

CLEAN AIR (AMENDMENT) BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Justices (Clean Air) Amendment Bill 1986;
State Pollution Control Commission (Mobile Plant and Equipment)
Amendment Bill 1986.

This Bill proposes amendments to the Clean Air Act 1961 in order to enable the burning of refuse to be controlled by the State Pollution Control Commission and local councils and to facilitate the administration and enforcement of the Act generally.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 gives effect to the Schedule of amendments.

Clause 4 gives effect to the Schedule of savings, transitional and other provisions.

Schedule 1 (1) amends section 5 of the Principal Act to vary the definitions of "Authorised officer" and "Scheduled premises" and to insert a definition of "Scheduled equipment" for the purposes of the new Part IVB of the Principal Act (inserted by Schedule 1 (7)) and the Schedule to the Principal Act.

Schedule 1 (2) amends section 14 of the Principal Act so as to make the occupier of scheduled premises guilty of an offence if air pollution is caused or increased by a failure to carry out, properly and efficiently, maintenance work on fuel burning equipment or industrial plant.

Schedule 1 (3) amends section 17 of the Principal Act—

- (a) so as to extend the nature of works which the Commission may require to be undertaken on scheduled premises for the better control of air pollution (Schedule 1 (3) (a) and (b)); and
- (b) so as to enable the Commission—
 - (i) to require progress reports to be submitted from time to time in relation to works required to be undertaken (Schedule 1 (3) (c), proposed section 17 (5) and (6)); and
 - (ii) to extend the time within which the works must be completed (Schedule 1 (3) (c), proposed section 17 (7) and (8)).

Schedule 1 (4) amends section 19A of the Principal Act so as to require the occupier of unscheduled premises on which certain control equipment is installed to maintain it and operate it properly and efficiently.

Schedule 1 (5) inserts a new section 19B into the Principal Act to make the occupier of unscheduled premises guilty of an offence if air pollution is caused or increased by improper maintenance or operation of fuel burning equipment (other than certain domestic items) or industrial plant in or on those premises.

Schedule 1 (6) amends section 20 of the Principal Act—

- (a) so as to extend the nature of works which the Commission or a local authority may require to be undertaken on unscheduled premises for the better control of air pollution (Schedule 1 (6) (a)–(c)); and
- (b) so as to enable the Commission or a local authority—
 - (i) to require progress reports to be submitted from time to time in relation to any work required to be undertaken (Schedule 1 (6) (d), proposed section 20 (6) and (7)); and
 - (ii) to extend the time within which the work must be completed (Schedule 1 (6) (d), proposed section 20 (8) and (9)).

Schedule 1 (7) inserts a new Part IVB into the Principal Act. The new provisions may be summarised as follows:

- (a) Section 21O provides that it is an offence to own scheduled equipment that is operated in New South Wales without a licence. The section contains appropriate transitional provisions in relation to existing equipment.
- (b) Section 21P provides that the provisions of the Principal Act relating to scheduled premises will generally apply to scheduled equipment.

- (c) Section 21Q prohibits the construction of scheduled equipment, or the modification of mobile plant or equipment so that it becomes scheduled equipment, without a pollution control approval. The section contains appropriate transitional provisions in relation to equipment currently under construction.

Schedule 1 (8) amends section 22 of the Principal Act to empower the Commission to give advice and assistance to a person who is the owner of any scheduled equipment for the purpose of assisting the person in preventing or minimising air pollution from that scheduled equipment.

Schedule 1 (9) amends section 23 of the Principal Act so as to empower the Commission to require certain information to be furnished by the owner of any mobile plant or equipment.

Schedule 1 (10) inserts a new section 23A into the Principal Act, which provides that the Commission may require the occupier of any premises on which there is any fuel burning equipment or industrial plant to measure pollution levels in the general area surrounding the premises.

Schedule 1 (11) amends section 24 of the Principal Act—

- (a) so as to make clear the meaning of the expression “open fire” (as used in section 24 (2) of the Principal Act) (Schedule 1 (11) (c), proposed section 24 (3)); and
- (b) so as to clarify the discretion of the Minister in determining the scope of application of orders under that section (Schedule 1 (11) (c), proposed section 24 (4)).

Schedule 1 (12) inserts sections 24A, 24B, 24C and 24D into the Principal Act. These provisions may be summarised as follows:

- (a) Section 24A allows the Commission to give orders prohibiting open fires and fires in incinerators for short periods when the anticipated weather conditions indicate high urban pollution from these sources.
- (b) Section 24B allows officers of the Commission or local authorities to direct individuals to extinguish particular fires which are burning in contravention of an order under section 24A or which are otherwise a health hazard or a nuisance.
- (c) Section 24C provides for the issue of on-the-spot infringement notices for breaches of orders under section 24A or 24B.
- (d) Section 24D allows the Commission to require the occupier of premises at which there is any fuel burning equipment or industrial plant, or the owner of any scheduled equipment, the use or operation of which is prohibited, or which cannot be fitted with proper control equipment or otherwise satisfactorily modified, to render the equipment or plant inoperable.

Schedule 1 (13) amends section 26 of the Principal Act so as to enable a person aggrieved by a notice under proposed section 23A to appeal to the Land and Environment Court.

Schedule 1 (14) amends section 27 of the Principal Act so as to confer on persons who are authorised officers under the Principal Act certain powers with respect to mobile equipment. The powers so conferred are analogous to those already possessed by authorised officers with respect to premises.

Schedule 1 (15) amends section 30 of the Principal Act in consequence of Schedule 1 (7) and (12).

Schedule 1 (16) amends section 31 of the Principal Act in consequence of Schedule 1 (10).

Schedule 1 (17) amends section 32A of the Principal Act in consequence of Schedule 1 (7).

Schedule 1 (18) amends section 33A of the Principal Act in consequence of Schedule 1 (5).

Schedule 1 (19) amends section 34 of the Principal Act so as to enable regulations to be made—

- (a) so that the concentration or rate of emission of air impurities is measurable by the use of certain visual tests (Schedule 1 (19) (a));
- (b) in relation to the sale and distribution of fuels used in the operation of fuel burning equipment or industrial plant (Schedule 1 (19) (b));
- (c) prohibiting the use of fuel, fuel burning equipment or industrial plant or prohibiting open fires (Schedule 1 (19) (e), proposed section 34 (1) (r)); and
- (d) prohibiting the operation of fuel burning equipment or industrial plant which fails to comply with prescribed standards or specifications (Schedule 1 (19) (e), proposed section 34 (1) (s)).

Schedule 1 (20) amends the Schedule to the Principal Act in consequence of Schedule 1 (1) and (7).

Schedule 2 enacts certain savings and transitional provisions and validates certain licences.

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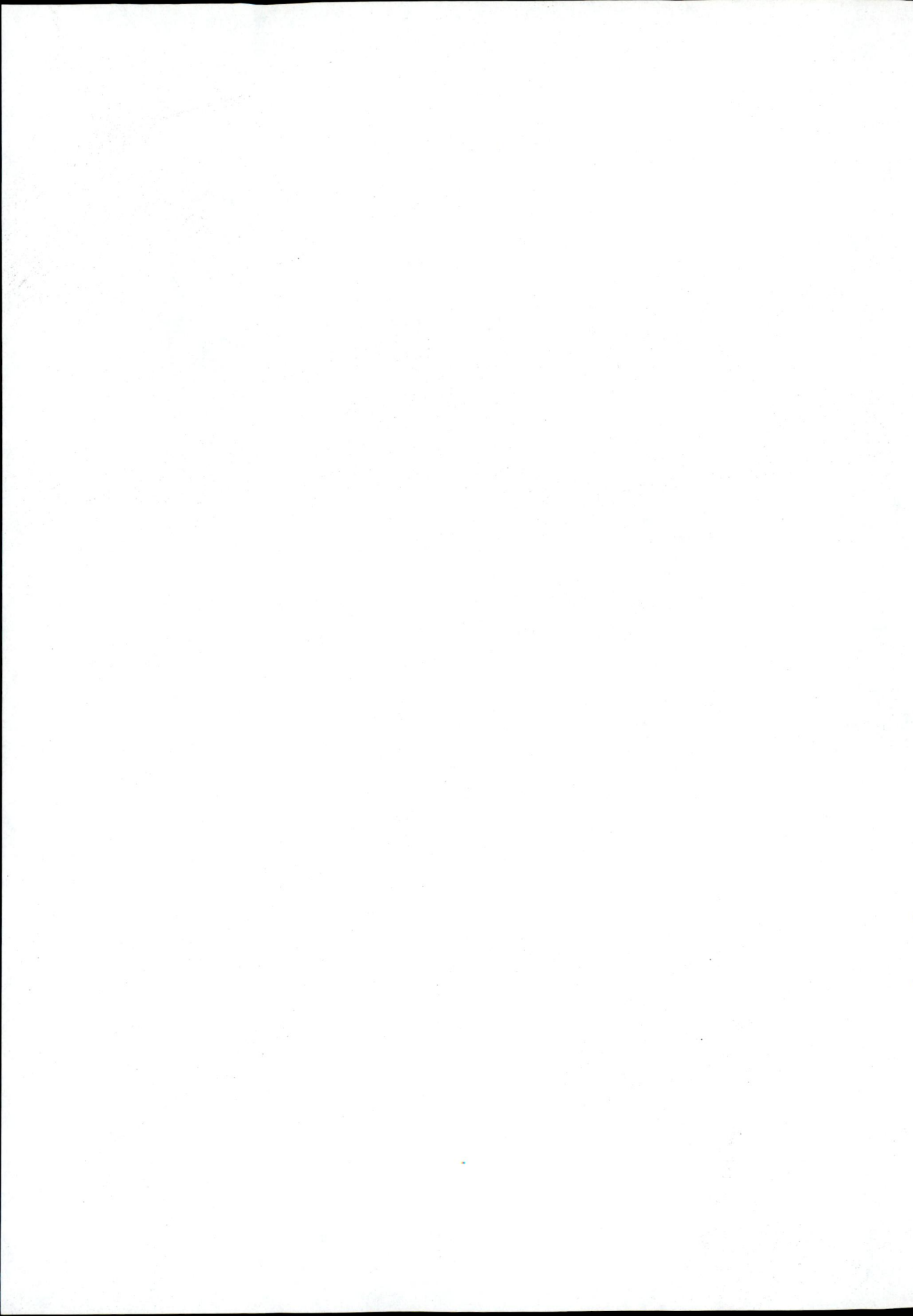


TABLE OF PROVISIONS

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SCHEDULE 1—AMENDMENTS TO THE CLEAN AIR ACT 1961

SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS



CLEAN AIR (AMENDMENT) BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Clean Air Act 1961 to make further provision for the control of air pollution arising from the operation of fuel burning equipment and industrial plant and the burning of fires in incinerators or in the open, and for other purposes.

See also Justices (Clean Air) Amendment Bill 1986; State Pollution Control Commission (Mobile Plant and Equipment) Amendment Bill 1986.

Clean Air (Amendment) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Clean Air (Amendment) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- 10 (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 69, 1961

- 15 3. The Clean Air Act 1961 is amended in the manner set forth in Schedule 1.

Savings, transitional and other provisions

4. Schedule 2 has effect.

SCHEDULE 1

(Sec. 3)

20 AMENDMENTS TO THE CLEAN AIR ACT 1961
(1) Section 5 (Interpretation)—**(a) Section 5 (1), definition of "Authorised officer"—**

- 25 (i) Omit "or scheduled premises" where firstly occurring, insert instead ", scheduled premises or scheduled equipment".
- (ii) After "scheduled premises" where fourthly occurring, insert ", or scheduled equipment".

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

- (b) Section 5 (1), definitions of “Scheduled equipment”, “Scheduled premises”—

Omit the definition of “Scheduled premises”, insert instead:

5 “Scheduled equipment” means any mobile plant or equipment—

- (a) used for any of the facilities or works for the time being prescribed by clause 1 of the Schedule; or
- (b) on which there is, or which consists of, any fuel burning equipment or industrial plant prescribed by clause 2 of the Schedule.
- 10

“Scheduled premises” means any premises—

- (a) used for any of the facilities or works for the time being prescribed by clause 1 of the Schedule;
- (b) on which there is any fuel burning equipment or industrial plant prescribed by clause 2 of the Schedule; or
- (c) on which a fire is used in or in connection with any trade, industry or process to burn combustible material, other than vegetation grown on those premises, at a rate of more than 300 kilograms per hour.
- 15
- 20

- (c) Section 5 (3)—

25 Omit “any premises or class of premises”, insert instead “any facilities or works or any fuel burning equipment or industrial plant”.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(c) Section 17 (5)–(8)—

After section 17 (4), insert:

5 (5) A notice under subsection (1) may provide that, at specified times before the expiry of the time limited by the notice for the carrying out of any work required to be undertaken in or on the premises, the occupier of the premises shall furnish reports to the Commission concerning the progress of the work generally and containing any particular information, plans or documentation specified in the notice.

10 (6) The occupier of the premises shall furnish reports as and when required in accordance with the notice.

Penalty: \$1,000.

15 (7) The time limited by a notice under subsection (1) may be extended by notice in writing given by the Commission before the expiry of that time.

(8) A time extended under subsection (7) shall be deemed to be the time limited by the notice under subsection (1) and may, by the further application of subsection (7), be further extended from time to time.

20 (4) Section 19A (**Control equipment on premises other than scheduled premises**)—

Section 19A (3)—

After section 19A (2), insert:

25 (3) Where any control equipment, other than prescribed control equipment, is installed in or on any premises, the occupier of the premises shall maintain that other control equipment in an efficient condition and shall operate it in a proper and efficient manner.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(5) Section 19B—

After section 19A, insert:

Operation of fuel burning equipment and industrial plant

5 19B. (1) The occupier of any premises who operates any fuel burning equipment or industrial plant in or on those premises in such a manner as to cause or increase air pollution from those premises is guilty of an offence if the air pollution so caused or increased, or any part of the air pollution so caused or increased, is caused by reason of the occupier's failure—

10 (a) to maintain that equipment or plant in an efficient condition; or

(b) to operate that equipment or plant in a proper and efficient manner.

15 (2) The occupier of any premises who carries out maintenance work on any control equipment, fuel burning equipment or industrial plant in or on those premises in such a manner as to cause or increase air pollution from those premises is guilty of an offence if the air pollution so caused or increased, or any part of the air pollution so caused or increased, is caused by reason of the occupier's failure to carry out that work in a proper and efficient manner.

20 (3) This section does not apply to or in respect of any stove, incinerator or similar fuel burning equipment used only for domestic purposes by or on behalf of the occupants of a dwelling (other than any such incinerator or similar fuel burning equipment used by or on behalf of the occupiers of 2 or more dwellings in a residential flat building).

(6) Section 20 (**Control of trades, industries, processes, fuel burning equipment and industrial plant**)—

30 (a) Section 20 (1) (b)—

Omit "or" where lastly occurring.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(b) Section 20 (1) (d), (e)—

After section 20 (1) (c), insert:

- 5 (d) install fuel burning equipment or industrial plant, or use fuel of a specified type, in or on the premises, where the local authority is satisfied that the use of that equipment or plant, or fuel, will reduce the emission of air impurities from the premises; or
- (e) carry out such other work for the purpose of preventing or minimising air pollution as may be specified in the notice,

10 (c) Section 20 (3)—

Omit “paragraph (a), (b) or (c) of subsection (1)”, insert instead “subsection (1) (a), (b), (c), (d) or (e)”.

(d) Section 20 (6)–(9)—

After section 20 (5), insert:

- 15 (6) A notice under subsection (1) or (3) may provide that, at specified times before the expiry of the time limited by the notice for the carrying out of any work required to be undertaken in or on any premises, the occupier of the premises shall furnish reports to the local authority (in the case of work required by a
- 20 notice under subsection (1)) or the Commission (in the case of work required by a notice under subsection (3)) concerning the progress of the work generally and containing any particular information, plans or other documentation specified in the notice.

- 25 (7) The occupier of the premises shall furnish reports as and when required in accordance with the notice.

Penalty: \$1,000.

- 30 (8) The time limited by a notice under subsection (1) or (3) may be extended by notice in writing given by the local authority or the Commission, as the case may be, before the expiry of that time.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(9) A time extended under subsection (8) shall be deemed to be the time limited by the notice under subsection (1) or (3), as the case may be, and may, by the further application of subsection (8), be further extended from time to time.

5 (7) Part IVB—

After Part IVA, insert:

PART IVB
SCHEDULED EQUIPMENT

Licensing

10 21O. (1) Any person who is the owner of any scheduled equipment which is used or operated in any part of the State and who is not the holder of a licence issued in respect of the equipment is guilty of an offence against this Act.

(2) This section does not apply to or in respect of a person—

15 (a) who, within the prescribed period after the commencement of this section, makes application for a licence in respect of the scheduled equipment; or

20 (b) who has, within the prescribed period after becoming the owner of the equipment, made application for the transfer to the person of a licence in respect of that equipment,

until the person's application has been finally determined.

Control of scheduled equipment

25 21P. The provisions of sections 14–15B, section 16 (subsection (2) excepted) and section 17 apply to and in respect of scheduled equipment in the same way as those provisions apply to and in respect of scheduled premises, but so apply—

(a) as if a reference in any such provision to scheduled premises were a reference to scheduled equipment;

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- 5 (b) as if a reference in any such provision to any fuel burning equipment or industrial plant in or on, or installed in or on, scheduled premises were a reference to any mobile fuel burning equipment or industrial plant which comprises or forms part of scheduled equipment;
- 10 (c) as if a reference in any such provision to any trade, industry or process carried on or conducted in or on scheduled premises were a reference to any trade, industry or process carried on or conducted by means of scheduled equipment;
- 15 (d) as if a reference in any such provision (section 17 excepted) to the occupier of scheduled premises were a reference to the owner, and to any lessee, hirer or person in charge, of scheduled equipment;
- (e) as if a reference in section 17 to the occupier of scheduled premises were a reference to the owner of scheduled equipment; and
- (f) with any modifications made by the regulations.

Construction of scheduled equipment

- 20 21Q. (1) A person shall not—
- (a) construct any scheduled equipment; or
- (b) carry out any work that constitutes the beginning of, or any subsequent step in, such a construction,
- except in accordance with a pollution control approval.
- 25 (2) A person shall not—
- (a) carry out any work on any mobile plant or equipment that would cause that plant or equipment to constitute scheduled equipment; or
- 30 (b) carry out any work on any mobile plant or equipment that constitutes the beginning of, or any subsequent step in, any work of the nature referred to in paragraph (a),

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except in accordance with a pollution control approval.

(3) A person who—

(a) constructs any equipment; or

(b) carries out any work,

5 in contravention of this section is guilty of an offence against this Act.

10 (4) Subsection (3) does not apply to or in respect of any construction or work carried out during the prescribed period after the commencement of this section by a person who, during that period, makes application for an appropriate pollution control approval, until the person's application has been finally determined.

(8) Section 22 (**Powers of Commission**)—

Section 22 (b)—

15 (a) After “premises” where firstly occurring, insert “, to the owner of any mobile plant or equipment”.

(b) After “occupier” where secondly occurring, insert “, owner”.

(c) After “premises” where secondly occurring, insert “, plant, equipment”.

20 (9) Section 23 (**Power to require information to be furnished**)—

(a) Section 23 (1)—

After “premises” where firstly occurring, insert “or the owner of any mobile plant or equipment”.

(b) Section 23 (1)—

25 Omit “that occupier”, insert instead “the occupier of those premises or the owner of that plant or equipment, as the case may be,”.

(c) Section 23 (1)—

30 Omit “premises, the”, insert instead “premises or comprised in that plant or equipment, the”.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(10) Section 23A—

After section 23, insert:

Measurement of pollution

5 23A. (1) The Commission, by notice in writing served on the occupier of any premises in or on which there is any fuel burning equipment or industrial plant, may require that occupier to take such reasonable steps as may be specified in the notice to measure at such localities, or at such distances from the premises, as may be specified in the notice, levels of air pollution caused by, or partly caused by, the operation of that equipment or plant and to report the results of any such measurements to the Commission.

10 (2) The notice shall specify a reasonable time for compliance with the notice.

15 (3) Section 23 (2) applies to and in respect of the reported measurement results as if they were information required by the Commission under section 23.

20 (4) A person who fails or neglects to comply with a requirement made under this section is guilty of an offence against this Act and is liable—

(a) where the offence was committed by a corporation—to a penalty not exceeding \$10,000; or

(b) where the offence was committed by any other person—to a penalty not exceeding \$4,000.

25 (5) A notice under this section shall not have any force—

(a) until the time limited for appealing against the notice has expired; and

30 (b) where within that time an appeal against the notice has been made under this Act, until the Court upholds the notice.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*(11) Section 24 (**Power to prohibit use of fuel, fuel burning equipment or industrial plant in certain areas or to prohibit open burning**)—

(a) Section 24 (2)—

5 Omit “order and may include in the order any one or more of the following provisions:”, insert instead “order.”.

(b) Section 24 (2) (a)–(d)—

Omit the paragraphs.

(c) Section 24 (3)–(6)—

After section 24 (2), insert:

10 (3) In subsection (2), “open fire” means any fire (whether or not constituting, or occurring in connection with the operation of, any fuel burning equipment) in which the products of combustion are not directed to the open air by means of a stack or chimney.

15 (4) The application of an order under this section may be general or may, by the terms of the order, be limited in any one or more of the following ways:

(a) so as to apply only to land, or a class of land, or to an area or areas, specified in the order;

20 (b) so as to apply only to persons, or a class of persons, so specified;

(c) so as to apply only at times, or in circumstances, or in the event of a combination of times and circumstances, so specified;

25 (d) in the case of an order referred to in subsection (2)—

(i) so as to apply only to burning for purposes specified in the order; or

(ii) so as to apply only to burning for purposes other than those so specified.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(5) The prohibition, by an order under this section, of burning by open fire includes the prohibition of—

- (a) lighting of or maintaining such a fire; and
- (b) suffering such a fire to be lit or maintained.

5 (6) In the event of any inconsistency between an order under this section and a regulation, the provisions of the order shall prevail to the extent of the inconsistency.

(12) Sections 24A–24D—

After section 24, insert:

10 **Burning of refuse, etc.—general orders**

24A. (1) If the Commission is of the opinion that meteorological conditions are such that the burning of fires in the open or in incinerators while those conditions subsist will contribute or is likely to contribute to air pollution to such an extent that an order under this section is warranted, the Commission may by order prohibit, unconditionally or conditionally, the burning of fires in the open or in incinerators, or in incinerators of a specified class.

15

(2) An order under this section shall have effect for a period (not exceeding 7 days) specified in the order.

20

(3) The provisions of section 24 (4) apply to and in respect of an order under this section in the same way as they apply to and in respect of an order under section 24.

(4) An order under this section shall be—

25 (a) published, not later than on the day on which the order is to take effect, in a daily newspaper circulating throughout the State; or

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(b) broadcast, not later than on the eve of the day on which the order is to take effect, by radio or television throughout the area or areas of the State to which the order relates.

5 (5) A person shall not neglect or fail to comply with an order under this section.

Penalty: \$500.

Burning of refuse, etc.—particular directions

24B. (1) If an authorised officer has reasonable grounds to believe that a fire is burning on any premises, being a fire—

10 (a) the burning of which is for the time being prohibited by an order under section 24 or 24A;

(b) the burning of which is prohibited by the regulations; or

15 (c) which, in the opinion of the authorised officer, is a hazard to the health of any person or is causing or is likely to cause serious discomfort or inconvenience to any person,

the authorised officer may, by notice in writing served on—

(d) the occupier, or the person apparently in charge, of the premises; or

(e) a person apparently in charge of the fire,

20 direct the occupier or other person on whom the notice is served to extinguish the fire immediately.

25 (2) Without affecting the operation of section 24A, such a notice shall prohibit lighting of or maintaining the same or any similar fire on the premises during such period (not exceeding 48 hours) following the service of the notice as may be specified in the notice.

(3) A person shall not—

(a) neglect or fail to comply with a direction given to the person by a notice under this section; or

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

- (b) light or maintain a fire or suffer a fire to be lit or maintained in contravention of the prohibition effected by such a notice.

Penalty: \$500.

- 5 (4) An authorised officer may, by a further notice in writing, revoke a direction given by a notice under this section.

Penalty notices

- 10 24c. (1) Where it appears to an authorised officer that any person has committed an offence by virtue of a contravention of, or a failure to comply with—

- (a) an order or direction under section 24A or 24B; or
(b) a provision of the regulations that is prescribed for the purposes of this section,

- 15 the authorised officer may serve a notice on the person to the effect that if the person does not desire to have the matter determined by a court, the person may pay to an officer specified in the notice, within a time so specified, an amount of penalty prescribed for that offence if dealt with under this section.

- (2) The notice may be served personally or by post.

- 20 (3) Any person alleged to have committed an offence to which subsection (1) applies has the right to decline to be dealt with under this section.

- 25 (4) Any person who fails to pay the penalty within the time specified in the notice or within such further time as may in any particular case be allowed shall be deemed to have declined to be dealt with under this section.

- (5) Where the amount of any prescribed penalty for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.

Clean Air (Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(6) Payment of a penalty in accordance with this section shall not be regarded as an admission of liability for the purpose of nor in any way affect or prejudice any civil claim, action or proceedings arising out of the same occurrence.

5 (7) No penalty prescribed under this section for any offence shall exceed any maximum amount of penalty which could be imposed for the offence by a court.

10 (8) The provisions of this section shall be construed as supplementing, and not as derogating from, any other provision of this Act or the regulations or any other Act or regulation, by-law or ordinance under any other Act in relation to proceedings which may be taken in respect of offences.

Direction to render equipment or plant inoperable

24D. (1) Where—

15 (a) the Commission is satisfied that the occupier of any premises cannot, or is not willing to—

20 (i) cause any fuel burning equipment or industrial plant in or on the premises, the use or operation of which is for the time being prohibited under section 15B or 19A, to be fitted with control equipment prescribed for the purposes of those sections; or

25 (ii) modify, or carry out work on, any fuel burning equipment or industrial plant in or on the premises as required by the Commission under section 17 or 20;

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(b) the Commission is satisfied that the owner of any scheduled equipment cannot, or is not willing to—

5 (i) cause any mobile fuel burning equipment or industrial plant which comprises or forms part of that scheduled equipment, the use or operation of which is for the time being prohibited under section 15B (as applied by section 21P), to be fitted with control equipment prescribed for the purposes of section 15B; or

10 (ii) modify, or carry out work on, any mobile fuel burning equipment or industrial plant comprised in that scheduled equipment as required by the Commission under section 17; or

15 (c) the use or operation of any fuel burning equipment or industrial plant in or on any premises or comprised in any scheduled equipment is prohibited by the regulations,

20 the Commission may by notice in writing direct the occupier of the premises or the owner of the scheduled equipment to take such steps as may be specified in the notice, within a time so specified, to render the fuel burning equipment or industrial plant incapable of use or operation.

(2) A notice under this section grounded on an inability or refusal to comply with a notice under section 17 or 20 shall not have any force—

25 (a) until the time limited for appealing against the notice under section 17 or 20 has expired; and

(b) where within that time an appeal against the notice under section 17 or 20 has been made under this Act, until the Court upholds such a notice.

30 (13) Section 26 (**Appeals**)—

Section 26 (1) (a) (iii)—

After “20”, insert “or 23A”.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*(14) Section 27 (**Powers of authorised officers**)—

(a) Section 27 (1A), (1B)—

After section 27 (1), insert:

5 (1A) An authorised officer may enter into or upon any mobile plant or equipment—

(a) by means of which an industry or trade is being carried on, at any time during which any manufacturing, industrial or trade process is being carried on by means of that plant or equipment; or

10 (b) in which the authorised officer reasonably suspects that air pollution has been, is being or is likely to be caused, at any time,

and shall have and may exercise in relation to that plant or equipment the same powers as an authorised officer is empowered by subsection (1) (e)–(g) to exercise in relation to any premises.

15 (1B) For the purposes of subsection (1A), the reference in subsection (1) (e) to premises shall be read as a reference to mobile plant or equipment.

20 (b) Section 27 (2) (a) (i)—

Omit “in” where firstly occurring, insert instead “, or the owner of any mobile plant or equipment, from”.

(c) Section 27 (2) (a) (i)—

25 After “premises” where secondly occurring, insert “, plant or equipment”.

(d) Section 27 (2) (a) (i)—

After “premises” where thirdly occurring, insert “or by means of that plant or equipment”.

(e) Section 27 (3)—

30 After “premises” where firstly occurring, insert “or mobile plant or equipment”.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(f) Section 27 (3)—

After “premises” where secondly occurring, insert “or the person apparently in charge of the plant or equipment, as the case requires”.

5 (g) Section 27 (4)—

Omit the subsection, insert instead:

(4) For the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Act, the holder of a prescribed office may—

10 (a) by notice in writing served on the occupier of any premises, require that occupier to provide such reasonable assistance and facilities (whether of the same kind as, or a different kind from, those prescribed in accordance with section 34 (1) (e)) as are specified in the notice within such
15 time and in such manner as are so specified; or

(b) by notice in writing served on the owner, hirer, lessee or person in charge of any mobile plant or equipment, require that owner, hirer, lessee or other person to provide such reasonable assistance or facilities as are specified in the
20 notice within such time and in such manner as are so specified.

(h) Section 27 (5) (c)—

After “premises”, insert “or the owner, hirer, lessee or person in charge of any mobile plant or equipment”.

25 (15) Section 30 (**Evidence**)—

(a) Section 30 (5) (c1)—

After section 30 (5) (c), insert:

(c1) that an order, a copy of which is set out in the certificate, was for the purposes of section 24A published in a daily
30 newspaper;

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(b) Section 30 (5) (d)—

After “24”, insert “or 24A”.

(c) Section 30 (5) (e)—

After “premises”, insert “, or in respect of mobile plant or equipment,”.

(16) Section 31 (**Unjustified disclosure of information**)—

Section 31 (c)—

Omit “section 23”, insert instead “sections 23 and 23A”.

(17) Section 32A (**Power to order contravention to be remedied**)—

After “20”, insert “(or under section 17 as applied by section 21P)”.

(18) Section 33A (**Orders for restoration and compensation**)—

Omit “or 19A”, insert instead “, 19A or 19B”.

(19) Section 34 (**Regulations**)—

(a) Section 34 (1) (f)—

After “prescribing”, insert “(whether by reference to the shade of colour or optical density of an emission or otherwise)”.

(b) Section 34 (1) (f5)—

Omit “of a prescribed class or description that are to be used, or are capable of being used, in the operation of motor vehicles”, insert instead “, or of fuel burning equipment, of a prescribed class or description”.

(c) Section 34 (1) (p)—

Omit “and” where secondly occurring.

(d) Section 34 (1) (q)—

Omit “description.”, insert instead “description;”.

Clean Air (Amendment) 1986

SCHEDULE 1—*continued*
AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(e) Section 34 (1) (r), (s)—

After section 34 (1) (q), insert:

(r) regulating or prohibiting—

5 (i) the use of fuel or the use or operation of fuel
burning equipment or industrial plant; and

(ii) burning by open fire; and

10 (s) prohibiting (whether by the issue of a notice in relation to
particular plant or equipment or otherwise) the operation
of any fuel burning equipment or industrial plant which
fails to comply with standards or specifications prescribed
by or under this Act with respect to its operation.

(f) Section 34 (3D)—

After section 34 (3C), insert:

15 (3D) Without limiting the operation of any other provision of
this section, the provisions of section 24 (4) apply to and in
respect of a regulation made under subsection (1) (r) in the same
way as they apply to and in respect of an order under section
24.

(20) Schedule—

20 (a) Omit the heading “SCHEDULED PREMISES.”, insert instead:

PRESCRIBED USES, EQUIPMENT AND PLANT

(b) Omit:

Any premises—

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(a) being used for—

Insert instead:

Prescribed uses

5 1. For the purposes of the definitions of “Scheduled equipment” and “Scheduled premises” in section 5 (1), the following are prescribed facilities or works:

(c) Omit paragraphs (b)–(c), insert instead:

Prescribed equipment or plant

10 2. For the purposes of the definitions of “Scheduled equipment” and “Scheduled premises” in section 5 (1), the following are prescribed fuel burning equipment or prescribed industrial plant, as the case may be:

15 Fuel burning equipment consuming or capable of consuming, either alone or in the aggregate, more than 300 kilograms of combustible material per hour.

Fuel burning equipment or industrial plant located in workshops, or comprising or forming part of workshops, operated by the State Rail Authority.

SCHEDULE 2

20

(Sec. 4)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Saving of certain orders

25 1. The amendments made by this Act to section 24 of the Clean Air Act 1961 do not affect the force or operation, on and after the commencement of this Act, of any order under that section in force immediately before the commencement of this Act.

*Clean Air (Amendment) 1986*SCHEDULE 2—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Transitional application of ss. 17 and 20, as amended**

2. The provisions of sections 17 (5)-(8) and 20 (6)-(9) of the Clean Air Act 1961, as amended by this Act, apply to and in respect of notices given under sections 17 and 20, respectively, of that Act and which were in force immediately before the commencement of this Act in the same way as those provisions apply to and in respect of notices given under those sections on or after the commencement of this Act.

Purport of orders under s. 24

3. Section 24 (5) of the Clean Air Act 1961, as amended by this Act, applies to and in respect of orders made under section 24 of that Act before the commencement of this Act in the same way as it applies to orders made under that section on or after the commencement of this Act.

Saving of certain authorities

4. A person who, immediately before the commencement of this Act, was the holder of an office prescribed for the purposes of section 27 (4) of the Clean Air Act 1961 as then in force shall, subject to that Act as amended by this Act, be deemed to be the holder of an office prescribed for the purposes of that subsection as in force on and after the commencement of this Act.

Saving of certain regulations

5. The amendments made by this Act to section 34 (1) (f5) of the Clean Air Act 1961 do not affect the force or operation, on and after the commencement of this Act, of any regulation in force under that Act immediately before the commencement of this Act.

Validation of certain licences

6. A licence purportedly granted at any time before the commencement of this Act—
- 25 (a) in respect of any mobile plant or equipment which, if this Act had been in force at that time, would have constituted scheduled equipment within the meaning of the Clean Air Act 1961; and

Clean Air (Amendment) 1986

SCHEDULE 2—*continued*

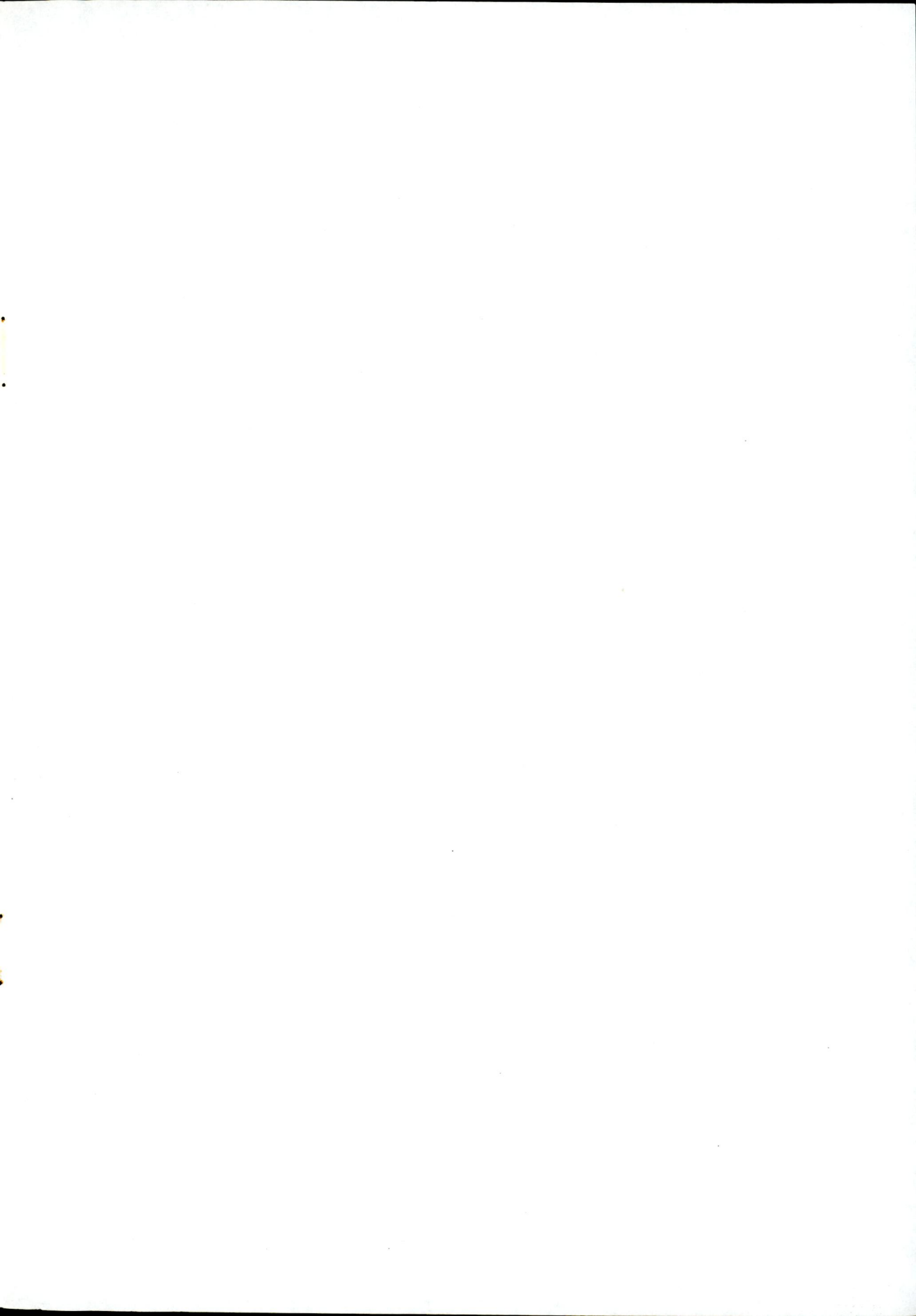
SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

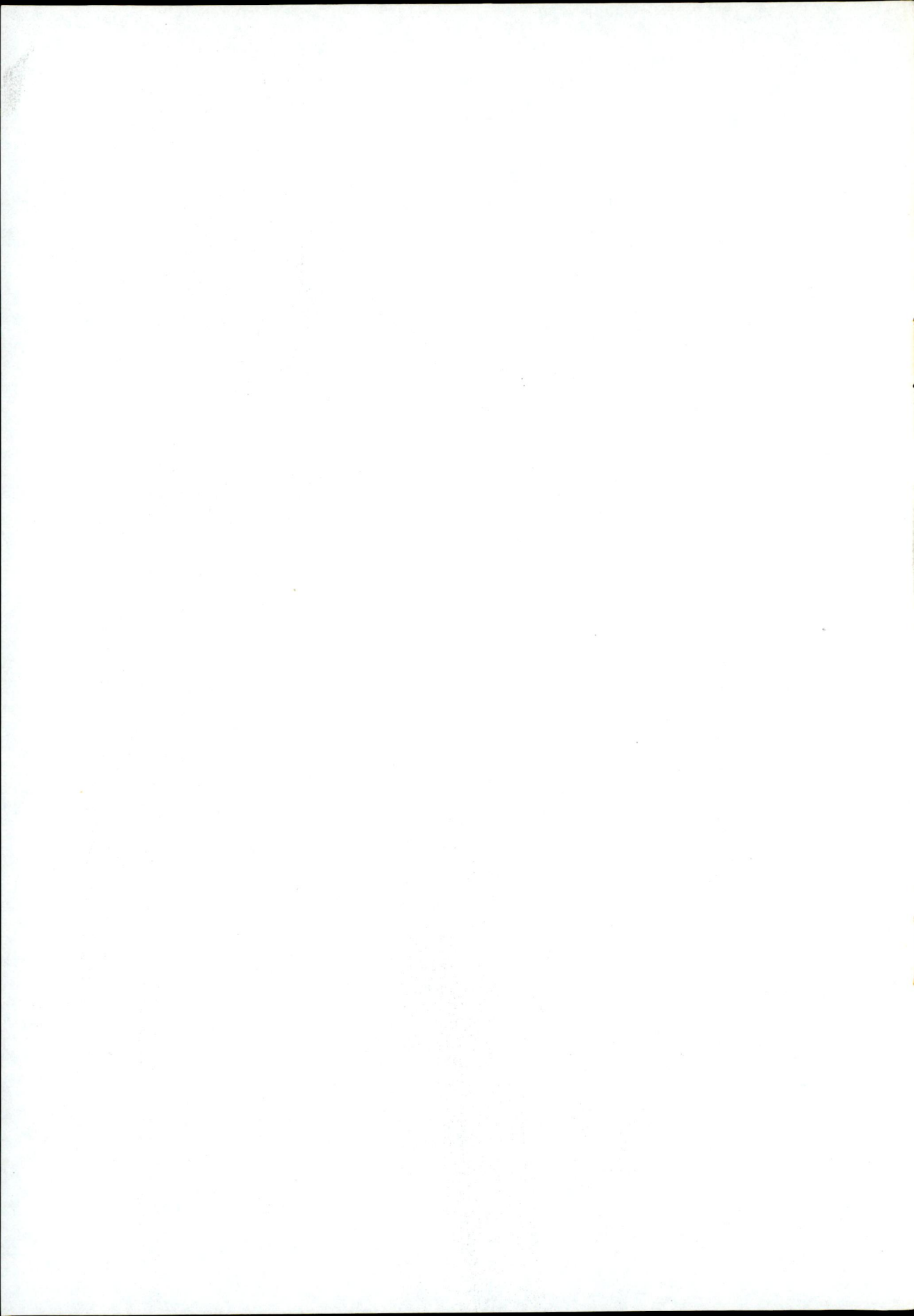
(b) purporting to be a licence in respect of scheduled premises within the meaning of that Act, as in force at that time,

is validated and shall, subject to the provisions of the Clean Air Act 1961 and the State Pollution Control Commission Act 1970, as in force on and after the commencement
5 of this Act, continue in force on and after the commencement of this Act as a licence in respect of scheduled equipment.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986





CLEAN AIR (AMENDMENT) ACT 1986 No. 26

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 69, 1961
4. Savings, transitional and other provisions

SCHEDULE 1—AMENDMENTS TO THE CLEAN AIR ACT 1961

SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

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CLEAN AIR (AMENDMENT) ACT 1986 No. 26

NEW SOUTH WALES



Act No. 26, 1986

An Act to amend the Clean Air Act 1961 to make further provision for the control of air pollution arising from the operation of fuel burning equipment and industrial plant and the burning of fires in incinerators or in the open, and for other purposes. [Assented to 6 May 1986.]

See also Justices (Clean Air) Amendment Act 1986; State Pollution Control Commission (Mobile Plant and Equipment) Amendment Act 1986.

Clean Air (Amendment) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Clean Air (Amendment) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 69, 1961

3. The Clean Air Act 1961 is amended in the manner set forth in Schedule 1.

Savings, transitional and other provisions

4. Schedule 2 has effect.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE CLEAN AIR ACT 1961

(1) Section 5 (**Interpretation**)—

(a) Section 5 (1), definition of "Authorised officer"—

- (i) Omit "or scheduled premises" where firstly occurring, insert instead ", scheduled premises or scheduled equipment".
- (ii) After "scheduled premises" where fourthly occurring, insert ", or scheduled equipment".

Clean Air (Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

- (b) Section 5 (1), definitions of “Scheduled equipment”, “Scheduled premises”—

Omit the definition of “Scheduled premises”, insert instead:

“Scheduled equipment” means any mobile plant or equipment—

- (a) used for any of the facilities or works for the time being prescribed by clause 1 of the Schedule; or
- (b) on which there is, or which consists of, any fuel burning equipment or industrial plant prescribed by clause 2 of the Schedule.

“Scheduled premises” means any premises—

- (a) used for any of the facilities or works for the time being prescribed by clause 1 of the Schedule;
- (b) on which there is any fuel burning equipment or industrial plant prescribed by clause 2 of the Schedule; or
- (c) on which a fire is used in or in connection with any trade, industry or process to burn combustible material, other than vegetation grown on those premises, at a rate of more than 300 kilograms per hour.

- (c) Section 5 (3)—

Omit “any premises or class of premises”, insert instead “any facilities or works or any fuel burning equipment or industrial plant”.

Clean Air (Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(2) Section 14 (**Occupiers to maintain and operate control equipment, etc.**)—

(a) Section 14 (2A)—

After section 14 (2), insert:

(2A) The occupier of any scheduled premises who carries out maintenance work on any control equipment, fuel burning equipment or industrial plant in or on those premises in such a manner as to cause or increase air pollution from those premises is guilty of an offence if the air pollution so caused or increased, or any part of the air pollution so caused or increased, is caused by reason of the occupier's failure to carry out that work in a proper and efficient manner.

(b) Section 14 (4)—

After "(2)", insert ", (2A)".

(3) Section 17 (**Commission to require work on scheduled premises**)—

(a) Section 17 (1) (c)—

Omit "or" where secondly occurring.

(b) Section 17 (1) (d), (e)—

After section 17 (1) (d), insert:

; or

(e) carry out such other work for the purpose of preventing or minimising air pollution as may be specified in the notice,

Clean Air (Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(c) Section 17 (5)–(8)—

After section 17 (4), insert:

(5) A notice under subsection (1) may provide that, at specified times before the expiry of the time limited by the notice for the carrying out of any work required to be undertaken in or on the premises, the occupier of the premises shall furnish reports to the Commission concerning the progress of the work generally and containing any particular information, plans or documentation specified in the notice.

(6) The occupier of the premises shall furnish reports as and when required in accordance with the notice.

Penalty: \$1,000.

(7) The time limited by a notice under subsection (1) may be extended by notice in writing given by the Commission before the expiry of that time.

(8) A time extended under subsection (7) shall be deemed to be the time limited by the notice under subsection (1) and may, by the further application of subsection (7), be further extended from time to time.

(4) Section 19A (**Control equipment on premises other than scheduled premises**)—

Section 19A (3)—

After section 19A (2), insert:

(3) Where any control equipment, other than prescribed control equipment, is installed in or on any premises, the occupier of the premises shall maintain that other control equipment in an efficient condition and shall operate it in a proper and efficient manner.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(5) Section 19B—

After section 19A, insert:

Operation of fuel burning equipment and industrial plant

19B. (1) The occupier of any premises who operates any fuel burning equipment or industrial plant in or on those premises in such a manner as to cause or increase air pollution from those premises is guilty of an offence if the air pollution so caused or increased, or any part of the air pollution so caused or increased, is caused by reason of the occupier's failure—

- (a) to maintain that equipment or plant in an efficient condition; or
- (b) to operate that equipment or plant in a proper and efficient manner.

(2) The occupier of any premises who carries out maintenance work on any control equipment, fuel burning equipment or industrial plant in or on those premises in such a manner as to cause or increase air pollution from those premises is guilty of an offence if the air pollution so caused or increased, or any part of the air pollution so caused or increased, is caused by reason of the occupier's failure to carry out that work in a proper and efficient manner.

(3) This section does not apply to or in respect of any stove, incinerator or similar fuel burning equipment used only for domestic purposes by or on behalf of the occupants of a dwelling (other than any such incinerator or similar fuel burning equipment used by or on behalf of the occupiers of 2 or more dwellings in a residential flat building).

(6) Section 20 (**Control of trades, industries, processes, fuel burning equipment and industrial plant**)—

(a) Section 20 (1) (b)—

Omit "or" where lastly occurring.

Clean Air (Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(b) Section 20 (1) (d), (e)—

After section 20 (1) (c), insert:

- (d) install fuel burning equipment or industrial plant, or use fuel of a specified type, in or on the premises, where the local authority is satisfied that the use of that equipment or plant, or fuel, will reduce the emission of air impurities from the premises; or
- (e) carry out such other work for the purpose of preventing or minimising air pollution as may be specified in the notice,

(c) Section 20 (3)—

Omit “paragraph (a), (b) or (c) of subsection (1)”, insert instead “subsection (1) (a), (b), (c), (d) or (e)”.

(d) Section 20 (6)–(9)—

After section 20 (5), insert:

(6) A notice under subsection (1) or (3) may provide that, at specified times before the expiry of the time limited by the notice for the carrying out of any work required to be undertaken in or on any premises, the occupier of the premises shall furnish reports to the local authority (in the case of work required by a notice under subsection (1)) or the Commission (in the case of work required by a notice under subsection (3)) concerning the progress of the work generally and containing any particular information, plans or other documentation specified in the notice.

(7) The occupier of the premises shall furnish reports as and when required in accordance with the notice.

Penalty: \$1,000.

(8) The time limited by a notice under subsection (1) or (3) may be extended by notice in writing given by the local authority or the Commission, as the case may be, before the expiry of that time.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(9) A time extended under subsection (8) shall be deemed to be the time limited by the notice under subsection (1) or (3), as the case may be, and may, by the further application of subsection (8), be further extended from time to time.

(7) Part IVB—

After Part IVA, insert:

PART IVB
SCHEDULED EQUIPMENT

Licensing

21O. (1) Any person who is the owner of any scheduled equipment which is used or operated in any part of the State and who is not the holder of a licence issued in respect of the equipment is guilty of an offence against this Act.

(2) This section does not apply to or in respect of a person—

- (a) who, within the prescribed period after the commencement of this section, makes application for a licence in respect of the scheduled equipment; or
- (b) who has, within the prescribed period after becoming the owner of the equipment, made application for the transfer to the person of a licence in respect of that equipment,

until the person's application has been finally determined.

Control of scheduled equipment

21P. The provisions of sections 14–15B, section 16 (subsection (2) excepted) and section 17 apply to and in respect of scheduled equipment in the same way as those provisions apply to and in respect of scheduled premises, but so apply—

- (a) as if a reference in any such provision to scheduled premises were a reference to scheduled equipment;

Clean Air (Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

- (b) as if a reference in any such provision to any fuel burning equipment or industrial plant in or on, or installed in or on, scheduled premises were a reference to any mobile fuel burning equipment or industrial plant which comprises or forms part of scheduled equipment;
- (c) as if a reference in any such provision to any trade, industry or process carried on or conducted in or on scheduled premises were a reference to any trade, industry or process carried on or conducted by means of scheduled equipment;
- (d) as if a reference in any such provision (section 17 excepted) to the occupier of scheduled premises were a reference to the owner, and to any lessee, hirer or person in charge, of scheduled equipment;
- (e) as if a reference in section 17 to the occupier of scheduled premises were a reference to the owner of scheduled equipment; and
- (f) with any modifications made by the regulations.

Construction of scheduled equipment

21Q. (1) A person shall not—

- (a) construct any scheduled equipment; or
- (b) carry out any work that constitutes the beginning of, or any subsequent step in, such a construction,

except in accordance with a pollution control approval.

(2) A person shall not—

- (a) carry out any work on any mobile plant or equipment that would cause that plant or equipment to constitute scheduled equipment; or
- (b) carry out any work on any mobile plant or equipment that constitutes the beginning of, or any subsequent step in, any work of the nature referred to in paragraph (a),

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

except in accordance with a pollution control approval.

(3) A person who—

- (a) constructs any equipment; or
- (b) carries out any work,

in contravention of this section is guilty of an offence against this Act.

(4) Subsection (3) does not apply to or in respect of any construction or work carried out during the prescribed period after the commencement of this section by a person who, during that period, makes application for an appropriate pollution control approval, until the person's application has been finally determined.

(8) Section 22 (**Powers of Commission**)—

Section 22 (b)—

- (a) After “premises” where firstly occurring, insert “, to the owner of any mobile plant or equipment”.
- (b) After “occupier” where secondly occurring, insert “, owner”.
- (c) After “premises” where secondly occurring, insert “, plant, equipment”.

(9) Section 23 (**Power to require information to be furnished**)—

(a) Section 23 (1)—

After “premises” where firstly occurring, insert “or the owner of any mobile plant or equipment”.

(b) Section 23 (1)—

Omit “that occupier”, insert instead “the occupier of those premises or the owner of that plant or equipment, as the case may be,”.

(c) Section 23 (1)—

Omit “premises, the”, insert instead “premises or comprised in that plant or equipment, the”.

Clean Air (Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(10) Section 23A—

After section 23, insert:

Measurement of pollution

23A. (1) The Commission, by notice in writing served on the occupier of any premises in or on which there is any fuel burning equipment or industrial plant, may require that occupier to take such reasonable steps as may be specified in the notice to measure at such localities, or at such distances from the premises, as may be specified in the notice, levels of air pollution caused by, or partly caused by, the operation of that equipment or plant and to report the results of any such measurements to the Commission.

(2) The notice shall specify a reasonable time for compliance with the notice.

(3) Section 23 (2) applies to and in respect of the reported measurement results as if they were information required by the Commission under section 23.

(4) A person who fails or neglects to comply with a requirement made under this section is guilty of an offence against this Act and is liable—

- (a) where the offence was committed by a corporation—to a penalty not exceeding \$10,000; or
- (b) where the offence was committed by any other person—to a penalty not exceeding \$4,000.

(5) A notice under this section shall not have any force—

- (a) until the time limited for appealing against the notice has expired; and
- (b) where within that time an appeal against the notice has been made under this Act, until the Court upholds the notice.

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*(11) Section 24 (**Power to prohibit use of fuel, fuel burning equipment or industrial plant in certain areas or to prohibit open burning**)—

(a) Section 24 (2)—

Omit “order and may include in the order any one or more of the following provisions:”, insert instead “order.”.

(b) Section 24 (2) (a)–(d)—

Omit the paragraphs.

(c) Section 24 (3)–(6)—

After section 24 (2), insert:

(3) In subsection (2), “open fire” means any fire (whether or not constituting, or occurring in connection with the operation of, any fuel burning equipment) in which the products of combustion are not directed to the open air by means of a stack or chimney.

(4) The application of an order under this section may be general or may, by the terms of the order, be limited in any one or more of the following ways:

- (a) so as to apply only to land, or a class of land, or to an area or areas, specified in the order;
- (b) so as to apply only to persons, or a class of persons, so specified;
- (c) so as to apply only at times, or in circumstances, or in the event of a combination of times and circumstances, so specified;
- (d) in the case of an order referred to in subsection (2)—
 - (i) so as to apply only to burning for purposes specified in the order; or
 - (ii) so as to apply only to burning for purposes other than those so specified.

Clean Air (Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(5) The prohibition, by an order under this section, of burning by open fire includes the prohibition of—

- (a) lighting of or maintaining such a fire; and
- (b) suffering such a fire to be lit or maintained.

(6) In the event of any inconsistency between an order under this section and a regulation, the provisions of the order shall prevail to the extent of the inconsistency.

(12) Sections 24A–24D—

After section 24, insert:

Burning of refuse, etc.—general orders

24A. (1) If the Commission is of the opinion that meteorological conditions are such that the burning of fires in the open or in incinerators while those conditions subsist will contribute or is likely to contribute to air pollution to such an extent that an order under this section is warranted, the Commission may by order prohibit, unconditionally or conditionally, the burning of fires in the open or in incinerators, or in incinerators of a specified class.

(2) An order under this section shall have effect for a period (not exceeding 7 days) specified in the order.

(3) The provisions of section 24 (4) apply to and in respect of an order under this section in the same way as they apply to and in respect of an order under section 24.

(4) An order under this section shall be—

- (a) published, not later than on the day on which the order is to take effect, in a daily newspaper circulating throughout the State; or

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(b) broadcast, not later than on the eve of the day on which the order is to take effect, by radio or television throughout the area or areas of the State to which the order relates.

(5) A person shall not neglect or fail to comply with an order under this section.

Penalty: \$500.

Burning of refuse, etc.—particular directions

24B. (1) If an authorised officer has reasonable grounds to believe that a fire is burning on any premises, being a fire—

- (a) the burning of which is for the time being prohibited by an order under section 24 or 24A;
- (b) the burning of which is prohibited by the regulations; or
- (c) which, in the opinion of the authorised officer, is a hazard to the health of any person or is causing or is likely to cause serious discomfort or inconvenience to any person,

the authorised officer may, by notice in writing served on—

- (d) the occupier, or the person apparently in charge, of the premises; or
- (e) a person apparently in charge of the fire,

direct the occupier or other person on whom the notice is served to extinguish the fire immediately.

(2) Without affecting the operation of section 24A, such a notice shall prohibit lighting of or maintaining the same or any similar fire on the premises during such period (not exceeding 48 hours) following the service of the notice as may be specified in the notice.

(3) A person shall not—

- (a) neglect or fail to comply with a direction given to the person by a notice under this section; or

Clean Air (Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

- (b) light or maintain a fire or suffer a fire to be lit or maintained in contravention of the prohibition effected by such a notice.

Penalty: \$500.

- (4) An authorised officer may, by a further notice in writing, revoke a direction given by a notice under this section.

Penalty notices

24C. (1) Where it appears to an authorised officer that any person has committed an offence by virtue of a contravention of, or a failure to comply with—

- (a) an order or direction under section 24A or 24B; or
(b) a provision of the regulations that is prescribed for the purposes of this section,

the authorised officer may serve a notice on the person to the effect that if the person does not desire to have the matter determined by a court, the person may pay to an officer specified in the notice, within a time so specified, an amount of penalty prescribed for that offence if dealt with under this section.

- (2) The notice may be served personally or by post.

(3) Any person alleged to have committed an offence to which subsection (1) applies has the right to decline to be dealt with under this section.

(4) Any person who fails to pay the penalty within the time specified in the notice or within such further time as may in any particular case be allowed shall be deemed to have declined to be dealt with under this section.

(5) Where the amount of any prescribed penalty for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.

Clean Air (Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(6) Payment of a penalty in accordance with this section shall not be regarded as an admission of liability for the purpose of nor in any way affect or prejudice any civil claim, action or proceedings arising out of the same occurrence.

(7) No penalty prescribed under this section for any offence shall exceed any maximum amount of penalty which could be imposed for the offence by a court.

(8) The provisions of this section shall be construed as supplementing, and not as derogating from, any other provision of this Act or the regulations or any other Act or regulation, by-law or ordinance under any other Act in relation to proceedings which may be taken in respect of offences.

Direction to render equipment or plant inoperable

24D. (1) Where—

- (a) the Commission is satisfied that the occupier of any premises cannot, or is not willing to—
- (i) cause any fuel burning equipment or industrial plant in or on the premises, the use or operation of which is for the time being prohibited under section 15B or 19A, to be fitted with control equipment prescribed for the purposes of those sections; or
 - (ii) modify, or carry out work on, any fuel burning equipment or industrial plant in or on the premises as required by the Commission under section 17 or 20;

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

- (b) the Commission is satisfied that the owner of any scheduled equipment cannot, or is not willing to—
 - (i) cause any mobile fuel burning equipment or industrial plant which comprises or forms part of that scheduled equipment, the use or operation of which is for the time being prohibited under section 15B (as applied by section 21P), to be fitted with control equipment prescribed for the purposes of section 15B; or
 - (ii) modify, or carry out work on, any mobile fuel burning equipment or industrial plant comprised in that scheduled equipment as required by the Commission under section 17; or
- (c) the use or operation of any fuel burning equipment or industrial plant in or on any premises or comprised in any scheduled equipment is prohibited by the regulations,

the Commission may by notice in writing direct the occupier of the premises or the owner of the scheduled equipment to take such steps as may be specified in the notice, within a time so specified, to render the fuel burning equipment or industrial plant incapable of use or operation.

(2) A notice under this section grounded on an inability or refusal to comply with a notice under section 17 or 20 shall not have any force—

- (a) until the time limited for appealing against the notice under section 17 or 20 has expired; and
- (b) where within that time an appeal against the notice under section 17 or 20 has been made under this Act, until the Court upholds such a notice.

(13) Section 26 (**Appeals**)—

Section 26 (1) (a) (iii)—

After “20”, insert “or 23A”.

SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*(14) Section 27 (**Powers of authorised officers**)—

(a) Section 27 (1A), (1B)—

After section 27 (1), insert:

(1A) An authorised officer may enter into or upon any mobile plant or equipment—

(a) by means of which an industry or trade is being carried on, at any time during which any manufacturing, industrial or trade process is being carried on by means of that plant or equipment; or

(b) in which the authorised officer reasonably suspects that air pollution has been, is being or is likely to be caused, at any time,

and shall have and may exercise in relation to that plant or equipment the same powers as an authorised officer is empowered by subsection (1) (e)–(g) to exercise in relation to any premises.

(1B) For the purposes of subsection (1A), the reference in subsection (1) (e) to premises shall be read as a reference to mobile plant or equipment.

(b) Section 27 (2) (a) (i)—

Omit “in” where firstly occurring, insert instead “, or the owner of any mobile plant or equipment, from”.

(c) Section 27 (2) (a) (i)—

After “premises” where secondly occurring, insert “, plant or equipment”.

(d) Section 27 (2) (a) (i)—

After “premises” where thirdly occurring, insert “or by means of that plant or equipment”.

(e) Section 27 (3)—

After “premises” where firstly occurring, insert “or mobile plant or equipment”.

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SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(f) Section 27 (3)—

After “premises” where secondly occurring, insert “or the person apparently in charge of the plant or equipment, as the case requires”.

(g) Section 27 (4)—

Omit the subsection, insert instead:

(4) For the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Act, the holder of a prescribed office may—

(a) by notice in writing served on the occupier of any premises, require that occupier to provide such reasonable assistance and facilities (whether of the same kind as, or a different kind from, those prescribed in accordance with section 34 (1) (e)) as are specified in the notice within such time and in such manner as are so specified; or

(b) by notice in writing served on the owner, hirer, lessee or person in charge of any mobile plant or equipment, require that owner, hirer, lessee or other person to provide such reasonable assistance or facilities as are specified in the notice within such time and in such manner as are so specified.

(h) Section 27 (5) (c)—

After “premises”, insert “or the owner, hirer, lessee or person in charge of any mobile plant or equipment”.

(15) Section 30 (**Evidence**)—

(a) Section 30 (5) (c1)—

After section 30 (5) (c), insert:

(c1) that an order, a copy of which is set out in the certificate, was for the purposes of section 24A published in a daily newspaper;

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SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

- (b) Section 30 (5) (d)—
After “24”, insert “or 24A”.
- (c) Section 30 (5) (e)—
After “premises”, insert “, or in respect of mobile plant or equipment,”.
- (16) Section 31 (**Unjustified disclosure of information**)—
Section 31 (c)—
Omit “section 23”, insert instead “sections 23 and 23A”.
- (17) Section 32A (**Power to order contravention to be remedied**)—
After “20”, insert “(or under section 17 as applied by section 21P)”.
- (18) Section 33A (**Orders for restoration and compensation**)—
Omit “or 19A”, insert instead “, 19A or 19B”.
- (19) Section 34 (**Regulations**)—
- (a) Section 34 (1) (f)—
After “prescribing”, insert “(whether by reference to the shade of colour or optical density of an emission or otherwise)”.
- (b) Section 34 (1) (f5)—
Omit “of a prescribed class or description that are to be used, or are capable of being used, in the operation of motor vehicles”, insert instead “, or of fuel burning equipment, of a prescribed class or description”.
- (c) Section 34 (1) (p)—
Omit “and” where secondly occurring.
- (d) Section 34 (1) (q)—
Omit “description.”, insert instead “description;”.

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SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(e) Section 34 (1) (r), (s)—

After section 34 (1) (q), insert:

(r) regulating or prohibiting—

(i) the use of fuel or the use or operation of fuel burning equipment or industrial plant; and

(ii) burning by open fire; and

(s) prohibiting (whether by the issue of a notice in relation to particular plant or equipment or otherwise) the operation of any fuel burning equipment or industrial plant which fails to comply with standards or specifications prescribed by or under this Act with respect to its operation.

(f) Section 34 (3D)—

After section 34 (3C), insert:

(3D) Without limiting the operation of any other provision of this section, the provisions of section 24 (4) apply to and in respect of a regulation made under subsection (1) (r) in the same way as they apply to and in respect of an order under section 24.

(20) Schedule—

(a) Omit the heading “SCHEDULED PREMISES.”, insert instead:

PRESCRIBED USES, EQUIPMENT AND PLANT

(b) Omit:

Any premises—

*Clean Air (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CLEAN AIR ACT 1961—*continued*

(a) being used for—

Insert instead:

Prescribed uses

1. For the purposes of the definitions of “Scheduled equipment” and “Scheduled premises” in section 5 (1), the following are prescribed facilities or works:

(c) Omit paragraphs (b)–(c), insert instead:

Prescribed equipment or plant

2. For the purposes of the definitions of “Scheduled equipment” and “Scheduled premises” in section 5 (1), the following are prescribed fuel burning equipment or prescribed industrial plant, as the case may be:

Fuel burning equipment consuming or capable of consuming, either alone or in the aggregate, more than 300 kilograms of combustible material per hour.

Fuel burning equipment or industrial plant located in workshops, or comprising or forming part of workshops, operated by the State Rail Authority.

 SCHEDULE 2

(Sec. 4)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Saving of certain orders

1. The amendments made by this Act to section 24 of the Clean Air Act 1961 do not affect the force or operation, on and after the commencement of this Act, of any order under that section in force immediately before the commencement of this Act.

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SCHEDULE 2—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Transitional application of ss. 17 and 20, as amended**

2. The provisions of sections 17 (5)-(8) and 20 (6)-(9) of the Clean Air Act 1961, as amended by this Act, apply to and in respect of notices given under sections 17 and 20, respectively, of that Act and which were in force immediately before the commencement of this Act in the same way as those provisions apply to and in respect of notices given under those sections on or after the commencement of this Act.

Purport of orders under s. 24

3. Section 24 (5) of the Clean Air Act 1961, as amended by this Act, applies to and in respect of orders made under section 24 of that Act before the commencement of this Act in the same way as it applies to orders made under that section on or after the commencement of this Act.

Saving of certain authorities

4. A person who, immediately before the commencement of this Act, was the holder of an office prescribed for the purposes of section 27 (4) of the Clean Air Act 1961 as then in force shall, subject to that Act as amended by this Act, be deemed to be the holder of an office prescribed for the purposes of that subsection as in force on and after the commencement of this Act.

Saving of certain regulations

5. The amendments made by this Act to section 34. (1) (f5) of the Clean Air Act 1961 do not affect the force or operation, on and after the commencement of this Act, of any regulation in force under that Act immediately before the commencement of this Act.

Validation of certain licences

6. A licence purportedly granted at any time before the commencement of this Act—
- (a) in respect of any mobile plant or equipment which, if this Act had been in force at that time, would have constituted scheduled equipment within the meaning of the Clean Air Act 1961; and

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SCHEDULE 2—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(b) purporting to be a licence in respect of scheduled premises within the meaning of that Act, as in force at that time,

is validated and shall, subject to the provisions of the Clean Air Act 1961 and the State Pollution Control Commission Act 1970, as in force on and after the commencement of this Act, continue in force on and after the commencement of this Act as a licence in respect of scheduled equipment.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986

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