop operating, any control equipment, fuel-burning equipment or any other plant or equipment during such times as may be specified in the notice, or to operate any such equipment in the manner specified in the notice;
- (e) to remove any goods or materials to such place and in such manner as may be specified in the notice;
- (f) to carry out such cleaning or repair work as may be specified in the notice;
- or
- (g) to take any such other action as the Minister thinks necessary for the prevention or mitigation of air pollution and specifies in the notice.

(2) A person to whom a notice under subsection (1) has been given shall comply with the notice.

(3) The Minister may, by further notice in writing, vary or revoke a notice given under subsection (1).

(4) The Minister shall not, in exercising his powers under this section, require the occupier of premises to take any action that would necessitate the occupier closing down his entire operation on the premises, unless the Minister has first consulted with the Minister of State Development in the matter.

36. The Minister shall, in exercising any of his powers under the preceding sections of this Part, take into consideration the prescribed matters and such other matters as he considers relevant.

Matters to be considered by Minister in exercising his powers under certain sections of this Part.

Authorized officer may require certain action to be taken in emergency situations.

37. (1) Where an authorized officer is of the opinion that the air pollution from any premises—

(a) is, or is likely to be, injurious to public health;

or

(b) is causing, or is likely to cause, serious discomfort or inconvenience to any person,

the authorized officer may, by notice in writing addressed to—

(c) the occupier of the premises;

(d) the person apparently in charge of the premises;

or

(e) the person apparently in charge of any activity on the premises that appears to be giving rise to the air pollution,

require the person to whom the notice is addressed to take such action as the authorized officer thinks necessary and specifies in the notice for stopping, controlling or preventing the air pollution, or mitigating the effects of the air pollution, at or within such time, and in such manner, as is specified in the notice.

(2) A person to whom a notice under subsection (1) is addressed shall not fail to comply with the notice.

Penalty: Ten thousand dollars.

Default Penalty: Five thousand dollars.

(3) It shall be a defence for a person charged with an offence under this section to prove that he could not reasonably comply with the notice.

(4) An authorized officer may, by further notice in writing, vary or revoke any notice given under this section.

38. (1) Where the Minister is of the opinion that air pollution is occurring, or is likely to occur, to an extent that—

(a) it is, or is likely to be, injurious to public health;

(b) it is causing, or is likely to cause, undue damage or injury to property, plants or animals;

or

Minister may prohibit the use of certain fuels and equipment in emergency situations.

- (c) it has, or is likely to have, a serious adverse impact on the environment,

the Minister may, by notice published in the *Gazette* and in a newspaper circulating throughout the State—

- (d) prohibit, unconditionally or conditionally, the sale, supply or use of such fuel, fuel-burning equipment or other plant or equipment as may be specified in the notice, or any fuel, fuel-burning equipment or other plant or equipment of a class specified in the notice;

or

- (e) prohibit, unconditionally or conditionally, the sale, supply or use of all fuel, fuel-burning equipment or other plant or equipment, except such fuel, fuel-burning equipment or other plant or equipment as may be specified in the notice, or of a class specified in the notice.

(2) A notice under subsection (1) shall have effect—

- (a) within the area specified in the notice;

and

- (b) for the period of time specified in the notice.

(3) A person shall not contravene a notice under this section.

(4) The Minister may, by further notice in the *Gazette*, vary or revoke any notice given under this section.

39. (1) Where the Director-General is of the opinion that meteorological conditions are such that the burning of fires in the open or in incinerators while those conditions subsist may be injurious to public health or may have a serious adverse impact on the environment, he may, by order, prohibit, unconditionally or conditionally, the burning of fires in the open or in incinerators, or in incinerators of a specified class, during such period, or periods, of time and within such area, or areas, of the State as may be specified in the order.

Director-General may prohibit burning in certain weather conditions.

(2) An order under subsection (1) must be—

- (a) published in a daily newspaper circulating throughout the State;

or

- (b) broadcast by radio throughout the area, or areas, of the State to which the order relates.

(3) A person shall not contravene an order under this section.

Penalty: Five hundred dollars.

40. (1) Where under any provision of this Part a person is, by notice or order, required or directed to do any specified thing, or prohibited from doing any specified thing, and that person fails to comply with the notice or order, the Minister may cause the notice or order to be complied with and, for that purpose, any person authorized by the Minister in that behalf and using only such force as is reasonably necessary, may enter, or break into, and take possession of such premises or parts of premises and do, or

Minister may cause work to be done where any notice or order is not complied with.

cause to be done, such things as full and proper compliance with the notice or order may require.

(2) An authorized person shall not exercise his power to break into premises except upon the authority of a warrant issued by a justice, unless the authorized person believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(3) A justice shall not issue a warrant under subsection (2) unless he is satisfied, upon information given on oath, that the warrant is reasonably required in all the circumstances.

(4) The Minister may recover the amount of the costs and expenses reasonably incurred by him in exercising his powers under subsection (1) from the person who failed to comply with the notice or order, as a debt in a court of competent jurisdiction.

PART V APPEALS

Constitution of
the Tribunal.

41. (1) There shall be a tribunal entitled the "Air Pollution Appeal Tribunal".

(2) The Tribunal shall consist of three members, of whom—

(a) one (the Chairman) shall be a person holding judicial office under the Local and District Criminal Courts Act, 1926, nominated by the Senior Judge;

(b) one shall be a person appointed by the Governor upon the nomination of the Minister of Health;

and

(c) one shall be a person appointed by the Governor upon the nomination of the Minister, being a person who, in the opinion of the Minister, has wide experience in the control of air pollution in industry.

Deputies.

42. (1) The Governor may appoint a suitable person to be the deputy of a member of the Tribunal (other than the Chairman).

(2) Where a member of the Tribunal (other than the Chairman) is for any reason absent or unable to act in his capacity as a member of the Tribunal, his deputy may act as a member of the Tribunal.

Term of office.

43. (1) A member appointed to the Tribunal by the Governor shall be appointed for such term, not exceeding three years, as the Governor determines and specifies in the instrument of his appointment.

(2) Upon the expiration of his term of office, a member of the Tribunal referred to in subsection (1) shall be eligible for re-appointment.

Removal of
members from
office, vacancies,
etc.

44. (1) The Chairman ceases to hold office as Chairman if—

(a) he ceases to hold judicial office under the Local and District Criminal Courts Act, 1926;

or

(b) his nomination is revoked by the Senior Judge.

(2) The Governor may remove a member of the Tribunal (other than the Chairman) from office on the ground of—

(a) mental or physical incapacity to carry out satisfactorily the duties of his office;

(b) dishonourable conduct;

or

(c) neglect of duty.

(3) The office of a member of the Tribunal (other than the Chairman) shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by giving notice in writing to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (2).

(4) Upon the office of a member of the Tribunal becoming vacant, a person shall be appointed to that office in accordance with this Act.

45. A member of the Tribunal (other than the Chairman) is entitled to receive such allowances and expenses as the Governor may from time to time determine.

Allowances and expenses.

46. (1) The Chairman shall preside at any meeting of the Tribunal.

Conduct of business.

(2) The Tribunal shall sit at such times and at such places as the Chairman may direct.

(3) Subject to this Act, the business of the Tribunal shall be conducted in a manner determined by the Tribunal.

47. (1) Where a person is dissatisfied with—

(a) any decision made by the Minister under this Act (other than under section 14 (a) or (b)) in relation to that person;

Grounds for, and manner of, appeal.

or

(b) the terms of any notice given by the Minister or an authorized officer, being a notice given to, or that has effect in relation to, that person,

he may appeal against that decision or notice to the Tribunal.

(2) An appeal under this section must be instituted in the prescribed manner.

(3) Subject to subsection (4), where an appeal under this section has been instituted, the decision or notice appealed against shall be suspended until the appeal has been determined or withdrawn.

(4) Where an appeal under this section has been instituted against a notice given under section 35 or 38, the notice shall continue to have effect

in relation to the appellant unless, upon application made to the Tribunal, the Tribunal orders that the operation of the notice in relation to the appellant be suspended until the appeal is determined or withdrawn.

(5) An appeal under this section shall be conducted as a full review of the decision or notice the subject of the appeal.

Tribunal must notify the parties of the time and place for hearing the appeal.

48. Before the Tribunal proceeds to hear an appeal, it shall—

- (a) give the appellant reasonable notice, in writing, of the time and place at which it will hear the appeal;
- and
- (b) give the respondent a copy of the notice of appeal, and reasonable notice, in writing, of the time and place at which it will hear the appeal.

Proceedings of the Tribunal.

49. (1) For the purposes of any appeal, the Tribunal may—

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the attendance before the Tribunal of any person;
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the production of any books, papers or documents;
- (c) inspect any books, papers or documents produced before it, retain them for such reasonable period as it thinks fit, and make copies of any of them;
- (d) require any person appearing before the Tribunal to make an oath or affirmation that he will truly answer all relevant questions put to him by the Tribunal or any person appearing before the Tribunal;

and

- (e) require any person appearing before the Tribunal (whether he has been summoned to appear or not) to answer any relevant questions put to him by any member of the Tribunal or any person appearing before the Tribunal.

(2) If a person—

- (a) fails without reasonable excuse to comply with the requirements of a summons served upon him under subsection (1) (a) or (b);
- (b) refuses or fails to comply with a requirement of the Tribunal under subsection (1);
- or
- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or a member of the Tribunal, or interrupts the proceedings of the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(3) For the purposes of dealing with an appeal the Tribunal may—

- (a) hear the appeal in such manner as the Tribunal considers appropriate;

- (b) proceed to hear and determine the appeal in the absence of any party;
- (c) extend the period prescribed under this Act within which the appeal must be made notwithstanding that the period has expired;
- (d) adjourn the hearing to any time or place, or to a time or place to be fixed;
- (e) allow the amendment of the notice of appeal;
- (f) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact therefrom that it considers proper;
- (g) adopt any findings, decision or judgment of a court that it considers relevant to the proceedings;

and

- (h) generally give all such directions and do all such things as it deems necessary or expedient in the proceedings.

(4) In any proceedings before the Tribunal the Tribunal shall not be bound by the rules of evidence but may inform itself upon any matter relating to the proceedings in such manner as it thinks fit.

(5) A party to an appeal may appear personally, or may be represented by a legal practitioner or any other agent.

50. Upon hearing an appeal, the Tribunal may—

Determination of an appeal.

- (a) revoke the decision or notice appealed against or, where appropriate, discharge the operation of the notice in relation to the appellant;
- (b) where it has revoked a decision or notice, substitute any decision or notice that could have been made or given in the first instance;
- (c) dismiss the appeal;
- (d) refer the matter back to the Minister for re-consideration;
- (e) make such other orders as to costs or any other ancillary matter as the Tribunal thinks fit.

51. No appeal shall lie against a decision of the Tribunal on an appeal under this Part.

Decision of Tribunal is final.

PART VI

MISCELLANEOUS

52. (1) The Minister may appoint such number of persons to be authorized officers as he thinks necessary or desirable for the proper administration of this Act.

Appointment of authorized officers.

(2) A council may appoint such number of persons to be authorized officers as the council thinks necessary or desirable for the proper carrying out of its functions under this Act.

(3) An authorized officer shall be furnished with a certificate in the prescribed form evidencing his appointment under this section.

(4) An authorized officer shall, upon the request of any person in relation to whom he has exercised, or intends to exercise, any of his powers under this Act, produce for the inspection of that person the certificate of appointment furnished him under this section.

Powers of
authorized
officers.

53. (1) An authorized officer may, for the purposes of ascertaining whether the provisions of this Act are being complied with—

(a) enter any premises in or on which a holder of a licence carries out a prescribed activity, at any time the premises are being so used;

or

(b) enter, or break into, at any time, any premises (including premises referred to in paragraph (a)) in which he suspects on reasonable grounds that an offence against this Act has been or is being committed,

and, while in or on those premises—

(c) examine any control equipment, fuel-burning equipment, or other plant or equipment, or any goods or materials;

(d) require any person to produce any plans, specifications, books, papers or documents;

(e) examine any plans, specifications, books, papers or documents and take extracts from, or make copies of, such of them as he has reasonable cause to believe would afford evidence of an offence against this Act;

(f) take and remove from the premises samples of any substance;

(g) carry out any tests;

(h) take any photographs;

(i) require the holder of a licence or approval under this Act to produce that licence or approval for his inspection;

or

(j) require any person to answer any question that may be relevant to the investigation.

(2) An authorized officer shall not exercise his power to break into premises pursuant to subsection (1) (b) except upon the authority of a warrant issued by a justice, unless the authorized officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(3) A justice shall not issue a warrant under subsection (2) unless he is satisfied, upon information given on oath—

(a) that there are reasonable grounds for suspecting that an offence against this Act has been, is being, or is about to be, committed;

and

(b) that the warrant is reasonably required in all the circumstances.

(4) In the exercise of his powers under this Act, an authorized officer may be accompanied by such persons as he considers necessary or desirable in the circumstances.

(5) A person shall not hinder or obstruct an authorized officer, or a person accompanying an authorized officer, in the exercise by the authorized officer, or accompanying person, of the powers conferred by this Act.

Penalty: One thousand dollars.

(6) Subject to subsection (7), a person shall not refuse or fail to answer, to the best of his knowledge, information or belief, any question put to him pursuant to this section.

Penalty: One thousand dollars.

(7) A person is not required to answer a question put to him if the answer would tend to incriminate him.

(8) A person shall not refuse or fail to comply with a requirement made of him pursuant to this section.

Penalty: One thousand dollars.

54. A council is responsible for the enforcement within its area of—

(a) section 39;

and

(b) any regulations made under section 64 (2) (e).

Council
responsible for
enforcement of
certain
provisions.

55. (1) The Minister may, by instrument in writing, delegate to the Director-General such of his powers, functions, duties and responsibilities under this Act as the Minister thinks fit.

Delegation by
Minister and
Director-General.

(2) The Director-General may, with the approval of the Minister, delegate to any officer of the Department any of the powers, functions, duties and responsibilities vested in or imposed upon the Director-General under this Act.

(3) The Minister may, by instrument in writing, delegate to a council such of his powers, functions, duties and responsibilities under this Act as may be necessary for the purpose of the performance by the council of its functions under this Act.

(4) A delegation under this section may be subject to such conditions or limitations as the Minister or the Director-General, as the case requires, thinks fit and specifies in the instrument of delegation.

(5) A delegation under this section is revocable at will, and does not prevent the exercise or performance of any power, function, duty or responsibility by the Minister or the Director-General under this Act.

56. (1) No personal liability shall attach to—

(a) an authorized officer;

(b) a person accompanying and assisting an authorized officer pursuant to this Act;

or

Immunity from
liability.

(c) a person authorized by the Minister to do anything on behalf of the Minister,

for an act or omission on his part, in good faith, in the exercise, or purported exercise, or the discharge, or purported discharge, of any power, function, duty or responsibility conferred or imposed upon him under this Act.

(2) A liability that would, but for subsection (1), lie against a person shall lie against the Crown.

Manner of giving notices.

57. Any notice required or authorized by this Act to be given to the occupier of premises shall be deemed to have been duly given—

(a) when the notice is served personally upon the occupier of the premises, or the person apparently in charge of the premises;

or

(b) where the notice is posted in an envelope addressed to the occupier of the premises at his last known place of business or residence, when it would be delivered in the ordinary course of post.

Duty not to divulge information relating to trade processes.

58. No person shall intentionally divulge, or use for his own gain, any information relating to trade processes obtained by him in the course of administering or enforcing this Act, except as he may be authorized or required to do so by law or by his principal or employer.

Penalty: Two thousand dollars.

Penalties and default penalties.

59. (1) Any person who contravenes or fails to comply with a provision of this Act is guilty of an offence.

(2) A person who is guilty of an offence against this Act for which no penalty is specifically provided shall be liable—

(a) in the case of an offence committed by a company—to a penalty not exceeding ten thousand dollars and a default penalty not exceeding two thousand dollars;

or

(b) in any other case—to a penalty not exceeding five thousand dollars and a default penalty not exceeding one thousand dollars.

(3) Where in, or at the foot of, any section or part of a section of this Act there appears the expression "Default Penalty", it signifies that any person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part as the amount of the default penalty.

(4) Where an offence is committed by a person by reason of his failure to comply with a provision of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1), shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the period has elapsed.

(5) Where a person is found guilty of an offence against this Act, the court may, in addition to any penalty it may impose, order the person to

carry out such work as the court thinks necessary or desirable for the purpose of making good any damage to property that may have occurred as a result of the offence.

60. Where a body corporate is guilty of an offence against this Act, each member of the governing body of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence, unless he proves that he exercised all reasonable diligence to prevent the commission of the offence by the body corporate.

Offences committed by body corporate.

61. (1) Proceedings for an offence against this Act shall be disposed of summarily.

Proceedings for offences.

(2) Proceedings for an offence against this Act shall not be commenced except upon the complaint of—

- (a) an authorized officer;
- or
- (b) a member of the police force.

(3) Where any proceedings for an offence against this Act are brought upon the complaint of an authorized officer who is in the employment of a council, the amount paid by the defendant in those proceedings by way of any fine shall be paid into the general funds of that council.

62. (1) In any proceedings for an offence against this Act, an allegation in a complaint that, at a specified time—

Evidentiary provisions.

- (a) a person was the occupier of specified premises;
- (b) a person was, or was not, the holder of a licence or of an approval to do any specified thing;
- (c) a licence or approval was subject to specified conditions;
- or
- (d) a person was an authorized officer,

shall, in the absence of proof to the contrary, be proof of the matter so alleged.

(2) In any proceedings for an offence against this Act, a certificate signed, or purporting to be signed, by an authorized officer certifying—

- (a) that he carried out a specified test in the prescribed manner on the day on which the offence is alleged to have been committed, or within the prescribed period of time from that day;

and

- (b) that, on the basis of that test, air pollution of a specified kind, class or concentration, or at a specified rate, was occurring at the time of the test,

shall, in the absence of proof to the contrary, be proof of the matters so certified.

(3) In any proceedings for an offence under section 33, a certificate signed, or purporting to be signed, by the Director-General certifying that a complaint was made to the Department alleging that an odour was detected at a specified place by the person making the complaint and that the odour

was offensive or caused discomfort, shall be conclusive proof of the matter so certified.

Moneys for this Act to be paid out of moneys appropriated by Parliament.

63. The moneys required for the purposes of this Act shall be paid out of moneys appropriated by Parliament for those purposes.

Regulations.

64. (1) The Governor may make such regulations as are contemplated by, or are necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) prescribe the form of notices authorized to be given under this Act;
- (b) prescribe the method for computing the fees payable under this Act, and provide for the remission of fees in specified circumstances;
- (c) prescribe standards in relation to the concentration of air pollution, the rate of air pollution and the times during which air pollution may occur;
- (d) prescribe the manner in which tests for ascertaining air pollution, or the concentration or rate of air pollution, are to be carried out;
- (e) prohibit or regulate the burning of matter by fires in the open or in domestic incinerators on any premises;
- (f) require occupiers to carry out tests and maintain records in relation to air pollution from the premises or the consumption of fuel in or on the premises;
- (g) prohibit or regulate the types of control equipment or fuel-burning equipment that may be used on industrial, commercial or domestic premises, and prescribe the manner in which any such type of equipment must be installed, operated or maintained;
- (h) prescribe the composition of fuels to be used in motor vehicles and prohibit the sale for use in motor vehicles of fuels of a composition other than that so prescribed;
- (i) exempt, conditionally or unconditionally, any persons from any provision of this Act;
- (j) provide for the expiation of offences against this Act upon payment of the prescribed fee;
- (k) prescribe penalties—
 - (i) in the case of breach of, or non-compliance with, any regulations made under paragraph (e) in respect of the burning of matter on industrial or commercial premises—not exceeding the penalties prescribed by section 59 (2);
 - (ii) in the case of breach of, or non-compliance with, any regulations made under paragraph (h)—not exceeding the penalties prescribed by section 59 (2);

and

(iii) in the case of breach of, or non-compliance with, any other regulations—not exceeding five hundred dollars.

(3) Any regulations made under this Act may be of general or limited application according to—

(a) the area;

(b) the time;

(c) the classes of persons, premises, activities, industries, processes, equipment, fuel or air pollution;

or

(d) the circumstances,

to which those regulations are expressed to apply.

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

C. L. LAUCKE, Governor's Deputy