

**STATE POLLUTION CONTROL COMMISSION
(AMENDMENT) BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

- Clean Air (Amendment) Bill 1987;
- Clean Waters (Amendment) Bill 1987;
- Environmentally Hazardous Chemicals (Amendment) Bill 1987;
- Noise Control (Amendment) Bill 1987.

The object of this Bill is to amend the State Pollution Control Commission Act 1970 so as—

- (a) to enable the Commission to delegate functions which may be conferred on it after the delegation is made;
- (b) to make it clear that conditions of licences granted under the Principal Act may require licensees to provide the Commission with periodic reports concerning licensed operations;
- (c) to provide for the variation of applications for pollution control approvals;
- (d) to make it clear that conditions of pollution control approvals may require the work authorised by the approvals to be carried out in stages;
- (e) to provide for the expiry of pollution control approvals;
- (f) to make it clear that conditions of pollution control approvals may require their holders to report to the Commission progress on the work authorised by the approvals;
- (g) to add a representative of the Soil Conservation Service of New South Wales to the membership of the Technical Advisory Committee and make minor changes to the constitution of that Committee;
- (h) to restate the offence of releasing, without appropriate authority, information obtained while administering or executing the Principal Act and other related Acts enforced by the Commission;

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- (i) to restate and expand the evidentiary provisions of the Principal Act and to extend those provisions to those related Acts;
- (j) to provide that, in certain circumstances, a person concerned in the management of a corporation is to be liable for offences committed by the corporation against the Principal Act and those related Acts; and
- (k) to enable offences against the Principal Act and those related Acts to be prosecuted in the name of the Commission.

The Bill also makes provisions of a saving and transitional nature.

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 State Pollution Control Commission 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.

Clause 5 is a formal provision giving effect to the Schedule of savings and transitional provisions.

Schedule 1 (1) amends section 5 (Interpretation) of the Principal Act so as to enable provisions of that Act to apply generally to other related Acts. A definition of the term "Pollution Control Acts" is inserted which means the Principal Act, Clean Air Act 1961, Clean Waters Act 1970, Environmentally Hazardous Chemicals Act 1985 and Noise Control Act 1975.

Schedule 1 (2) amends section 16 (Delegation) of the Principal Act so as to permit the Commission to delegate such powers, authorities, duties and functions as may be conferred or imposed on the Commission by future Acts.

Schedule 1 (3) substitutes section 17H of the Principal Act with a section (Conditions requiring monitoring by licensees) which enables the Commission to require a licensee to supply to it information about things which are required to be done by other conditions of the licence or relate to the operation or maintenance of the licensed premises, plant or equipment.

Schedule 1 (4) amends section 17J (Application for pollution control approval) of the Principal Act so as to allow the applicant, with the consent of the Commission, to vary an application for a pollution control approval.

Schedule 1 (5) (a) amends section 17K (Pollution control approvals) of the Principal Act so as to permit the Commission to require, by the conditions attached to a pollution control approval, that the work it authorises be carried out in stages the commencement of which is agreed to by the Commission.

Schedule 1 (5) (b) inserts proposed section 17K (4A) into the Principal Act which provides that a pollution control approval expires 2 years (or, if the Commission agrees, 3 years) after it is granted, unless the work authorised by the approval has been substantially commenced within that period.

Schedule 1 (6) substitutes section 17L of the Principal Act with a section (Conditions requiring monitoring by holders of approvals) which enables the Commission to require the holder of a pollution control approval to supply to it information about things which are authorised to be done by, or required to be done by the conditions of, the approval.

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Schedule 1 (7) inserts proposed Division 4 into Part IIIA (Licences and Approvals) of the Principal Act which proposed Division contains the following proposed sections:

Section 17O (Request for further details about applications) which replaces and repeats the substance of former sections 17H and 17L of the Principal Act.

Section 17P (Effect of false or misleading particulars supplied by licensees etc.) which provides that the holder of a licence or pollution control approval contravenes a condition of the licence or approval if particulars supplied under proposed section 17H or 17L are false or misleading in a material respect. Any such particulars may not be used in a prosecution of the holder except for a contravention created by the proposed section.

Schedule 1 (8) amends section 18 (Technical Advisory Committee) of the Principal Act so as to increase the membership of the Technical Advisory Committee to 18 by including a representative of the Soil Conservation Service of New South Wales. The section is also amended to permit the Director of the Commission to nominate an officer of the Commission to be a member of the Committee if the Director is absent and to provide that the Director or the member so nominated is to chair meetings of the Committee.

Schedule 1 (9) amends section 22 (Meetings of Technical Advisory Committee and other committees) of the Principal Act so as to provide that the Director or the Director's nominee is to form part of the quorum for a meeting of the Technical Advisory Committee.

Schedule 1 (10) inserts section 22A (Definitions) into Part V (General) of the Principal Act so as to apply the provisions of that Part which relate to licences to those granted under the Environmentally Hazardous Chemicals Act 1985.

Schedule 1 (11) substitutes section 26 of the Principal Act with a section (Disclosure of information) which modernises the restrictions placed on the disclosure of information obtained by officers of the Commission in enforcing the Pollution Control Acts. The proposed section is similar to section 44 of the Environmentally Hazardous Chemicals Act 1985 but also expressly permits the Commission to release information obtained under proposed sections 17H and 17L of the Principal Act and particulars of licences, pollution control approvals and certain notices given under the Pollution Control Acts.

Schedule 1 (12) and (13) amend section 27 (Proof of certain matters) and repeal section 27A of the Principal Act and replace the latter section with proposed sections 27A (Evidence of documents and certificate evidence) and 27B (Evidence of occupation of premises and ownership of equipment). The intention is to re-enact in the Principal Act evidentiary provisions for all of the Pollution Control Acts so as to avoid duplication and unnecessary minor variations. Additional provision has been made for certificate evidence of the results of analyses (proposed section 27A (5)), of the ownership of licensed equipment (proposed section 27B (2)) and of the classification of premises (proposed section 27B (3)).

Schedule 1 (14) inserts proposed sections 30B and 30C into the Principal Act. Of the proposed sections:

Section 30B (Offences by corporations) provides that directors and persons concerned in the management of corporations may be prosecuted for offences against Pollution Control Acts committed by the corporations.

Section 30C (Prosecutions in the name of the Commission) permits prosecutions for offences against the Pollution Control Acts to be brought in the name of the Commission.

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Schedule 2 contains savings and transitional provisions which declare the effect of the amendments proposed to be made by Schedule 1 on certain applications, pollution control approvals, licences and notices made, granted or served under the Principal Act before those amendments commence.

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TABLE OF PROVISIONS

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3. Principal Act
4. Amendment of Act No. 95, 1970
5. Savings and transitional provisions

SCHEDULE 1—AMENDMENTS

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS



**STATE POLLUTION CONTROL COMMISSION
(AMENDMENT) BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the State Pollution Control Commission Act 1970 so as to assist the enforcement of laws aimed at preventing pollution of the environment.

See also Clean Air (Amendment) Bill 1987, Clean Waters (Amendment) Bill 1987, Environmentally Hazardous Chemicals (Amendment) Bill 1987, Noise Control (Amendment) Bill 1987.

State Pollution Control Commission (Amendment) 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the State Pollution Control Commission (Amendment) Act 1987.

5 Commencement

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

Principal Act

3. The State Pollution Control Commission Act 1970 is referred to in this Act as the Principal Act.

Amendment of Act No. 95, 1970

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

Savings and transitional provisions

5. Schedule 2 has effect.

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SCHEDULE 1—AMENDMENTS

(Sec. 4)

(1) Section 5 (**Interpretation**)—

(a) Definition of “licence”—

Omit the definition, insert instead:

20 “licence” means a licence granted under this Act for the purposes of a Pollution Control Act and in force;

(b) Definition of “Pollution Control Acts”—

After the definition of “pollution”, insert:

“Pollution Control Acts” means—

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(a) this Act;

(b) the Clean Air Act 1961;

(c) the Clean Waters Act 1970;

(d) the Environmentally Hazardous Chemicals Act 1985;
and

30

(e) the Noise Control Act 1975;

(c) Definition of “pollution control approval”—

After “Act” insert “for the purposes of a Pollution Control Act”.

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SCHEDULE 1—AMENDMENTS—*continued*

(d) Section 5 (2)—

At the end of section 5, insert:

(2) In this Act, a reference to a licence includes a reference to a renewed licence.

5 (2) Section 16 (**Delegation**)—

Section 16 (3A)—

After section 16 (3), insert:

10 (3A) A condition of a delegation or authorisation may permit or require the exercise or performance of such of the powers, authorities, duties and functions as may be conferred or imposed on the Commission by or under this or any other Act as in force from time to time.

(3) Section 17H—

Omit the section, insert instead:

15 **Conditions requiring monitoring by licensees**

17H. (1) The conditions of a licence may require the holder of the licence to supply to the Commission, when required by those conditions, particulars certified by that holder (or by another person approved by the Commission) as correct and which relate—

20

(a) to the doing or completion of anything required to be done by those conditions; or

(b) to the operation or maintenance of premises, plant or equipment to which the licence relates.

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(2) Without affecting the generality of subsection (1), conditions of a licence may require the supply of particulars derived from monitoring—

(a) the operation of plant or equipment; or

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(b) ambient conditions prevailing at or near the premises, plant or equipment,

to which the licence relates, and the provision and maintenance of appropriate measuring and recording devices.

(4) Section 17J (**Application for pollution control approval**)—

Section 17J (1A)—

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After section 17J (1), insert:

(1A) An application under section 17I may, with the consent of the Commission, be varied by the applicant before it is dealt with under section 17K.

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SCHEDULE 1—AMENDMENTS—*continued*

(5) Section 17K (**Pollution control approvals**)—

(a) Section 17K (3) (b)—

Omit the paragraph, insert instead:

(b) attach to a pollution control approval a condition that requires, or has the effect of requiring, that any work that is the subject of the approval shall not be carried out—

(i) except at a location described in the approval; or

(ii) except in such stages as are described in the approval, as are commenced only after compliance with requirements described in the approval and as are carried out in accordance with other requirements so described.

(b) Section 17K (4A)—

After section 17K (4), insert:

(4A) A pollution control approval for the carrying out of work expires—

(a) 2 years; or

(b) if the Commission is satisfied on reasonable grounds that that period should be extended—3 years,

after the granting of the application for the approval, unless the work has been substantially commenced within that period.

(6) Section 17L—

Omit the section, insert instead:

Conditions requiring monitoring by holders of approvals

17L. The conditions of a pollution control approval may require the holder of the approval to supply to the Commission, when required by those conditions, particulars certified by that holder (or by another person approved by the Commission) as correct and which relate to the doing or completion of anything—

(a) authorised to be done by the approval; or

(b) required to be done by those conditions.

(7) Part IIIA, Division 4—

After Division 3 of Part IIIA, insert:

DIVISION 4—*Miscellaneous*

Request for further details about applications

17O. The Commission may, by written notice served on—

(a) an applicant for a licence; or

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(b) an applicant for a pollution control approval, require the applicant to supply to the Commission such information and such plans and specifications as the Commission considers necessary and relevant to the application and specifies in the notice.

Effect of false or misleading particulars supplied by licensees etc.

17P. (1) A holder of a licence or a pollution control approval who supplies particulars for the purposes of a condition referred to in section 17H or 17L is guilty of the offence of contravening a condition of the licence or approval if any of the particulars is false or misleading in a material respect.

(2) Any particulars so supplied to the Commission shall not, if the holder objects (when supplying them) to doing so on the ground that they might tend to incriminate the holder, be admissible in evidence in any prosecution of that holder for any offence, except an offence created by subsection (1).

(8) Section 18 (Technical Advisory Committee)—**(a) Section 18 (1)—**

Omit “which shall consist of the Director, and seventeen”, insert instead “, which shall consist of the Director (or, in the Director’s absence, a member or officer of the Commission nominated by the Director) and 18”.

(b) Section 18 (2) (k1)—

After section 18 (2) (k), insert:

(k1) one shall be a representative of the Soil Conservation Service of New South Wales nominated by the Commissioner of that Service;

(c) Section 18 (5)—

After “Director”, insert “(or, in the Director’s absence, the member of the Committee nominated by the Director)”.

(d) Section 18 (6)—

Omit the subsection.

(9) Section 22 (Meetings of Technical Advisory Committee and other committees)—**Section 22 (2) (a)—**

Omit “nine”, insert instead “9, including the Director or the member of the Committee nominated by the Director”.

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SCHEDULE 1—AMENDMENTS—*continued*

(10) Section 22A—

Before section 23, insert:

Definitions

22A. In this Part—

5 “licence” includes a licence granted under the Environmentally
Hazardous Chemicals Act 1985;

“local authority” means the council of a city, municipality or
shire.

(11) Section 26—

10 Omit the section, insert instead:

Disclosure of information

15 26. (1) Except as provided by subsections (3) and (4), a person
is guilty of an offence against this Act and liable to a penalty not
exceeding \$4,000 if the person discloses any information about
any manufacturing or other industrial or commercial secrets or
working processes, being information obtained in connection with
the administration or execution of any of the Pollution Control
Acts (the Environmentally Hazardous Chemicals Act 1985
excepted) or a regulation made under any of those Acts (that Act
20 excepted), unless the disclosure of information is—

(a) made, otherwise than in contravention of a provision of
any of those Acts, in connection with the administration
or execution of any such Act or regulation;

(b) made with the prior permission of the Minister;

25 (c) ordered by a court, or by any other body or person
authorised by law to examine witnesses, in the course of,
and for the purpose of, the hearing and determination by
that court, body or person of any matter or thing; or

30 (d) in accordance with a requirement imposed under the
Ombudsman Act 1974.

(2) The Minister may grant the permission referred to in
subsection (1) (b) only if the Minister is satisfied that to do so
would be in the public interest.

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SCHEDULE 1—AMENDMENTS—*continued*

- 5 (3) An officer of the Commission authorised in writing by the Commission for the purposes of this section may communicate any matter which comes to the knowledge of the officer in the exercise of any power, authority, duty or function under any of the Pollution Control Acts or a regulation made under any such Act—
- 10 (a) to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to pollution, chemicals or chemical wastes or to the protection of the environment; or
- 15 (b) to any person, when communication of the matter to that person is reasonably related to the prevention of harm that may be, or the amelioration of harm that has been, caused to the public, to any person or property or to the environment.
- (4) The Commission may disclose the following information by publishing it in such manner as it considers appropriate:
- 20 (a) particulars of licences and pollution control approvals and the conditions to which they are subject;
- (b) any of the particulars supplied to the Commission under section 17H or 17L by the holder of a licence or a pollution control approval;
- 25 (c) the particulars of any notice given under—
- (i) section 17 or 20 of the Clean Air Act 1961;
- (ii) Part V of the Noise Control Act 1975;
- (iii) section 35 of the Environmentally Hazardous Chemicals Act 1985; or
- (iv) any prescribed provision of any Pollution Control Act or of any regulation made under any such Act.
- 30 (5) Subsection (4) does not authorise the Commission to disclose any information about manufacturing or other industrial or commercial secrets obtained from any premises except with the consent of the occupier of those premises.
- (12) Section 27 (**Proof of certain matters**)—
- 35 (a) Section 27 (c)–(c3)—
- Omit section 27 (c), insert instead:
- 40 (c) the appointment of any member or any officer of the Commission, the Technical Advisory Committee, the Clean Waters Advisory Committee or the Hazardous Chemicals Advisory Committee;

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(c1) the appointment of any member or servant of a local authority;

(c2) the appointment of the Secretary or any officer or employee of the Department of Health;

5 (c3) the appointment of the General Manager or any officer or employee of the Maritime Services Board;

(b) Section 27 (2)—

At the end of section 27, insert:

10 (2) In any legal proceedings by the Commission, no proof shall be required (until evidence is given to the contrary) of the fact that a person is, or at any relevant time was, the occupier of any land to which the proceedings relate.

(13) Sections 27A, 27B—

Omit section 27A, insert instead:

15 **Evidence of documents and certificate evidence**

27A. (1) Any instrument purporting—

(a) to be an instrument issued, made or given for the purposes of a Pollution Control Act (including any instrument referred to in subsections (2)–(5)); and

20 (b) to have been signed by the Minister, the Director, a member of the Commission, the Secretary of the Department of Health, an authorised officer, an officer or employee of the Maritime Services Board authorised by the General Manager of that Board to sign it, a member or servant of a local authority or any other person
25 authorised by a Pollution Control Act to issue, make or give the instrument,

is admissible in any proceedings under a Pollution Control Act and shall, in the absence of evidence to the contrary, be deemed
30 to be such an instrument and to have been so signed.

(2) A document certified by the Director or an authorised officer to be a true copy of an instrument, being an instrument purporting—

35 (a) to be issued, made or given for the purposes of a Pollution Control Act; and

(b) to have been signed by the Minister, the Director, a member of the Commission, the Secretary of the Department of Health or an authorised officer,

40 is admissible in any proceedings under a Pollution Control Act as if it were the original document of which it purports to be a copy.

SCHEDULE 1—AMENDMENTS—*continued*

(3) A certificate signed by the Director or an authorised officer and certifying any one or more of the following:

- 5 (a) that an instrument, a copy of which is set out in or annexed to the certificate, being an instrument purporting—
- (i) to be issued, made or given for the purposes of a Pollution Control Act; and
- 10 (ii) to have been signed by the Minister, the Director, a member of the Commission, the Secretary of the Department of Health or an authorised officer, was issued, made or given on a day specified in the certificate;
- 15 (b) that a person was, or was not, at a time or during a period so specified, the holder of a particular licence so specified, a licence of a kind so specified or a licence in respect of premises, plant or equipment so specified;
- (c) that a licence was, or was not, at a time or during a period so specified, subject to conditions so specified;
- 20 (d) that a licence was, at a time so specified, revoked or suspended for a period so specified;
- (e) that a condition attached to a licence was, at a time so specified, revoked or varied in the manner so specified or that a new condition was, at a time so specified, attached to a licence;
- 25 (f) that a pollution control approval was, or was not, given in relation to any matter so specified;
- (g) that a pollution control approval was, or was not, at a time or during a period so specified, subject to conditions so specified;
- 30 (h) that a person was, or was not, at a time or during a period so specified, an authorised officer;
- (i) that a person was, or was not, at a time or during a period so specified, an officer of the Commission, the Department of Health or the Maritime Services Board or a servant of a local authority;
- 35 (j) that an exemption was, or was not, given under a Pollution Control Act or a regulation made under any such Act in relation to any matter so specified;
- 40 (k) that any such exemption was, or was not, at a time or during a period so specified, in force or subject to conditions so specified;

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- (l) that any such exemption was, or was not, or that any such conditions were, or were not, varied or revoked at a time so specified;
- 5 (m) that any consent necessary for bringing proceedings for an offence against a Pollution Control Act or a regulation made under any such Act has been duly given;
- 10 (n) that an order, a copy of which is set out in or annexed to the certificate, was for the purposes of section 21F, 24 or 24A of the Clean Air Act 1961 published in a manner so specified and on a day so specified;
- (o) that premises are within an area to which an order under section 24 or 24A of the Clean Air Act 1961 applies, a copy of which order is set out in or annexed to the certificate;
- 15 (p) that a requirement was, or was not, made under section 17 or 20 of the Clean Air Act 1961 by the Commission in relation to any matter so specified;
- 20 (q) that a register kept under a Pollution Control Act shows that premises so specified were, at a time or during a period so specified, within a specified classification referred to in regulations made under any such Act;
- (r) that a notice, a copy of which is set out in or annexed to the certificate, was for the purposes of section 12 of the Clean Waters Act 1970 published in the Gazette or a newspaper specified in the certificate on a day so specified;
- 25 (s) that a drain was or was not specified in a licence as a drain from which pollutants may be discharged into any waters; or
- 30 (t) that premises are within a part of the State to which a proclamation under section 17 of the Noise Control Act 1975 relates, a copy of which proclamation is set out in or annexed to the certificate,

is admissible in any proceedings under a Pollution Control Act and shall be prima facie evidence of the matters so certified.

(4) A certificate signed by an authorised officer—

- 35 (a) setting out the result of any test carried out for the purposes of a Pollution Control Act or any regulations made under any such Act; and

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- (b) at the discretion of the authorised officer who signed the certificate, describing the manner in which the test was carried out,

5 is admissible in any proceedings under a Pollution Control Act and is prima facie evidence of the matters so set out and described.

- (5) A certificate signed by an authorised officer—

- (a) setting out—

10 (i) the result of any analysis of a substance carried out for the purposes of a Pollution Control Act or any regulations made under any such Act; and

(ii) that the analysis was carried out by a specified authorised officer; and

15 (b) at the discretion of the authorised officer who signed the certificate, describing the manner in which the analysis was carried out,

is admissible in any proceedings under a Pollution Control Act and is prima facie evidence of the nature of the substance analysed and of the matters so set out and described.

20 (6) In this section—

“authorised officer”, in relation to signing or certifying an instrument, includes—

(a) an officer of the Commission authorised by the Director; and

25 (b) an officer of the Department of Health authorised by the Secretary of that Department,

to sign or certify the instrument;

“instrument” includes a notice, an order and a written direction.

30 **Evidence of occupation of premises and ownership of equipment**

27B. (1) In proceedings for an offence against a Pollution Control Act, a certificate under section 27A that is admitted in evidence and that certifies that a person was, at a time or during a period, the holder of a licence or a pollution control approval for premises shall be accepted by the court as evidence of the truth of an allegation, in the information relating to the offence, that—

35 (a) the person was, at that time or during that period, the occupier of those premises; and

SCHEDULE 1—AMENDMENTS—*continued*

- (b) the premises were, at that time or during that period, scheduled premises, within the meaning of the Pollution Control Act specified in the certificate,

5 unless the contrary is proved or unless it is proved that the person was not, at that time or during that period, the holder of a licence or an approval for those premises.

10 (2) In proceedings for an offence against a Pollution Control Act, a certificate under section 27A that is admitted in evidence and that certifies that a person was, at a time or during a period, the holder of a licence for equipment shall be accepted by the court as evidence of the truth of an allegation, in the information relating to the offence, that—

- 15 (a) the person was, at that time or during that period, the owner of that equipment; and
 (b) the equipment was, at that time or during that period, scheduled equipment, within the meaning of a Pollution Control Act specified in the certificate,

20 unless the contrary is proved or unless it is proved that the person was not, at that time or during that period, the holder of a licence for that equipment.

25 (3) In proceedings for an offence against a Pollution Control Act, evidence that a register kept under any such Act shows that premises were, at a time or during a period, within a classification specified in the register shall be accepted by the court as evidence of the truth of an allegation, in the information relating to the offence, that the premises were, at that time or during that period, within that classification, unless the contrary is proved.

(4) In this section—

30 “information” includes an application referred to in section 41 of the Land and Environment Court Act 1979.

(14) Sections 30B, 30C—

After section 30A, insert:

Offences by corporations

35 30B. (1) If a corporation contravenes, whether by act or omission, a provision of—

- (a) any of the Pollution Control Acts; or
 (b) a regulation made under any such Act,

40 each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

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(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

5 (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against any such Act or regulation.

(4) In this section—

10 “Pollution Control Acts” does not include the Environmentally Hazardous Chemicals Act 1985.

Prosecutions in the name of the Commission

30C. If a person can prosecute an offence against a Pollution Control Act as a member, officer or employee of the Commission, the person may prosecute in the name of the Commission.

15 SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 5)

Variation of certain applications

1. Section 17J (1A) of the Principal Act, as amended by this Act, applies to an application made under section 17I of that Act before the commencement of that subsection but which was not dealt with under section 17K of that Act before that commencement.

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Saving of conditions attached to pollution control approvals

2. A condition attached under section 17K (3) (b) of the Principal Act to a pollution control approval before the commencement of Schedule 1 (5) shall be deemed to have been attached under section 17K (3) (b) of that Act, as amended by this Act.

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Expiration of pollution control approvals

3. Section 17K (4A) of the Principal Act, as amended by this Act, does not apply to a pollution control approval the application for which was granted before the commencement of that subsection.

30 Requests for further details about applications

4. (1) Section 17O of the Principal Act, as amended by this Act, applies to an applicant for a licence or a pollution control approval even though the application was made before the commencement of that section.

(2) A notice served under section 17H or 17L of the Principal Act before the commencement of Schedule 1 (7) shall be deemed to have been served under section 17O of that Act, as amended by this Act.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

Evidence of documents and certificate evidence

5. (1) Sections 27A and 27B of the Principal Act, as amended by this Act, apply in respect of—

- (a) an instrument purporting to have been issued, made or given;
- 5 (b) an instrument or document signed or certified; and
- (c) a certificate signed,

for the purposes of a Pollution Control Act, whether before or after the commencement of Schedule 1 (13).

10 (2) The provisions of section 27A (4) and (5) of the Principal Act, as amended by this Act, apply to a test and an analysis carried out for the purposes of a Pollution Control Act, or regulations made under any such Act, whether before or after the commencement of Schedule 1 (13).

(3) In this clause—

15 “Pollution Control Act” has the same meaning as in the Principal Act, as amended by this Act.

**STATE POLLUTION CONTROL COMMISSION
(AMENDMENT) ACT 1987 No. 187**

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TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 95, 1970
5. Savings and transitional provisions

SCHEDULE 1—AMENDMENTS

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS



**STATE POLLUTION CONTROL COMMISSION (AMENDMENT)
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NEW SOUTH WALES



Act No. 187, 1987

An Act to amend the State Pollution Control Commission Act 1970 so as to assist the enforcement of laws aimed at preventing pollution of the environment. [Assented to 4 December 1987]

See also Clean Air (Amendment) Act 1987, Clean Waters (Amendment) Act 1987, Environmentally Hazardous Chemicals (Amendment) Act 1987, Noise Control (Amendment) Act 1987.

State Pollution Control Commission (Amendment) 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the State Pollution Control Commission (Amendment) Act 1987.

Commencement

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

Principal Act

3. The State Pollution Control Commission Act 1970 is referred to in this Act as the Principal Act.

Amendment of Act No. 95, 1970

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

Savings and transitional provisions

5. Schedule 2 has effect.

SCHEDULE 1—AMENDMENTS

(Sec. 4)

(1) Section 5 (**Interpretation**)—

(a) Definition of “licence”—

Omit the definition, insert instead:

“licence” means a licence granted under this Act for the purposes of a Pollution Control Act and in force;

(b) Definition of “Pollution Control Acts”—

After the definition of “pollution”, insert:

“Pollution Control Acts” means—

- (a) this Act;
- (b) the Clean Air Act 1961;
- (c) the Clean Waters Act 1970;
- (d) the Environmentally Hazardous Chemicals Act 1985;
- and
- (e) the Noise Control Act 1975;

(c) Definition of “pollution control approval”—

After “Act” insert “for the purposes of a Pollution Control Act”.

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SCHEDULE 1—AMENDMENTS—*continued*

(d) Section 5 (2)—

At the end of section 5, insert:

(2) In this Act, a reference to a licence includes a reference to a renewed licence.

(2) Section 16 (**Delegation**)—

Section 16 (3A)—

After section 16 (3), insert:

(3A) A condition of a delegation or authorisation may permit or require the exercise or performance of such of the powers, authorities, duties and functions as may be conferred or imposed on the Commission by or under this or any other Act as in force from time to time.

(3) Section 17H—

Omit the section, insert instead:

Conditions requiring monitoring by licensees

17H. (1) The conditions of a licence may require the holder of the licence to supply to the Commission, when required by those conditions, particulars certified by that holder (or by another person approved by the Commission) as correct and which relate—

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

(2) Without affecting the generality of subsection (1), conditions of a licence may require the supply of particulars derived from monitoring—

- (a) the operation of plant or equipment; or
- (b) ambient conditions prevailing at or near the premises, plant or equipment,

to which the licence relates, and the provision and maintenance of appropriate measuring and recording devices.

(4) Section 17J (**Application for pollution control approval**)—

Section 17J (1A)—

After section 17J (1), insert:

(1A) An application under section 17I may, with the consent of the Commission, be varied by the applicant before it is dealt with under section 17K.

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SCHEDULE 1—AMENDMENTS—*continued*

(5) Section 17K (**Pollution control approvals**)—

(a) Section 17K (3) (b)—

Omit the paragraph, insert instead:

(b) attach to a pollution control approval a condition that requires, or has the effect of requiring, that any work that is the subject of the approval shall not be carried out—

(i) except at a location described in the approval; or

(ii) except in such stages as are described in the approval, as are commenced only after compliance with requirements described in the approval and as are carried out in accordance with other requirements so described.

(b) Section 17K (4A)—

After section 17K (4), insert:

(4A) A pollution control approval for the carrying out of work expires—

(a) 2 years; or

(b) if the Commission is satisfied on reasonable grounds that that period should be extended—3 years,

after the granting of the application for the approval, unless the work has been substantially commenced within that period.

(6) Section 17L—

Omit the section, insert instead:

Conditions requiring monitoring by holders of approvals

17L. The conditions of a pollution control approval may require the holder of the approval to supply to the Commission, when required by those conditions, particulars certified by that holder (or by another person approved by the Commission) as correct and which relate to the doing or completion of anything—

(a) authorised to be done by the approval; or

(b) required to be done by those conditions.

(7) Part IIIA, Division 4—

After Division 3 of Part IIIA, insert:

DIVISION 4—*Miscellaneous*

Request for further details about applications

17O. The Commission may, by written notice served on—

(a) an applicant for a licence; or

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(b) an applicant for a pollution control approval, require the applicant to supply to the Commission such information and such plans and specifications as the Commission considers necessary and relevant to the application and specifies in the notice.

Effect of false or misleading particulars supplied by licensees etc.

17P. (1) A holder of a licence or a pollution control approval who supplies particulars for the purposes of a condition referred to in section 17H or 17L is guilty of the offence of contravening a condition of the licence or approval if any of the particulars is false or misleading in a material respect.

(2) Any particulars so supplied to the Commission shall not, if the holder objects (when supplying them) to doing so on the ground that they might tend to incriminate the holder, be admissible in evidence in any prosecution of that holder for any offence, except an offence created by subsection (1).

(8) Section 18 (Technical Advisory Committee)—**(a) Section 18 (1)—**

Omit “which shall consist of the Director, and seventeen”, insert instead “, which shall consist of the Director (or, in the Director’s absence, a member or officer of the Commission nominated by the Director) and 18”.

(b) Section 18 (2) (k1)—

After section 18 (2) (k), insert:

(k1) one shall be a representative of the Soil Conservation Service of New South Wales nominated by the Commissioner of that Service;

(c) Section 18 (5)—

After “Director”, insert “(or, in the Director’s absence, the member of the Committee nominated by the Director)”.

(d) Section 18 (6)—

Omit the subsection.

(9) Section 22 (Meetings of Technical Advisory Committee and other committees)—**Section 22 (2) (a)—**

Omit “nine”, insert instead “9, including the Director or the member of the Committee nominated by the Director”.

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SCHEDULE 1—AMENDMENTS—*continued*

(10) Section 22A—

Before section 23, insert:

Definitions

22A. In this Part—

“licence” includes a licence granted under the Environmentally Hazardous Chemicals Act 1985;

“local authority” means the council of a city, municipality or shire.

(11) Section 26—

Omit the section, insert instead:

Disclosure of information

26. (1) Except as provided by subsections (3) and (4), a person is guilty of an offence against this Act and liable to a penalty not exceeding \$4,000 if the person discloses any information about any manufacturing or other industrial or commercial secrets or working processes, being information obtained in connection with the administration or execution of any of the Pollution Control Acts (the Environmentally Hazardous Chemicals Act 1985 excepted) or a regulation made under any of those Acts (that Act excepted), unless the disclosure of information is—

- (a) made, otherwise than in contravention of a provision of any of those Acts, in connection with the administration or execution of any such Act or regulation;
- (b) made with the prior permission of the Minister;
- (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974.

(2) The Minister may grant the permission referred to in subsection (1) (b) only if the Minister is satisfied that to do so would be in the public interest.

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SCHEDULE 1—AMENDMENTS—*continued*

(3) An officer of the Commission authorised in writing by the Commission for the purposes of this section may communicate any matter which comes to the knowledge of the officer in the exercise of any power, authority, duty or function under any of the Pollution Control Acts or a regulation made under any such Act—

- (a) to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to pollution, chemicals or chemical wastes or to the protection of the environment; or
- (b) to any person, when communication of the matter to that person is reasonably related to the prevention of harm that may be, or the amelioration of harm that has been, caused to the public, to any person or property or to the environment.

(4) The Commission may disclose the following information by publishing it in such manner as it considers appropriate:

- (a) particulars of licences and pollution control approvals and the conditions to which they are subject;
- (b) any of the particulars supplied to the Commission under section 17H or 17L by the holder of a licence or a pollution control approval;
- (c) the particulars of any notice given under—
 - (i) section 17 or 20 of the Clean Air Act 1961;
 - (ii) Part V of the Noise Control Act 1975;
 - (iii) section 35 of the Environmentally Hazardous Chemicals Act 1985; or
 - (iv) any prescribed provision of any Pollution Control Act or of any regulation made under any such Act.

(5) Subsection (4) does not authorise the Commission to disclose any information about manufacturing or other industrial or commercial secrets obtained from any premises except with the consent of the occupier of those premises.

(12) Section 27 (**Proof of certain matters**)—

(a) Section 27 (c)–(c3)—

Omit section 27 (c), insert instead:

- (c) the appointment of any member or any officer of the Commission, the Technical Advisory Committee, the Clean Waters Advisory Committee or the Hazardous Chemicals Advisory Committee;

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SCHEDULE 1—AMENDMENTS—*continued*

- (c1) the appointment of any member or servant of a local authority;
- (c2) the appointment of the Secretary or any officer or employee of the Department of Health;
- (c3) the appointment of the General Manager or any officer or employee of the Maritime Services Board;

(b) Section 27 (2)—

At the end of section 27, insert:

(2) In any legal proceedings by the Commission, no proof shall be required (until evidence is given to the contrary) of the fact that a person is, or at any relevant time was, the occupier of any land to which the proceedings relate.

(13) Sections 27A, 27B—

Omit section 27A, insert instead:

Evidence of documents and certificate evidence

27A. (1) Any instrument purporting—

- (a) to be an instrument issued, made or given for the purposes of a Pollution Control Act (including any instrument referred to in subsections (2)–(5)); and
- (b) to have been signed by the Minister, the Director, a member of the Commission, the Secretary of the Department of Health, an authorised officer, an officer or employee of the Maritime Services Board authorised by the General Manager of that Board to sign it, a member or servant of a local authority or any other person authorised by a Pollution Control Act to issue, make or give the instrument,

is admissible in any proceedings under a Pollution Control Act and shall, in the absence of evidence to the contrary, be deemed to be such an instrument and to have been so signed.

(2) A document certified by the Director or an authorised officer to be a true copy of an instrument, being an instrument purporting—

- (a) to be issued, made or given for the purposes of a Pollution Control Act; and
- (b) to have been signed by the Minister, the Director, a member of the Commission, the Secretary of the Department of Health or an authorised officer,

is admissible in any proceedings under a Pollution Control Act as if it were the original document of which it purports to be a copy.

SCHEDULE 1—AMENDMENTS—*continued*

- (3) A certificate signed by the Director or an authorised officer and certifying any one or more of the following:
- (a) that an instrument, a copy of which is set out in or annexed to the certificate, being an instrument purporting—
 - (i) to be issued, made or given for the purposes of a Pollution Control Act; and
 - (ii) to have been signed by the Minister, the Director, a member of the Commission, the Secretary of the Department of Health or an authorised officer, was issued, made or given on a day specified in the certificate;
 - (b) that a person was, or was not, at a time or during a period so specified, the holder of a particular licence so specified, a licence of a kind so specified or a licence in respect of premises, plant or equipment so specified;
 - (c) that a licence was, or was not, at a time or during a period so specified, subject to conditions so specified;
 - (d) that a licence was, at a time so specified, revoked or suspended for a period so specified;
 - (e) that a condition attached to a licence was, at a time so specified, revoked or varied in the manner so specified or that a new condition was, at a time so specified, attached to a licence;
 - (f) that a pollution control approval was, or was not, given in relation to any matter so specified;
 - (g) that a pollution control approval was, or was not, at a time or during a period so specified, subject to conditions so specified;
 - (h) that a person was, or was not, at a time or during a period so specified, an authorised officer;
 - (i) that a person was, or was not, at a time or during a period so specified, an officer of the Commission, the Department of Health or the Maritime Services Board or a servant of a local authority;
 - (j) that an exemption was, or was not, given under a Pollution Control Act or a regulation made under any such Act in relation to any matter so specified;
 - (k) that any such exemption was, or was not, at a time or during a period so specified, in force or subject to conditions so specified;

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SCHEDULE 1—AMENDMENTS—*continued*

- (l) that any such exemption was, or was not, or that any such conditions were, or were not, varied or revoked at a time so specified;
- (m) that any consent necessary for bringing proceedings for an offence against a Pollution Control Act or a regulation made under any such Act has been duly given;
- (n) that an order, a copy of which is set out in or annexed to the certificate, was for the purposes of section 21F, 24 or 24A of the Clean Air Act 1961 published in a manner so specified and on a day so specified;
- (o) that premises are within an area to which an order under section 24 or 24A of the Clean Air Act 1961 applies, a copy of which order is set out in or annexed to the certificate;
- (p) that a requirement was, or was not, made under section 17 or 20 of the Clean Air Act 1961 by the Commission in relation to any matter so specified;
- (q) that a register kept under a Pollution Control Act shows that premises so specified were, at a time or during a period so specified, within a specified classification referred to in regulations made under any such Act;
- (r) that a notice, a copy of which is set out in or annexed to the certificate, was for the purposes of section 12 of the Clean Waters Act 1970 published in the Gazette or a newspaper specified in the certificate on a day so specified;
- (s) that a drain was or was not specified in a licence as a drain from which pollutants may be discharged into any waters;
or
- (t) that premises are within a part of the State to which a proclamation under section 17 of the Noise Control Act 1975 relates, a copy of which proclamation is set out in or annexed to the certificate,

is admissible in any proceedings under a Pollution Control Act and shall be prima facie evidence of the matters so certified.

(4) A certificate signed by an authorised officer—

- (a) setting out the result of any test carried out for the purposes of a Pollution Control Act or any regulations made under any such Act; and

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- (b) at the discretion of the authorised officer who signed the certificate, describing the manner in which the test was carried out,

is admissible in any proceedings under a Pollution Control Act and is prima facie evidence of the matters so set out and described.

- (5) A certificate signed by an authorised officer—

- (a) setting out—

- (i) the result of any analysis of a substance carried out for the purposes of a Pollution Control Act or any regulations made under any such Act; and
 (ii) that the analysis was carried out by a specified authorised officer; and

- (b) at the discretion of the authorised officer who signed the certificate, describing the manner in which the analysis was carried out,

is admissible in any proceedings under a Pollution Control Act and is prima facie evidence of the nature of the substance analysed and of the matters so set out and described.

- (6) In this section—

“authorised officer”, in relation to signing or certifying an instrument, includes—

- (a) an officer of the Commission authorised by the Director; and
 (b) an officer of the Department of Health authorised by the Secretary of that Department,

to sign or certify the instrument;

“instrument” includes a notice, an order and a written direction.

Evidence of occupation of premises and ownership of equipment

27B. (1) In proceedings for an offence against a Pollution Control Act, a certificate under section 27A that is admitted in evidence and that certifies that a person was, at a time or during a period, the holder of a licence or a pollution control approval for premises shall be accepted by the court as evidence of the truth of an allegation, in the information relating to the offence, that—

- (a) the person was, at that time or during that period, the occupier of those premises; and

SCHEDULE 1—AMENDMENTS—*continued*

- (b) the premises were, at that time or during that period, scheduled premises, within the meaning of the Pollution Control Act specified in the certificate,

unless the contrary is proved or unless it is proved that the person was not, at that time or during that period, the holder of a licence or an approval for those premises.

(2) In proceedings for an offence against a Pollution Control Act, a certificate under section 27A that is admitted in evidence and that certifies that a person was, at a time or during a period, the holder of a licence for equipment shall be accepted by the court as evidence of the truth of an allegation, in the information relating to the offence, that—

- (a) the person was, at that time or during that period, the owner of that equipment; and
 (b) the equipment was, at that time or during that period, scheduled equipment, within the meaning of a Pollution Control Act specified in the certificate,

unless the contrary is proved or unless it is proved that the person was not, at that time or during that period, the holder of a licence for that equipment.

(3) In proceedings for an offence against a Pollution Control Act, evidence that a register kept under any such Act shows that premises were, at a time or during a period, within a classification specified in the register shall be accepted by the court as evidence of the truth of an allegation, in the information relating to the offence, that the premises were, at that time or during that period, within that classification, unless the contrary is proved.

- (4) In this section—

“information” includes an application referred to in section 41 of the Land and Environment Court Act 1979.

(14) Sections 30B, 30C—

After section 30A, insert:

Offences by corporations

30B. (1) If a corporation contravenes, whether by act or omission, a provision of—

- (a) any of the Pollution Control Acts; or
 (b) a regulation made under any such Act,

each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

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(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against any such Act or regulation.

(4) In this section—

“Pollution Control Acts” does not include the Environmentally Hazardous Chemicals Act 1985.

Prosecutions in the name of the Commission

30C. If a person can prosecute an offence against a Pollution Control Act as a member, officer or employee of the Commission, the person may prosecute in the name of the Commission.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 5)

Variation of certain applications

1. Section 17J (1A) of the Principal Act, as amended by this Act, applies to an application made under section 17I of that Act before the commencement of that subsection but which was not dealt with under section 17K of that Act before that commencement.

Saving of conditions attached to pollution control approvals

2. A condition attached under section 17K (3) (b) of the Principal Act to a pollution control approval before the commencement of Schedule 1 (5) shall be deemed to have been attached under section 17K (3) (b) of that Act, as amended by this Act.

Expiration of pollution control approvals

3. Section 17K (4A) of the Principal Act, as amended by this Act, does not apply to a pollution control approval the application for which was granted before the commencement of that subsection.

Requests for further details about applications

4. (1) Section 17O of the Principal Act, as amended by this Act, applies to an applicant for a licence or a pollution control approval even though the application was made before the commencement of that section.

(2) A notice served under section 17H or 17L of the Principal Act before the commencement of Schedule 1 (7) shall be deemed to have been served under section 17O of that Act, as amended by this Act.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

Evidence of documents and certificate evidence

5. (1) Sections 27A and 27B of the Principal Act, as amended by this Act, apply in respect of—

- (a) an instrument purporting to have been issued, made or given;
- (b) an instrument or document signed or certified; and
- (c) a certificate signed,

for the purposes of a Pollution Control Act, whether before or after the commencement of Schedule 1 (13).

(2) The provisions of section 27A (4) and (5) of the Principal Act, as amended by this Act, apply to a test and an analysis carried out for the purposes of a Pollution Control Act, or regulations made under any such Act, whether before or after the commencement of Schedule 1 (13).

(3) In this clause—

“Pollution Control Act” has the same meaning as in the Principal Act, as amended by this Act.