



New South Wales

Pollution Control Amendment (Load-based Licensing) Act 1997 No 146

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Pollution Control Amendment (Load-based Licensing) Act 1997 No 146

Act No 146, 1997

An Act to amend the *Pollution Control Act 1970* to enable the implementation of a load-based licensing scheme; and to amend the *Waste Minimisation and Management Act 1995*. [Assented to 17 December 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Pollution Control Amendment (Load-based Licensing) Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Pollution Control Act 1970 No 95

The *Pollution Control Act 1970* is amended as set out in Schedule 1.

4 Amendment of Waste Minimisation and Management Act 1995 No 102

The *Waste Minimisation and Management Act 1995* is amended as set out in Schedule 2.

Schedule 1 Amendment of Pollution Control Act 1970

(Section 3)

[1] Section 17B Applications

Omit “the prescribed form and shall be accompanied by the prescribed fee” from section 17B (1).

Insert instead “the form determined by the Authority”.

[2] Section 17C Short-term licences

Omit section 17C (2).

[3] Section 17E Duration of licences

Insert at the end of the section:

(2) However, the regulations may provide that, unless it is sooner suspended or ceases to be in force, a licence (whether an original licence or a renewed licence) remains in force until:

- (a) a specified day, or
- (b) a day determined by the Authority, or
- (c) a day determined in accordance with the regulations.

(3) A day specified or determined as referred to in subsection (2) by a provision of a regulation must not be later than 12 months after the day on which the provision takes effect.

[4] Section 17G

Omit the section. Insert instead:

17G Licence fees

(1) The regulations may make provision for or with respect to licence fees, including the following:

- (a) the time at which, or the periods for or during which, fees are to be paid,
- (b) the types of fees,
- (c) the structure of fees,
- (d) the payment of more than one type of fee,
- (e) the payment of more than one annual fee,
- (f) the payment of a combined fee or fees for two or more licences held by the same person or different persons,
- (g) the basis on which a fee is to be calculated,
- (h) the factors to be used or taken into consideration in calculating a fee, including:
 - (i) the activity conducted on the premises in respect of which the licence is issued, or
 - (ii) the activity conducted by use of the plant or equipment in respect of which the licence is issued, or
 - (iii) the kinds of pollutants discharged,
- (i) the provision of economic incentives to licensees to avoid or reduce harm to the environment from activities carried out by licensees,
- (j) without limiting section 42, 68 or 69 of the *Interpretation Act 1987*, the application or adoption of standards or tests, with or without modification, and as in force as at a particular time or from time to time as specified by the regulations, to be used in fee calculations for measuring the amounts of pollutants and assessing the discharge of pollutants,
- (k) the constitution, as an incorporated or unincorporated body, of bodies having functions relating to the review of licence fee calculations or aspects of those calculations,
- (l) the determination of particular fees to be paid by particular licensees or applicants for licences,

- (m) the creation and retention of records and information required for the calculation of fees,
 - (n) the provision to the Authority by licensees and former licensees (including transferors of licences) of particulars relevant to the determination of a fee,
 - (o) the certification of particulars referred to in paragraph (n) and the persons who may certify the particulars, including the approval by the Authority of persons or classes of persons as certifiers,
 - (p) the payment of fees by instalments,
 - (q) the payment of interest on unpaid fees, including the interest rate,
 - (r) penalties for late applications for licences and late payment or underpayment of fees,
 - (s) the recovery of fees by the Authority,
 - (t) the crediting of amounts held by the Authority on behalf of a licensee towards the payment of a fee,
 - (u) the refund and waiver of fees, or particular types of fees, in whole or in part,
 - (v) discount schemes and the granting of discounts,
 - (w) rebate schemes and the payment of rebates.
- (2) Without limiting any other power to make regulations under this Act, different fees may be prescribed according to specified factors or circumstances.
 - (3) The regulations may impose a licence fee despite the fact that the fee may comprise a tax.
 - (4) Without limiting section 17D, the Authority may refuse an application for a licence or for the renewal or transfer of a licence:
 - (a) if any fee or other amount due and payable under this Act or the regulations in relation to the application or licence is unpaid, or

- (b) if the applicant has previously defaulted in the payment of such a fee or other amount, or
 - (c) if, in the Authority's opinion, the applicant is or will be unwilling or is or will be unable to pay a fee or other amount that is or may become due and payable under this Act or the regulations in relation to the application or licence.
- (5) If a fee or other amount due and payable under this Act or the regulations in relation to a licence is unpaid, the Authority:
- (a) may recover the fee or other amount from the current holder of the licence (or the last holder of the licence if the licence has ceased to be in force), or
 - (b) may recover that part of the fee or other amount that relates to a period for which an earlier holder of the licence held the licence from that earlier holder,
- as a debt.
- (6) If the Authority is satisfied that any pollution would not be such as to warrant the payment of the fee for a licence, the Authority may, on the application of the person applying for the licence or for the renewal or transfer of the licence, remit in whole or in part the fee payable for the licence.

[5] Section 17H Conditions requiring provision and certification of particulars by or on behalf of licensees

Insert at the end of section 17H (1) (b):

, or

- (c) to the calculation or verification of a fee paid or payable in relation to the licence.

[6] Section 17J Application for pollution control approval

Omit "the prescribed form" from section 17J (1).

Insert instead "the form determined by the Authority".

[7] Section 17LA

Insert after section 17L:

17LA Approved persons

- (1) If, in relation to a condition of a licence or a pollution control approval held by a person, the Authority approves of another person under section 17H or 17L, the approval of the other person is taken to be an approval for the purposes of each of the following provisions:
 - (a) section 17H,
 - (b) section 17L,
 - (c) section 53 (2) of the *Waste Minimisation and Management Act 1995*,
 - (d) section 53A of the *Waste Minimisation and Management Act 1995*,unless the Authority otherwise determines either generally or in a particular case.
- (2) The Authority may, at any time, by written notice to the holder of a licence or a pollution control approval, revoke the approval of a person referred to in this section. Any such revocation revokes each approval that an approval is taken to be by subsection (1).
- (3) In this section, *licence* includes a licence under the *Waste Minimisation and Management Act 1995*.

[8] Section 17P

Omit the section. Insert instead:

17P Effect of false or misleading particulars supplied by holder of licence or approval or approved person

- (1) A holder of a licence or a pollution control approval:
 - (a) who supplies particulars for the purposes of a condition referred to in section 17H or 17L, or

- (b) on whose behalf particulars for the purposes of a condition referred to in section 17H or 17L are supplied by a person approved by the Authority as referred to in either of those sections,
- is guilty of an offence against the *Environmental Offences and Penalties Act 1989* of contravening a condition of the licence or approval if any of the particulars is false or misleading in a material respect.
- (2) A person who is approved by the Authority as referred to in section 17H or 17L and who supplies particulars for the purposes of a condition referred to in section 17H or 17L is guilty of an offence against the *Environmental Offences and Penalties Act 1989* of contravening a condition of the licence or approval if any of the particulars is false or misleading in a material respect.
- (3) Any particulars so supplied to the Authority:
- (a) may be taken into consideration by the Authority and used for the purposes of this Act and the regulations, and
- (b) without limiting paragraph (a), are admissible in evidence in any prosecution of the holder of a licence or approval, or a person approved by the Authority as referred to in section 17H or 17L, for an offence against this Act or the regulations, whether or not the particulars might tend to incriminate that holder or person.

[9] Section 24 Power of entry

Insert at the end of section 24 (1A) (b):

- , or
- (c) a holder, or former holder, of a licence to produce to the authorised officer any records, reports, books, plans, maps or documents relating to the calculation of a licence fee or any matter relevant to the calculation of a licence fee,

[10] Section 27A Evidence

Insert after section 27A (3) (t):

- (u) that a person was, or was not, at a time or during a period so specified, a person approved by the Authority as referred to in section 17H or 17L in relation to such particulars as are so specified,

[11] Section 32 Regulations

Insert after section 32 (4):

- (5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Pollution Control Amendment (Load-based Licensing) Act 1997*.
- (6) A provision referred to in subsection (5) may, if the regulations so provide, take effect from the date of assent to the *Pollution Control Amendment (Load-based Licensing) Act 1997* or a later day.
- (7) To the extent to which a provision referred to in subsection (5) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Schedule 2 Amendment of Waste Minimisation and Management Act 1995

(Section 4)

[1] Section 5 Definitions

Insert in alphabetical order:

grant a licence includes renew a licence.

[2] Section 47 Applications for licences

Omit section 47 (2). Insert instead:

(2) An application must be in the form approved by the EPA.

(2A) The fee for a licence:

- (a) is the fee prescribed by the regulations, and
- (b) must be paid at the time the application is made for the licence.

(2B) The fee for the renewal of a licence:

- (a) is the fee prescribed by the regulations, and
- (b) must be paid within the prescribed period after the licence is renewed.

[3] Section 49 Determination of applications for licences

Insert after section 49 (2):

(2A) Without limiting subsection (1) or (2), the EPA may refuse an application for a licence or for the renewal or transfer of a licence:

- (a) if any fee or other amount due and payable under this Act or the regulations in relation to the application or licence is unpaid, or
- (b) if the applicant has previously defaulted in the payment of such a fee or other amount, or
- (c) if, in the EPA's opinion, the applicant is or will be unwilling or is or will be unable to pay a fee or other amount that is or may become due and payable under this Act or the regulations in relation to the application or licence.

[4] Section 50 Duration and transfer of licences

Insert “and the regulations” after “this Act” in section 50 (1).

[5] Section 50 (1A)

Insert after section 50 (1):

(1A) The regulations may provide that, unless it is sooner suspended or ceases to be in force, a licence (whether an original licence or a renewed licence) remains in force until:

- (a) a specified day, or
- (b) a day determined by the EPA, or
- (c) a day determined in accordance with the regulations.

(1B) A day specified or determined as referred to in subsection (1A) by a provision of a regulation must not be later 12 months after the day on which the provision takes effect.

[6] Section 53 Conditions generally

Insert “(or another person approved by the EPA)” after “licensee” in section 53 (2).

[7] Sections 53A and 53B

Insert after section 53:

53A Conditions requiring provision and certification of particulars by or on behalf of licensees

(1) The conditions of a licence may require the licensee to supply to the EPA, when required by those conditions, particulars certified by the licensee (or by another person approved by the EPA) as correct and that relate:

- (a) to the doing or completion of anything required to be done by those conditions, or
- (b) to the operation or maintenance of any premises, plant, equipment or vehicle to which the licence relates, or

- (c) to the calculation or verification of a fee paid or payable in relation to the licence.
- (2) Without limiting the generality of subsection (1), conditions of a licence may require the supply of particulars derived from monitoring:
- (a) the operation of plant, equipment or a vehicle, or
 - (b) ambient conditions prevailing at or near the premises, plant, equipment or vehicle,
- to which the licence relates, and the provision and maintenance of appropriate measuring and recording devices.

53B Approved persons

- (1) If, in relation to a condition of a licence held by a person, the EPA approves of another person under section 53 (2) or 53A, the approval of the other person is taken to be an approval for the purposes of each of the following provisions:
- (a) section 53 (2),
 - (b) section 53A,
 - (c) section 17H of the *Pollution Control Act 1970*,
 - (d) section 17L of the *Pollution Control Act 1970*,
- unless the EPA otherwise determines either generally or in a particular case.
- (2) The EPA may, at any time, by written notice to the licensee, revoke the approval of a person referred to in this section. Any such revocation revokes each approval that an approval is taken to be by subsection (1).
- (3) In this section, *licence* includes a licence or pollution control approval under the *Pollution Control Act 1970*.

[8] Section 54A

Insert after section 54:

54A Effect of false or misleading particulars supplied by licensee or approved person

- (1) A licensee:
 - (a) who supplies particulars for the purposes of a condition referred to in section 53 (2) or 53A, or
 - (b) on whose behalf particulars for the purposes of a condition referred to in section 53 (2) or 53A are supplied by a person approved by the EPA as referred to in either of those provisions,

is guilty of an offence against the *Environmental Offences and Penalties Act 1989* of contravening a condition of the licence if any of the particulars is false or misleading in a material respect.
- (2) A person who is approved by the EPA as referred to in section 53 (2) or 53A and who supplies particulars for the purposes of a condition referred to in section 53 (2) or 53A is guilty of an offence against the *Environmental Offences and Penalties Act 1989* of contravening a condition of the licence if any of the particulars is false or misleading in a material respect.
- (3) Any particulars so supplied to the EPA:
 - (a) may be taken into consideration by the EPA and used for the purposes of this Act and the regulations, and
 - (b) without limiting paragraph (a), are admissible in evidence in any prosecution of the licensee, or a person approved by the EPA as referred to in section 53 (2) or 53A, for an offence against this Act or the regulations, whether or not the particulars might tend to incriminate that licensee or person.

[9] Section 82 Evidence

Insert after section 82 (1) (l):

- (m) that a person was or was not, at a time or during a period so specified, a person approved by the EPA as referred to in section 53 (2) or 53A in relation to such particulars as are so specified,

[Minister's second reading speech made in—
Legislative Assembly on 13 November 1997
Legislative Council on 27 November 1997]

BY AUTHORITY