

CLEAN WATERS (AMENDMENT) ACT 1987 No. 189

NEW SOUTH WALES



TABLE OF PROVISIONS

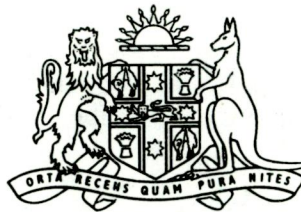
1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 78, 1970
5. Transitional provision

SCHEDULE 1—AMENDMENTS



CLEAN WATERS (AMENDMENT) ACT 1987 No. 189

NEW SOUTH WALES



Act No. 189, 1987

An Act to amend the Clean Waters Act 1970 so as to assist the enforcement of laws aimed at preventing water pollution. [Assented to 4 December 1987]

*Clean Waters (Amendment) 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Clean Waters (Amendment) Act 1987.

Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Principal Act

3. The Clean Waters Act 1970 is referred to in this Act as the Principal Act.

Amendment of Act No. 78, 1970

4. The Principal Act is amended as set out in Schedule 1.

Transitional provision

5. Section 20 of the Principal Act, as amended by this Act, applies to control equipment installed before or after the commencement of Schedule 1 (5).

SCHEDULE 1—AMENDMENTS

(Sec. 4)

- (1) Section 2 (**Arrangement**)—
Omit the section.

- (2) Section 5 (**Interpretation**)—

- (a) Definition of “pollute”—

From paragraphs (a)–(c), omit “on the waters” wherever occurring, insert instead “on, or otherwise introduce into or on to, the waters (whether through an act or omission)”.

- (b) Definition of “wastes”—

Omit the definition, insert instead:

“wastes” means any solid, gas or liquid, with or without matter in suspension or solution in it, which is or may be discharged from premises—

- (a) in the course of any process or operation carried on in connection with any mine (within the meaning of the Mines Inspection Act 1901 or the Coal Mines Regulation Act 1982), open cut working (within the meaning of the latter Act), coal washing, trade, industry, agriculture or sewage treatment; or

*Clean Waters (Amendment) 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (b) in the course of any domestic process or operation, or which is in, or is or may be discharged from, any waste disposal depot;
- (c) Definition of “waters”—
After “lagoon”, insert “, swamp, wetlands, unconfined surface water”.
- (3) Section 6 (**Clean Waters Advisory Committee**)—
- (a) Section 6 (1)—
Omit “eighteen”, insert instead “19”.
- (b) Section 6 (2) (b)—
Omit “seventeen”, insert instead “18”.
- (c) Section 6 (2) (b) (via)—
After section 6 (2) (b) (vi), insert:
(via) one shall be a representative of the Soil Conservation Service of New South Wales nominated by the Commissioner of that Service;
- (4) Section 16 (**Prohibition of pollution of waters**)—
- (a) Section 16 (1)—
Omit “or cause or permit any waters to be polluted”.
- (b) Section 16 (2) (a), (b)—
Omit the paragraphs, insert instead:
- (a) the person places any matter (whether solid, liquid or gaseous) in a position where—
- (i) it falls, descends, is washed, is blown or percolates;
or
- (ii) it is likely to fall, descend, be washed, be blown or percolate,
into any waters, on to the dry bed of any waters, or into any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted, or causes or permits any such matter to be placed in such a position; or
- (b) the person places any such matter on the dry bed of any waters, or in any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted, or causes or permits any such matter to be placed on such a dry bed or in such a drain, channel or gutter,

*Clean Waters (Amendment) 1987*SCHEDULE 1—AMENDMENTS—*continued*

(c) Section 16 (3)–(4)—

After section 16 (2), insert:

(3) A person shall not cause any waters to be polluted, whether intentionally or not.

(4) A person shall not permit any waters to be polluted.

(5) Section 20—

After section 19, insert:

Maintenance and operation of certain control equipment

20. (1) In this section—

“control equipment” means any apparatus or device used or designed to prevent the pollution of waters.

(2) The occupier of any premises in or on which any control equipment is installed shall—

(a) maintain the equipment in an efficient condition; and

(b) operate the equipment in a proper and efficient manner.

(3) Any person who contravenes 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 \$20,000; or

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

(6) Section 27A—

After section 27, insert:

Notice to clean up pollution

27A. (1) The Commission may, by a written notice, direct—

(a) an occupier of premises on or in which any waters have been or are polluted or from which the pollution of any waters has been caused; or

(b) a person who has caused the pollution of any waters,

to take such measures to remove, disperse, destroy or mitigate the pollution as are specified in the notice.

(2) Where an occupier of premises complies with any such notice and the occupier was not the person who caused the pollution, the cost of complying with the notice may be recovered as a debt in a court of competent jurisdiction from that person.

SCHEDULE 1—AMENDMENTS—*continued*

(3) A person who, without reasonable excuse, does not comply with any direction in a notice issued under this section and served on the person is guilty of an offence against this Act and liable to a penalty not exceeding \$5,000.

(7) **Section 28 (Occupier may be required to supply information)—**

Section 28 (1)—

Omit the subsection, insert instead:

(1) The Commission may, by written notice served on the occupier of any premises, require the occupier to furnish to it, at or within such time or times as may be specified in the notice, such information as to—

- (a) any manufacturing, industrial or trade process carried on in or on the premises;
- (b) any pollution control equipment, waste treatment works or drainage systems situated at the premises; or
- (c) any wastes discharged or removed or likely to be discharged or removed from the premises,

as the Commission requires by the notice.

(8) **Section 29A—**

After section 29, insert:

Sampling of tanker loads etc. for pollutants

29A. (1) An authorised officer who suspects on reasonable grounds that any substance which is or may become a pollutant is being conveyed by or is situated in a container being conveyed by a motor vehicle may—

- (a) if the vehicle is moving, direct that it be stopped;
- (b) request the driver or owner of the motor vehicle to supply to the officer (immediately or within such time as may be specified by the officer) particulars of the nature and quantity of any substance being so conveyed;
- (c) take without payment, for the purpose of examination or testing, samples of any substance being so conveyed; and
- (d) detain the vehicle for such time as is necessary to take the samples.

(2) The powers of an authorised officer under this section may be exercised only if the officer suspects on reasonable grounds that the substance, vehicle or container has been or is being used in connection with an offence against this Act or the regulations.

SCHEDULE 1—AMENDMENTS—*continued*

- (3) Any person who—
- (a) wilfully delays or obstructs an authorised officer when exercising any power under this section;
 - (b) without reasonable excuse, does not supply any particulars as requested or supplies particulars which are false or misleading in a material respect; or
 - (c) does not comply with any reasonable requirement made for the purposes of this section by an authorised officer,
- is guilty of an offence against this Act and liable to a penalty not exceeding \$5,000.
- (9) Section 30 (**Disclosure of information**)—
Omit the section.
- (10) Section 32 (**Evidence**)—
Omit the section.
- (11) Section 33 (**Proceedings for offences**)—
- (a) Section 33 (1), (3)—
Omit “court of petty sessions held before a stipendiary magistrate” wherever occurring, insert instead “Local Court constituted by a Magistrate”.
 - (b) Section 33 (3)—
Omit “the court”, insert “the Local Court”.

CLEAN WATERS (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the State Pollution Control Commission (Amendment) Bill 1987.

The object of this Bill is to amend the Clean Waters Act 1970 so as—

- (a) to expand and make clearer the circumstances in which waters are to be regarded as having been polluted for the purposes of that Act;
- (b) to add a representative of the Soil Conservation Service of New South Wales to the membership of the Clean Waters Advisory Committee.
- (c) to require equipment used to prevent the pollution of waters to be adequately maintained and operated;
- (d) to enable the Commission to require the cleaning up of water pollution;
- (e) to empower the Commission to obtain additional information from the occupiers of premises;
- (f) to provide for the sampling of tanker loads for substances that may cause the pollution of waters;
- (g) to omit provisions facilitating the giving of evidence and restricting the disclosure of information obtained by officers of the Commission, for which provision is intended to be made in the State Pollution Control Commission Act 1970; and
- (h) to make minor changes for the purpose of statute law revision.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed by the Governor-in-Council.

Clause 3 states that the Clean Waters Act 1970 is referred to as the Principal Act.

Clause 4 is a formal provision giving effect to the Schedule of amendments to the Principal Act.

Clean Waters (Amendment) 1987

Clause 5 is a transitional provision which makes it clear that proposed section 20 (Maintenance and operation of certain control equipment) of the Principal Act will apply to equipment installed before the commencement of that proposed section.

Schedule 1 (1) repeals section 2 of the Principal Act, which provides for the division of that Act, because that provision is redundant.

Schedule 1 (2) amends section 5 (Interpretation) of the Principal Act so as to expand the definitions of "pollute", "wastes" and "waters".

Schedule 1 (3) amends section 6 (Clean Waters Advisory Committee) of the Principal Act so as to increase the membership of the Clean Waters Advisory Committee to 19 by including a representative of the Soil Conservation Service of New South Wales.

Schedule 1 (4) amends section 16 (Prohibition of pollution of waters) of the Principal Act so as to restate in clearer terms the separate offences contained in that section and to expand the offence created by section 16 (2).

Schedule 1 (5) inserts proposed section 20 (Maintenance and operation of certain control equipment) into the Principal Act which will require an occupier of premises to adequately maintain and operate any equipment installed on the premises and used or designed for use to prevent the pollution of waters.

Schedule 1 (6) inserts proposed section 27A (Notice to clean up pollution) into the Principal Act which will enable the Commission to require pollution of waters to be removed, dispersed, destroyed or mitigated, as appropriate.

Schedule 1 (7) amends section 28 (Occupier may be required to supply information) of the Principal Act so that the Commission may require the supply of information concerning pollution control equipment, waste treatment works or drainage systems from an occupier of premises.

Schedule 1 (8) inserts proposed section 29A (Sampling of tanker loads etc. for pollutants) into the Principal Act. The proposed section will empower an authorised officer to take samples for the purpose of examination or testing only if there is a suspected offence against the Principal Act or regulations made under it.

Schedule 1 (9) and (10) repeal sections 30 (Disclosure of information) and 32 (Evidence) of the Principal Act because of amendments intended to be made by the proposed State Pollution Control Commission (Amendment) Act 1987.

Schedule 1 (11) amends section 33 (Proceedings for offences) of the Principal Act so as to update references to courts of petty sessions and stipendiary magistrates.

CLEAN WATERS (AMENDMENT) BILL 1987

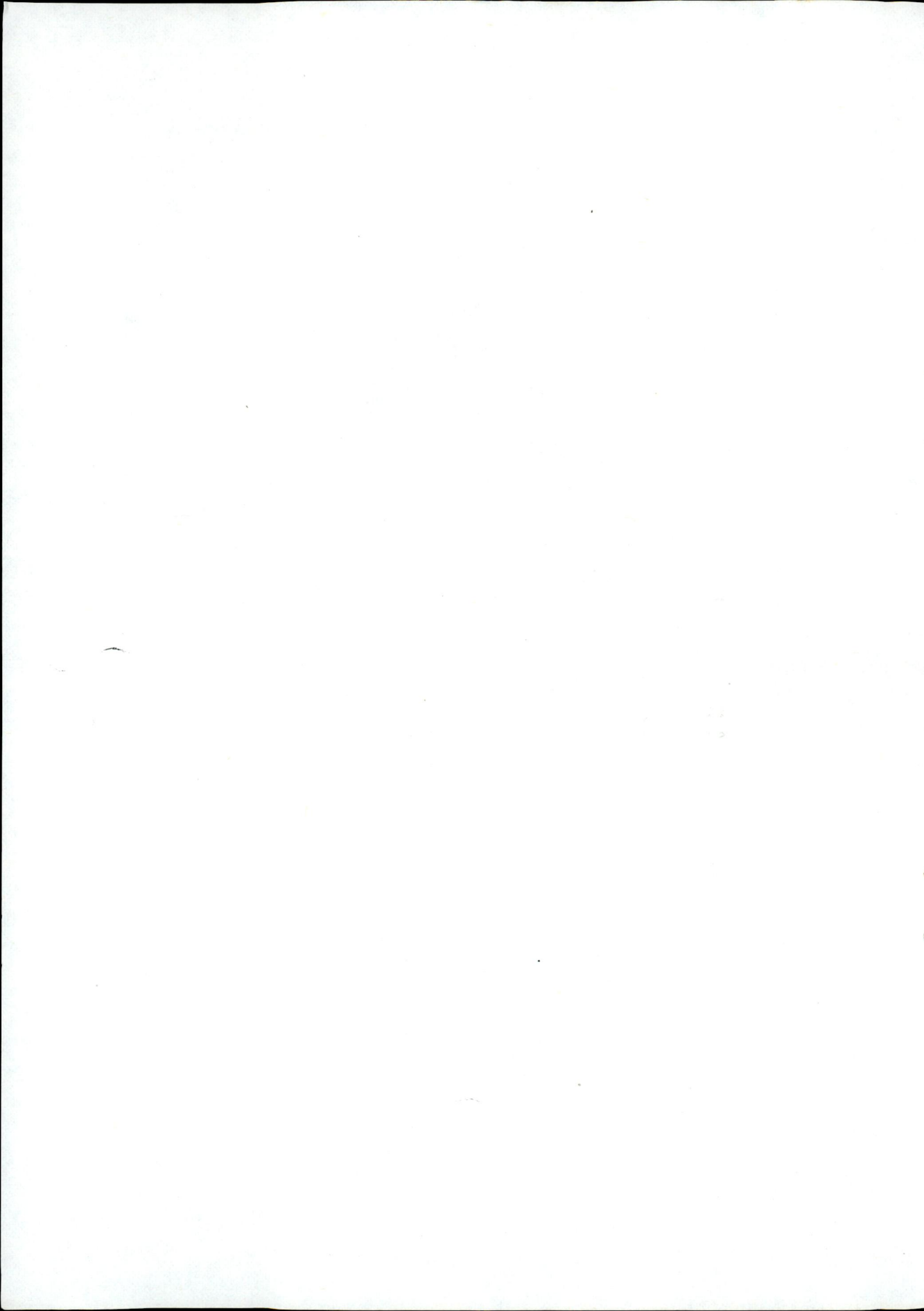
NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS



CLEAN WATERS (AMENDMENT) BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Clean Waters Act 1970 so as to assist the enforcement of laws aimed at preventing water pollution.

*Clean Waters (Amendment) 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Clean Waters (Amendment) Act 1987.

Commencement

- 5 2. This Act shall commence on a day or days to be appointed by proclamation.

Principal Act

3. The Clean Waters Act 1970 is referred to in this Act as the Principal Act.

10 Amendment of Act No. 78, 1970

4. The Principal Act is amended as set out in Schedule 1.

Transitional provision

5. Section 20 of the Principal Act, as amended by this Act, applies to control equipment installed before or after the commencement of Schedule 15 1 (5).

SCHEDULE 1—AMENDMENTS

(Sec. 4)

- (1) Section 2 (**Arrangement**)—

Omit the section.

- 20 (2) Section 5 (**Interpretation**)—

- (a) Definition of “pollute”—

From paragraphs (a)–(c), omit “on the waters” wherever occurring, insert instead “on, or otherwise introduce into or on to, the waters (whether through an act or omission)”.

- 25 (b) Definition of “wastes”—

Omit the definition, insert instead:

“wastes” means any solid, gas or liquid, with or without matter in suspension or solution in it, which is or may be discharged from premises—

- 30 (a) in the course of any process or operation carried on in connection with any mine (within the meaning of the Mines Inspection Act 1901 or the Coal Mines Regulation Act 1982), open cut working (within the meaning of the latter Act), coal washing, trade, industry,
35 agriculture or sewage treatment; or

*Clean Waters (Amendment) 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (b) in the course of any domestic process or operation, or which is in, or is or may be discharged from, any waste disposal depot;
- (c) Definition of “waters”—
- 5 After “lagoon”, insert “, swamp, wetlands, unconfined surface water”.
- (3) Section 6 (**Clean Waters Advisory Committee**)—
- (a) Section 6 (1)—
- Omit “eighteen”, insert instead “19”.
- 10 (b) Section 6 (2) (b)—
- Omit “seventeen”, insert instead “18”.
- (c) Section 6 (2) (b) (via)—
- After section 6 (2) (b) (vi), insert:
- 15 (via) one shall be a representative of the Soil Conservation Service of New South Wales nominated by the Commissioner of that Service;
- (4) Section 16 (**Prohibition of pollution of waters**)—
- (a) Section 16 (1)—
- Omit “or cause or permit any waters to be polluted”.
- 20 (b) Section 16 (2) (a), (b)—
- Omit the paragraphs, insert instead:
- (a) the person places any matter (whether solid, liquid or gaseous) in a position where—
- 25 (i) it falls, descends, is washed, is blown or percolates; or
- (ii) it is likely to fall, descend, be washed, be blown or percolate,
- into any waters, on to the dry bed of any waters, or into any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted, or causes or permits any such matter to be placed in such a position; or
- 30 (b) the person places any such matter on the dry bed of any waters, or in any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted, or causes or permits any such matter to be placed on such a dry bed or in such a drain, channel or gutter,
- 35

*Clean Waters (Amendment) 1987*SCHEDULE 1—AMENDMENTS—*continued*

(c) Section 16 (3)–(4)—

After section 16 (2), insert:

(3) A person shall not cause any waters to be polluted, whether intentionally or not.

5 (4) A person shall not permit any waters to be polluted.

(5) Section 20—

After section 19, insert:

Maintenance and operation of certain control equipment

20. (1) In this section—

10 “control equipment” means any apparatus or device used or designed to prevent the pollution of waters.

(2) The occupier of any premises in or on which any control equipment is installed shall—

15 (a) maintain the equipment in an efficient condition; and

(b) operate the equipment in a proper and efficient manner.

(3) Any person who contravenes this section is guilty of an offence against this Act and is liable—

20 (a) where the offence was committed by a corporation—to a penalty not exceeding \$20,000; or

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

(6) Section 27A—

After section 27, insert:

Notice to clean up pollution

25 27A. (1) The Commission may, by a written notice, direct—

(a) an occupier of premises on or in which any waters have been or are polluted or from which the pollution of any waters has been caused; or

30 (b) a person who has caused the pollution of any waters, to take such measures to remove, disperse, destroy or mitigate the pollution as are specified in the notice.

35 (2) Where an occupier of premises complies with any such notice and the occupier was not the person who caused the pollution, the cost of complying with the notice may be recovered as a debt in a court of competent jurisdiction from that person.

*Clean Waters (Amendment) 1987*SCHEDULE 1—AMENDMENTS—*continued*

(3) A person who, without reasonable excuse, does not comply with any direction in a notice issued under this section and served on the person is guilty of an offence against this Act and liable to a penalty not exceeding \$5,000.

5 (7) Section 28 (**Occupier may be required to supply information**)—

Section 28 (1)—

Omit the subsection, insert instead:

10 (1) The Commission may, by written notice served on the occupier of any premises, require the occupier to furnish to it, at or within such time or times as may be specified in the notice, such information as to—

- (a) any manufacturing, industrial or trade process carried on in or on the premises;
- 15 (b) any pollution control equipment, waste treatment works or drainage systems situated at the premises; or
- (c) any wastes discharged or removed or likely to be discharged or removed from the premises,

as the Commission requires by the notice.

20 (8) Section 29A—

After section 29, insert:

Sampling of tanker loads etc. for pollutants

25 29A. (1) An authorised officer who suspects on reasonable grounds that any substance which is or may become a pollutant is being conveyed by or is situated in a container being conveyed by a motor vehicle may—

- (a) if the vehicle is moving, direct that it be stopped;
- (b) request the driver or owner of the motor vehicle to supply to the officer (immediately or within such time as may be specified by the officer) particulars of the nature and quantity of any substance being so conveyed;
- 30 (c) take without payment, for the purpose of examination or testing, samples of any substance being so conveyed; and
- (d) detain the vehicle for such time as is necessary to take the samples.

35 (2) The powers of an authorised officer under this section may be exercised only if the officer suspects on reasonable grounds that the substance, vehicle or container has been or is being used in connection with an offence against this Act or the regulations.

*Clean Waters (Amendment) 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (3) Any person who—
- (a) wilfully delays or obstructs an authorised officer when exercising any power under this section;
 - 5 (b) without reasonable excuse, does not supply any particulars as requested or supplies particulars which are false or misleading in a material respect; or
 - (c) does not comply with any reasonable requirement made for the purposes of this section by an authorised officer,
- 10 is guilty of an offence against this Act and liable to a penalty not exceeding \$5,000.
- (9) Section 30 (**Disclosure of information**)—
Omit the section.
- (10) Section 32 (**Evidence**)—
Omit the section.
- 15 (11) Section 33 (**Proceedings for offences**)—
- (a) Section 33 (1), (3)—
Omit “court of petty sessions held before a stipendiary magistrate” wherever occurring, insert instead “Local Court constituted by a Magistrate”.
 - 20 (b) Section 33 (3)—
Omit “the court”, insert “the Local Court”.



