



ANNO SEPTIMO

GEORGI VI REGIS.

A.D. 1943.

No. 34 of 1943.

An Act to provide for the regulation of noxious trades and to make consequential amendments of the Local Government Act, 1934-1941, and the Health Act, 1935-1941.

[Assented to 23rd December, 1943.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

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| Short title. | 1. This Act may be cited as the "Noxious Trades Act, 1943". |
| Commence-
ment of Act. | 2. This Act shall come into force on a day to be fixed by proclamation. |
| Repealing
provision. | 3. The Acts mentioned in the schedule are amended to the extent therein expressed. |
| Interpretation. | 4. In this Act, unless the context or subject matter otherwise requires— |
- "Central Board" means the Central Board of Health :
- "district" means the area within the jurisdiction of a local board :
- "local board" means a local board of health, and "the local board" means the local board of health of the particular district :

“metropolitan area” means the area comprised in the municipalities of Adelaide, Brighton, Burnside, Glenelg, Henley and Grange, Hindmarsh, Kensington and Norwood, Port Adelaide, Prospect, St. Peters, Thebarton, Unley and Woodville, in the district council districts of Campbelltown, Enfield, Marion, Mitcham, Payneham, Walkerville and West Torrens, and in the Garden Suburb of Colonel Light Gardens :

“noxious trade” means any trade, business, or manufacture declared by the Governor to be a noxious trade :

“noxious trades area” means any part of the State declared by the Governor to be a noxious trades area.

5. The Governor may by regulation declare any trade, business, or manufacture to be a noxious trade. Declaration of noxious trade.

6. (1) This Act shall apply within the metropolitan area. Application of Act.

(2) The Governor may by regulation declare that this Act shall apply within any other part of the State. During the time any such regulation is in force with respect to any part of the State, this Act shall apply within that part of the State.

7. (1) The Governor may by regulation declare that any area comprised within any part of the State to which this Act applies shall be a noxious trades area and shall by regulation specify the noxious trades which may be carried on in that area. Declaration of noxious trade areas.

(2) Before any regulation is made in pursuance of this section, the Minister shall cause to be published in a newspaper circulating in the locality in which the regulation will have effect, a notice stating—

- (a) that such a regulation is proposed to be made ;
- (b) the intent of the regulation proposed to be made ;
- (c) that any person may within the time specified in the notice make representations in writing to the Minister with respect to any matter arising out of the making of the regulation.

Before the regulation is made, the Minister shall consider any representations so made.

8. (1) Every person, before commencing to carry on a noxious trade in any part of the State to which this Act then applies, shall apply in writing to the local board to be licensed to carry on the noxious trade. Carrying on of noxious trades.

(2) Where a person, on the day when this Act first applies to any part of the State, is carrying on in that part of the

State a trade, business, or manufacture then declared to be a noxious trade, he shall, within three months after the said day, apply as aforesaid to be licensed to carry on the noxious trade.

(3) Where a trade, business, or manufacture carried on by a person in any part of the State to which this Act applies is afterwards declared to be a noxious trade, that person shall, within three months after the day when the trade, business, or manufacture is declared to be a noxious trade, apply as aforesaid to be licensed to carry on the noxious trade.

(4) The application shall in every case be accompanied by the payment to the local board of the prescribed fee.

Licence to
carry on
noxious trade.

9. (1) The local board shall grant a licence to any person making application as aforesaid if the local board is satisfied—

(a) that the noxious trade is or will be carried on in a noxious trades area and that the noxious trade has been specified by regulation as a noxious trade which may be carried on in that area ;

(b) that the premises in which the noxious trade is or will be carried on comply with the regulations under this Act and that the premises and the site of the premises are suitable for the purpose of carrying on the noxious trade ; and

(c) that the noxious trade is or will be carried on in accordance with the regulations.

(2) If at the time this Act is applied to any part of the State any person is carrying on a noxious trade in that part of the State, and if the noxious trade is not carried on in a noxious trades area or if the noxious trade is carried on in a noxious trade area but the noxious trade has not been specified by regulation as a noxious trade which may be carried on in that area, the local board, if satisfied as to the matters referred to in paragraphs (b) and (c) of subsection (1), shall grant a licence to that person to carry on the noxious trade, but any such licence shall be granted only in respect of those premises in which the noxious trade is carried on at the time aforesaid.

Provision as
to existing
noxious trades.

10. (1) If any licence is granted to any person under subsection (2) of section 9 in respect of any premises, the Minister, on the recommendation of the Central Board, may at any time after the expiration of the period of five years after the time this Act is first applied to the part of the State in which the premises are situated and whilst any such licence is in force, direct by notice in writing given to the said person and the local board that no further licence shall be granted in respect of the said premises and after the giving of the notice no further licence shall be granted in respect of those premises. Notice as

aforesaid shall be given at least six months before the day upon which the licence granted in respect of the premises would expire by effluxion of time.

(2) If, after notice is given as aforesaid, the person to whom the licence was granted as aforesaid, removes the noxious trade from the premises aforesaid to other premises situated in a noxious trades area and is licensed under this Act to carry on that trade in those premises, he may apply to the Supreme Court for an order directing the Minister to pay to him such proportion (if any) of the expenses of removing the noxious trade to the other premises aforesaid as the Court may direct in accordance with this section.

(3) The Supreme Court may make such order for the payment of such proportion (if any) of the said expenses as it deems just after taking into account—

- (a) whether the noxious trade carried on in the premises licensed as mentioned in subsection (1) was carried on in accordance with the regulations under this Act:
- (b) the condition of the premises aforesaid and whether the premises were at the time of the giving of the notice under this section suitable for the carrying on of the noxious trade:
- (c) whether, at the time of the giving of the notice under this section, the carrying on of the noxious trade at the premises aforesaid was such that, if this Act had not been passed, legal proceedings could have been taken to restrain the carrying on of the noxious trade and whether, if this Act had not been passed, any claim, legal or equitable, could have been enforced by any person against the person carrying on the noxious trade for the payment of any damages or compensation by reason of the carrying on of the noxious trade:
- (d) the reasonable and proper costs incurred by the said person in removing the noxious trade as aforesaid:
- (e) whether the land upon which were situated the premises in which the noxious trade was carried on was enhanced or reduced in value by reason of the removal of the noxious trade therefrom:
- (f) whether the noxious trade may reasonably be carried on more conveniently or economically at the premises to which it is removed:

(g) whether the noxious trade was removed as a consequence of the giving of the notice under this section :

(h) any other matter which the Court thinks just.

(4) The order of the Supreme Court shall be final and conclusive.

(5) The power to make rules conferred by the Supreme Court Act, 1935-1936, shall include power to make rules relating to proceedings under this section.

(6) The moneys required for the purposes of this section shall be paid out of moneys voted by Parliament for the purpose.

Licences.

11. (1) Every licence shall—

- (a) describe the person to whom it is issued ;
- (b) describe the noxious trade to which it relates ;
- (c) describe the premises at which the noxious trade is to be carried on ;
- (d) contain such other particulars as are prescribed.

(2) Every licence shall continue in force until the thirtieth day of June next after the issue thereof and no longer.

Appeal to
Central Board.

12. (1) If any application for a licence is refused by a local board, the applicant may within one month of the refusal appeal to the Central Board.

(2) If the Central Board is satisfied that the application should be granted pursuant to this Act it shall direct the local board to issue a licence and the local board shall issue a licence accordingly.

Protection
against actions
for nuisance.

13. (1) No person shall be entitled to any civil remedy, legal or equitable, on the ground of any nuisance arising from the carrying on under licence under this Act of any noxious trade within any part of the State to which this Act applies unless it is shown that the person carrying on the noxious trade has failed to carry on the noxious trade in accordance with the licence issued therefor or with the regulations under this Act.

(2) No criminal proceedings shall be taken in respect of any nuisance arising from the carrying on under licence under this Act of any noxious trade within any part of the State to which this Act applies.

(3) Nothing in this section shall affect the right of any person under any judgment of any competent court in respect of the carrying on of any noxious trade in any part of the State before this Act applied to that part of the State.

14. (1) Any person who in any part of the State to which this Act applies carries on any noxious trade in or on any premises or who uses any premises in carrying on that trade without being the holder of a licence under this Act in respect of those premises, shall be guilty of an offence and liable to a penalty not exceeding twenty-five pounds for every day during which he carries on the said trade or uses those premises as aforesaid.

Penalty for carrying on noxious trade without licence.

(2) It shall be a defence to any proceedings for an offence against this section if the defendant satisfies the court that the offence was committed during any period of three months such as is referred to in subsection (2) or (3) of section 8 and that the noxious trade was carried on in the circumstances mentioned in the subsection aforesaid appropriate to those circumstances.

15. (1) The local board shall keep a register in the prescribed form showing—

Register of Licences.

- (a) the names and addresses of all persons licensed under this Act;
- (b) the premises in respect of which licences are granted under this Act;
- (c) particulars of the noxious trades carried on at those premises;
- (d) such other particulars as are prescribed.

(2) The register shall be open for inspection by the Central Board, any officer of the Central Board, and any person interested.

16. (1) The local board and any officer of the local board may at any time enter into or upon and inspect any premises used or reasonably suspected of being used for the purpose of carrying on any noxious trade.

Powers of local boards.

(2) The local board may, by notice in writing, require any person carrying on a noxious trade to place and maintain the premises in a sanitary condition.

17. The Central Board, and any officer of the Central Board may, at any time, exercise the rights of entry and inspection conferred on the local board by subsection (1) of section 16.

Powers of Central Board.

Regulations.

18. The Governor may, upon the recommendation of the Central Board, make regulations respecting—

- (a) the declaring of any trade, business or manufacture to be a noxious trade ; the declaring any part of the State to which this Act applies to be a noxious trades area ; and the specifying of the noxious trades which may be carried on in any noxious trades area ;
- (b) the granting and form of licences under this Act ;
- (c) the fees to be paid for licences under this Act ;
- (d) the cancellation of licences under this Act ;
- (e) the procedure to be followed on appeals under this Act to the Central Board ;
- (f) the form and requirements of registers of licences under this Act ;
- (g) returns and other information to be supplied to the Central Board by local boards ;
- (h) the construction and requirements of premises licensed under this Act ;
- (i) the plant, machinery and appliances to be provided and used for the purpose of carrying on any noxious trade and to be provided in premises licensed under this Act ;
- (j) the disposal of offal, garbage and effluent from premises licensed under this Act ;
- (k) the means to be taken to prevent or limit the emanation of offensive smells caused by the carrying out of any noxious trade ;
- (l) the sanitary rules to be observed in the carrying on of any noxious trade ;
- (m) prescribing penalties not exceeding twenty pounds for breaches of any regulation and additional penalties not exceeding ten pounds for any day during which any such breach is continued ;
- (n) generally for carrying out the provisions of this Act.

Obstructing persons in discharge of duty.

19. Any person who hinders or obstructs any person in the discharge of a duty imposed on him by or under any authority conferred by this Act shall be guilty of an offence and liable to a penalty not exceeding ten pounds.

Application of Act to public authorities.

20. (1) Any premises owned or occupied by the Government or by any public body shall be subject to the provisions of this Act in the same manner as if the premises were owned or occupied by private persons.

(2) Any officer or person having the use or control of any such premises shall be liable for any breach of the provisions of this Act as if he were the actual user thereof.

21. If this Act applies within any part of the State which is outside a district, the Central Board shall in that part have and exercise all the powers and duties of a local board under this Act, and all the provisions of this Act, except section 12, shall *mutatis mutandis* apply accordingly.

Provision where Act applied outside a district.

22. All proceedings for offences against this Act shall be disposed of summarily.

Proceedings for offences.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. M. BARCLAY-HARVEY, Governor.

THE SCHEDULE.

Act Amended.	How Amended.
Local Government Act, 1934-1941	<p>In section 3 the following passage :— “ Part XXVIII.—Manufacturing Districts and Noisy Trades.— Division I.—Manufacturing Districts : Division II.—Noisy Trades ” is struck out and the following passage inserted in lieu thereof :— “ Part XXVIII.—Noisy Trades ”.</p> <p>The heading to Part XXVIII. is amended by striking out the words “ Manufacturing Districts And ” therein. The heading “ Division I.—Manufacturing Districts ” to Division I of Part XXVIII. is struck out. Sections 556 to 568 (both inclusive) are repealed. The heading “ Division II.— Noisy Trades ” to Division II of Part XXVIII. is struck out. The word “ Division ” in the first line of section 569 is struck out and the word “ Part ” inserted in lieu thereof. The word “ Division ” in the fifth line of section 570 is struck out and the word “ Part ” inserted in lieu thereof. Section 669 is amended by striking out subdivisions IX. and XI. of paragraph (19) thereof.</p>
Health Act, 1935-1941.	<p>Section 4 is amended by striking out the definition of “ offensive trade ” therein. Section 5 is amended by striking out subsections (3) and (4) thereof. Sections 89 to 94 (both inclusive) are repealed.</p>