



## ENVIRONMENT PROTECTION

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No. 65 of 1977

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**AN ACT to amend the Environment Protection Act 1973.**

**[21 September 1977]**

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1—(1)** This Act may be cited as the *Environment Protection Act 1977*. Short title and citation.

(2) The *Environment Protection Act 1973*\*, as subsequently amended, is in this Act referred to as the Principal Act.

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\* No. 34 of 1973. Amended by No. 68 of 1975.

## Interpretation.

**2** Section 2 of the Principal Act is amended—

(a) by omitting from subsection (1) the definition of “noise” and substituting therefor the following definition:—

“‘noise’ has the meaning assigned to that expression by subsection (2);”;

(b) by omitting from that subsection the definition of “pollutant” and substituting therefor the following definition:—

“‘pollutant’ has the meaning assigned to that expression by subsections (3) and (4);”;

(c) by omitting from that subsection the definition of “scheduled premises” and substituting therefor the following definition:—

“‘scheduled premises’ means scheduled premises within the meaning of section 22A;”;

(d) by omitting subsection (2) and substituting the following subsections:—

“(2) References in this Act to noise shall include mechanical vibrations in any medium, whether solid, liquid or gaseous and, for the purposes of this Act, a person shall be deemed to make a noise who does any act whereby noise is created.

“(3) Any substance, whether solid, liquid, or gaseous, and whether living or not, is a pollutant for the purposes of this Act—

(a) if it is prescribed as a pollutant; or

(b) if it, directly or indirectly, causes pollution or odours or noises that are offensive or prejudicial to man.

“(4) For the purposes of this Act the creation of an odour that is offensive or prejudicial to man shall be regarded as a pollutant.

“(5) For the purposes of this Act a noise that is capable of either directly or indirectly prejudicially affecting the health of or occasioning offence, distress, or irritation to man shall be regarded as a pollutant.”.

**3** Section 10 of the Principal Act is amended—

(a) by omitting from subsection (11) (a) the words “paragraph (d) of this subsection” and substituting therefor the words “paragraph (e)”;

(b) by omitting subsection (11) (b);

(c) by inserting after subsection (11) the following subsection:—

“(11A) A person is not required to comply with a notice under subsection (11) (a) unless there is an inspection centre situated—

(a) within 80 kilometres of his place of residence or business; or

(b) if the motor vehicle to which the notice relates has been brought into the State for a temporary purpose, within 80 kilometres from the place at which it was landed in the State or from which it is intended to remove it from the State.”; and

(d) by adding at the end thereof the following subsection:—

“(18) Subject to section 19, where an authorized officer inspects any equipment, industrial plant, locomotive, motor vehicle, or vessel and the inspection reveals that the equipment, industrial plant, locomotive, motor vehicle, or vessel is being operated in contravention of any provision of the Act, the authorized officer may, by a notice in the prescribed form, order that the owner or operator thereof carry out such work specified in the notice, or do such things in respect thereof, and within such time as is so specified, and the owner or operator so ordered to carry out work or to do things shall give effect to the order.”.

**4** Section 11 of the Principal Act is amended by omitting the words “Sections nineteen and twenty do” and substituting “Section 19 does”.

Application  
of part.

**5** Section 15 of the Principal Act is amended—

Fixed sources  
of pollution.

(a) by omitting from subsection (2) the words “an occupier of land shall not thereon” and substituting therefor the words “no person on land shall”;

(b) by omitting from subsection (5) the word “if” and substituting therefor the words “in respect of an emission if, in relation thereto”; and

(c) by omitting paragraph (a) of that subsection and substituting therefor the following paragraph:—

“(a) the best practicable means in current use have been used to prevent or minimize pollution of the environment; or”.

Moving sources  
of pollution.

**6** Section 16 of the Principal Act is amended—

- (a) by inserting in subsection (1), after the word “operate”, the words “, or cause or allow to be operated,”;
- (b) by omitting from subsection (2) the words “this section” (second occurring) and substituting therefor the words “subsection (1)”;
- (c) by omitting from subsection (3) the words “this section” (second occurring) and substituting therefor the words “subsection (1)”;
- (d) by omitting from subsection (4) the words “this section” (first occurring) and substituting therefor the words “subsection (1)”;
- (e) by inserting after that subsection the following subsections:—

“(4A) Where a standard is prescribed in respect of the emission of a pollutant from any kind of locomotive, motor vehicle, or vessel no person shall, except in such cases as may be prescribed, operate or cause or allow to be operated a locomotive, motor vehicle, or vessel of that kind if, when tested in the prescribed manner, that locomotive, motor vehicle, or vessel emits a pollutant that does not comply with that standard.

“(4B) Where at any time a motor vehicle is being operated the registered owner thereof shall be deemed to have allowed it to be operated at that time unless it is shown that it was then being operated without his authority or acquiescence.

“(4C) For the purposes of this section the registered owner of a motor vehicle means the person who is registered as the owner of that motor vehicle under the *Traffic Act 1925* or under the law of any jurisdiction outside the State that provides for the registration of motor vehicles or the owners thereof.”.

Pollution  
of waters.

**7** Section 17 of the Principal Act is amended—

- (a) by omitting from subsection (1) (d) all the words following the word “marsh”; and
  - (b) by inserting after subsection (1) the following subsection:—
- “(1A) Subsection (1) does not apply in a case where an occupier of land causes or permits to flow, or puts or

permits to be put a pollutant into, any water on that land unless that water forms, or forms part of, or communicates with—

- (a) any of the waters referred to in subsection (1) (a), (b), or (c); or
- (b) any river, stream, watercourse, lake, pond, or marsh situated, wholly or partly, on land occupied by some other person.”.

**8** Section 19 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting therefor the following subsections:—

Notices to  
reduce or  
eliminate  
pollution or  
noise.

“(1) Subject to this section, where an enforcement authority is of opinion—

- (a) that, in relation to an emission of a pollutant or noise from land, there has been a failure to comply with the standards prescribed in relation thereto; or
- (b) that all practicable means have not been taken to prevent or minimize the emission of a pollutant or noise from land,

it may serve notice on the occupier of the land requiring him within such time as may be specified in the notice to take such steps as may be so specified to remedy the matter.

“(1A) The steps that may be specified in a notice served under subsection (1) may be such steps as in the opinion of the enforcing authority by which it is served would prevent or reduce the emission or ensure that the standards relating thereto are complied with.

“(1B) For the purposes of this section, in respect of any land, the Director and the corporation of the municipality in which the land is situated are enforcement authorities.

“(1C) Where, under subsection (1), a notice has been served on the occupier of any land by an enforcement authority that notice may be withdrawn by a further notice served on the occupier of that land by that enforcement authority.

“(1D) Where a notice has been served under subsection (1) by an enforcement authority in respect of the emission of a pollutant or noise from any source on any land, a notice shall not be served under that subsection by any other enforcement authority in respect of the emission of a pollutant or noise from that source unless either the notice first mentioned has been withdrawn or no further proceedings can be taken in consequence of its service.”;

(b) by omitting from subsection (2) the word “municipality” and substituting therefor the words “enforcement authority”; and

(c) by omitting from subsection (5) the word “municipality” and substituting therefor the words “enforcement authority”.

Control of  
emissions, &c.,  
by Director.

**9** Section 20 of the Principal Act is repealed.

**10** Section 23 of the Principal Act is repealed and the following sections are substituted therefor:—

Nature of  
scheduled  
premises.

“22A—(1) For the purposes of this Act scheduled premises are—

(a) premises of the kind described in the First Schedule; and

(b) any particular premises that, by virtue of an order under subsection (2), are for the time being deemed to be scheduled premises.

“(2) The Minister may, on the recommendation of the council, by order, declare that the premises specified in the order shall be deemed, for the purposes of this Act, to be scheduled premises while the operations or processes specified in the order are carried on on those premises, and while any operation or process so specified is carried on on those premises that operation or process shall be deemed to be an operation or process by reason of which the premises are scheduled premises.

Prohibition  
on operating  
unlicensed  
scheduled  
premises.

“23—(1) Subject to this section, a person shall not operate any scheduled premises unless he is licensed so to do.

“(2) If in respect of any premises that became scheduled premises on the commencement of this Act an application was made for a licence on or before 31st December 1974 subsection (1) does not apply to those premises unless the proceedings on that application have terminated.

“(3) Where in respect of any premises declared to be scheduled premises under section 22A (2) an application for a licence is made

within one month from the date on which they were so declared to be scheduled premises, subsection (1) does not apply to those premises until a decision has been made in respect of that application.”.

**11** Section 24 of the Principal Act is amended by inserting in subsection (4) after the word “Director” (second occurring) the words “and any conditions attached to the licence by the Director pursuant to section 25 (2)”. Application  
for licences.

**12** Section 38 of the Principal Act is amended— Rights of  
appeal.

(a) by omitting from subsection (1) (a) the words “or section twenty”;

(b) by inserting after subsection (1) the following subsections:—

“(1A) Where the Director—

(a) grants a licence; or

(b) renews a licence and since the date of the grant of the licence or, in the case of a further renewal, the last renewal thereof—

(i) changes of the nature referred to in section 29 (1) have been made in respect of the premises to which the licence relates; or

(ii) any terms or conditions of the licence have been varied,

any person who lodged an objection under section 24 in respect of the application for the grant or renewal of the licence may appeal against the grant or renewal of the licence.

“(1B) An appeal may not be made under subsection (1A) in respect of the renewal of a licence except on the ground that the appellant resides or carries on business at premises in an area that is or is likely to be adversely affected by pollution or noise arising from the premises to which the licence relates.”;

(c) by omitting the word “and” at the end of paragraph (a) of subsection (3);

(d) by inserting after paragraph (a) the following paragraph:—

“(b) the appellant being notified under section 24 (4A) of the decision to which the appeal relates; and”;

- (e) by renumbering paragraph “(b)” of that subsection as paragraph “(c)”;
- (f) by omitting from subsection (4) the words “under section nineteen” and substituting therefor the words “served by a municipality under section 19”.

Jurisdiction of  
appeal board.

**13** Section 40 of the Principal Act is amended—

- (a) by inserting in subsection (2), after the word “appeal” (first occurring), the words “under section 38 (1)”;
- (b) by inserting after subsection (3) the following subsection:—
  - “(3A) In deciding an appeal under section 38 (1A) the appeal board may—
    - (a) reject the appeal; or
    - (b) direct the Director to cancel or amend the provisions of the licence to which the appeal relates,
 and the Director shall comply with any such direction.”.

Proof of  
pollution.

**14** Section 43 of the Principal Act is amended by omitting subsection (2) and substituting therefor the following subsection:—

“(2) For the purposes of section 16 a locomotive, motor vehicle, or vessel shall be deemed to be operated so as to cause or permit the emission therefrom of a pollutant into the atmosphere if—

- (a) a furnace or internal combustion engine therein emits more smoke than it would when properly managed and maintained;
- (b) there is used therein an internal combustion engine—
  - (i) which is not equipped with a device required by the regulations under this or any other Act to be fitted to the engine for the prevention of pollution; or
  - (ii) on which such a device is not operating properly; or
- (c) there is used or burnt therein any fuel prohibited by the regulations.”.



**15** Section 51 of the Principal Act is omitted and the following section substituted:—

“ 51—(1) No person shall emit or cause or permit to be emitted noise which is harmful to, or offensive to the senses of, any person— Emission of noise prohibited.

(a) who is not on the land from which the noise is emitted; or

(b) who is in a public place.

Penalty: \$500 and a daily penalty of \$50.”.

“(2) This section does not apply to noise emitted in the course of ordinary farming operations if the noise is not of an unusual kind having regard to the nature of those operations.”.

**16** Section 55 of the Principal Act is amended—

Regulations.

(a) by inserting in paragraph (d) of subsection (2), after the word “ prohibiting ”, the words “ or regulating ”;

(b) by inserting in that paragraph, after the word “ possession ” the words “ , use, operation ”; and

(c) by inserting after that paragraph the following paragraphs:—

“(da) prohibiting or regulating the sale, manufacture, supply, receipt, possession, use, operation, or disposal of things that do not comply with the prescribed requirements in respect of the emission of noise;

“(db) requiring, prohibiting, or regulating the marking and labelling of things referred to in paragraph (d) and things capable of emitting noise;”.

**17** The First Schedule to the Principal Act is amended—

Scheduled premises

(a) by omitting from paragraph 1 the words “ smelted to produce metal ” and substituting therefor the word “ processed ”;

(b) by omitting from paragraph 5 the words “ or chemicals ” and substituting therefor the words “ chemicals, grain, or seeds ”;

(c) by omitting from that paragraph the words “ by sifting or air elutriation ”;

(d) by inserting after paragraph 9 the following paragraph:—

“ 9A Lime, gravel, sand, loam, soil, or clay pits used for the extraction of any valuable substance and from which such a substance is taken for the purpose of selling it.”;

- (e) by omitting from paragraph 16 the words “ or processing ” and substituting “, processing, or packaging ”;
- (f) by omitting from that paragraph the words “ and similar ” and substituting therefor the words “ condensed or evaporated milk, or other ”;
- (g) by omitting from paragraph 19 the word “ and ” (first occurring) and substituting therefor the words “ seed, grain, or ”;
- (h) by inserting in paragraph 25 after the word “ Sawmills ” the words “ and timber processing plants ”, and after the word “ sawmill ”, the words “ or plant ”; and
- (i) by omitting from the heading “(Section 2.)” and substituting “(Section 22A)”.