

Environment Protection (Amendment) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 24 March 1987

(Brought in by the Honourable J. H. Kennan)

A BILL

to amend the *Environment Protection Act 1970* and for other purposes.

Environment Protection (Amendment) Act 1987

The Parliament of Victoria enacts as follows:

Purpose.

1. The main purpose of this Act is to amend the *Environment Protection Act 1970*—

- 5 (a) to establish an on-the-spot fine procedure for some offences;
 and
- (b) to give members of the police force limited powers of entry
 into residential premises to investigate the emission of noise;
 and
- 10 (c) to include a number of other powers and obligations relating
 to environment protection.

Commencement.

2. (1) This Act (except section 23) comes into operation on a day or days to be proclaimed.

- 15 (2) Section 23 is deemed to have come into operation on 10
December 1985.

Act No 8056
Reprinted to
No 10160
Subsequently
amended by
Nos 10261,
10262, 16/1986
and 127/1986

Principal Act.

3. In this Act the *Environment Protection Act 1970* is called the Principal Act.

Infringements.

4. (1) After section 63A of the Principal Act insert: 5

Infringement notices.

‘63B. (1) In this section and in sections 63C and 63D—

“**Infringement**” means an offence prescribed in the Schedule.

“**Prosecution officer**” means—

- (a) in relation to any infringement, any person who has been appointed under section 59 to take proceedings for offences against this Act; and 10
- (b) in relation to an infringement under section 48A (8) or 56 (2) or the Environment Protection (Audible Intruder Alarm) Regulations 1978, a member of the police force. 15

(2) A prosecution officer may serve or cause to be served an infringement notice on any person if the prosecution officer has reason to believe that the person has committed an infringement.

(3) An infringement notice must be addressed to the alleged offender and be signed by the prosecution officer and include the following particulars: 20

- (a) The day, time and place of the alleged infringement;
- (b) The nature of the alleged infringement;
- (c) The prescribed penalty for the alleged infringement;
- (d) The place or places at which the prescribed penalty may be paid; 25
- (e) The date of the notice and a statement that the prescribed penalty may be paid within 28 days after that date;
- (f) A statement to the effect that if the prescribed penalty is paid at a place specified in the notice, the matter will not be brought before a court unless, before the expiration of the period specified in the notice as the period within which payment may be made, notice is given that the infringement notice is withdrawn; 30
- (g) A summary of the provisions of this Act relating to the withdrawal of infringement notices. 35

(4) The prescribed penalty for the purposes of this section and sections 63C and 63D for an infringement is the amount prescribed in the Schedule in respect of that infringement.'

Withdrawal of infringement notice.

5 "63C. (1) A prosecution officer may withdraw an infringement notice at any time within 28 days after the date of the infringement notice by serving or causing to be served a withdrawal notice on the alleged offender.

10 (2) A withdrawal notice must be signed by the prosecution officer and include—

(a) a statement to the effect that the infringement notice has been withdrawn; and

15 (b) a statement to the effect that court proceedings may be instituted against the alleged offender for the alleged infringement specified in the infringement notice.

(3) An infringement notice may be withdrawn even if the prescribed penalty has been paid.

20 (4) Once a withdrawal notice is served, the Authority must refund the amount of any penalty which was paid on an infringement notice before it was withdrawn."

Payment of penalty.

25 "63D. (1) If the amount of the prescribed penalty shown on the infringement notice is paid at the appropriate place before the end of the period for payment set out in the notice, or, if the prosecution officer allows, at any time before the service of a summons in respect of the alleged infringement—

(a) the offender has expiated the infringement by payment of the prescribed penalty; and

30 (b) no further proceedings may be taken in respect of the infringement; and

(c) no conviction for the infringement may be regarded as having been recorded.

35 (2) Every penalty paid pursuant to this section must be applied in the same manner as if the offender had been convicted of the infringement in the Magistrates' Court on the information of the prosecution officer who served the infringement notice or caused it to be served.

40 (3) Payment of any penalty under this section may be made by cheque or money order either lodged at or sent by post to the place referred to in the notice, but in the case of a cheque payment is not to be taken to be made unless and until the cheque is honoured upon presentation.

(4) Nothing in this section prejudices the institution or the prosecution of proceedings for an alleged infringement if—

- (a) an infringement notice has been served in respect of the alleged infringement and the amount of the prescribed penalty is not paid before the end of the period specified in the notice as the time for payment or of any further period allowed by the prosecution officer; or
- (b) an infringement notice in respect of the alleged infringement has been withdrawn.

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(5) In any proceedings for an alleged infringement, if the court is satisfied that an infringement notice was served in respect of the alleged infringement and has not been withdrawn, the conviction imposed by the court must not be taken to be a conviction for any purpose except in relation to—

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- (a) the making of the conviction itself; and
- (b) subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal or order to review.”

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(2) After section 72 of the Principal Act insert:

Section 63B

“Schedule
Infringements

20

Infringement

Penalty

Any offence against section 43A, 48 (1), 48A (8), 48B (1), 48C (1), 55AC (3), 55A (4), 55AC (5), 55AC (6) or 56 (2)

1 penalty unit

Any offence against section 19A (7), 27 (1), 27 (2), 27A (1), 27A (2), 28B (5), 31A (7), 31B (6), 42 (1), 42 (2), 42 (2A), 42 (2B), 42 (3), 42B (2), 42B (8), 42B (11), 42B (13), 46A (5), 47 (9), 47A (6), 48AB (4), 53, 53A (3), 53I (3), 54 (2), 54A (3), 54B (2), 55B (4), 55C (3), 55C (6), 55C (7) or 59C

4 penalty units.

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Any offence against the regulations.

1 penalty unit.”

(3) The *Magistrates (Summary Proceedings) Act 1975* is amended as follows:

- (a) In Schedule One after “*Education Act 1958*” insert “*Environment Protection Act 1970*”;
- (b) In Schedule Two, after paragraph (b) insert—
- (c) “Infringements” within the meaning of section 63B of the *Environment Protection Act 1970*.’

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Powers of entry in respect of unreasonable noise.

5. Section 48A of the Principal Act is amended as follows:

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(a) In sub-section (1), before the definition of “**Habitable room**” insert—

“**Court officer**” means—

- (a) a magistrate; or

(b) a clerk of a Magistrates' Court—

who has been appointed by the Secretary to the Attorney-General's Department for the purposes of this section,'; and

(b) After sub-section (8) insert—

5 “(8A) A member of the police force using such force as is reasonably necessary may enter any residential premises from which unreasonable noise is emitted to investigate the emission if an order to that effect has been made under sub-section (8F).

10 (8B) After entering any residential premises pursuant to an order under sub-section (8F) and investigating the emission of noise, the member of the police force may give any direction under sub-section (6) which the member of the police force considers necessary to abate the unreasonable noise.

15 (8C) Any person who delays or obstructs a member of the police force in taking any action which is authorised by an order under sub-section (8F) or who, being the occupier of any premises, refuses to permit a member of the police force to take any action which is authorised by an order under that sub-section, is guilty of an offence and liable to a penalty of not more than 100 penalty units.

20 (8D) An application for an order under sub-section (8F) must be made by a member of the police force of or above the rank of senior constable to a court officer.

25 (8E) A member of the police force may make an application under sub-section (8D) for an order only if the member has reasonable grounds to believe that no other measure would be effective to abate the unreasonable noise.

30 (8F) If the court officer to whom an application is made under sub-section (8D) is satisfied that no other measure would be effective to abate the unreasonable noise, the court officer may make an order empowering a member of the police force, using such force as is reasonably necessary, to enter residential premises for the purpose of investigating the emission of noise.

35 (8G) An order under sub-section (8F) may be made subject to any conditions that the court officer thinks fit.”.

Definition of Waste.

40 6. In section 4 (1), in the definition of “Waste” for paragraph (c) substitute—

 “(c) any otherwise discarded, rejected, abandoned, unwanted or surplus matter intended for—

- (i) recycling, reprocessing, recovery or purification by a separate operation from that which produced the matter; or
- (ii) sale; and”.

Notification.

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7. The Principal Act is amended as follows:

- (a) In section 19B (3) (b) (v)—
 - (i) for “advises” substitute “asks”; and
 - (ii) omit “that they wish”;
- (b) After section 19B (6) insert— 10

“(6A) If the Authority receives a request under sub-section (3) (b) (v) from a number of persons—

 - (a) the name and address of the person who is to be notified may be stated in the request; and
 - (b) it is sufficient compliance with sub-section (3) (b) (v), if the notice— 15
 - (i) is sent to that person or, if no name and address are stated, to one of the persons who made the request; and
 - (ii) is published in a newspaper circulating generally throughout Victoria.”; 20
- (c) In section 20 (8) (b) (v)—
 - (i) for “advises” substitute “asks”; and
 - (ii) omit “that they wish”;
- (d) After section 20 (8A) insert— 25

“(8B) If the Authority receives a request under sub-section (8) (b) (v) from a number of persons—

 - (a) the name and address of the person who is to be notified may be stated in the request; and
 - (b) it is sufficient compliance with sub-section (8) (b) (v) if the notice— 30
 - (i) is sent to that person or, if no name and address are stated, to one of the persons who made the request; and
 - (ii) is published in a newspaper circulating generally throughout Victoria.”; 35
- (e) In section 20A (6) (b) (v)—
 - (i) for “advises” substitute “asks”; and
 - (ii) omit “that they wish”;
- (f) After section 20A (7) insert— 40

“(8) If the Authority receives a request under sub-section (6) (b) (v) from a number of persons—

- (a) the name and address of the person who is to be notified may be stated in the request; and
- (b) it is sufficient compliance with sub-section (6) (b) (v) if the notice—
 - (i) is sent to that person or, if no name and address are stated, to one of the persons who made the request; and
 - (ii) is published in a newspaper circulating generally throughout Victoria.”.

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10 Licence relating to part of premises.

8. Section 20 of the Principal Act is amended as follows:

- (a) In sub-section (5) (b) before ‘relates’ insert “except as provided in sub-section (7C)”;
- (b) After sub-section (7B) insert—

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“(7C) If a works approval has been obtained in respect of any premises, but only part of the works has been satisfactorily completed in accordance with the works approval, the Authority may issue a licence subject to any conditions, limitations and restrictions that are not inconsistent with any conditions specified in the works approval that the Authority considers appropriate in respect of that part of the premises in which the works have been so completed.”.

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Licensing of certain premises.

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9. Section 20 of the Principal Act is amended as follows:

- (a) In sub-section (6), after “required” insert “except an application referred to in sub-section (8C)”;
- (b) Before sub-section (9) insert—

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“(8C) Sub-sections (8) and (8B) with any necessary modifications apply to any application under this section for a licence—

- (a) in respect of premises which before 1 January 1985 were exempt from the requirement to hold a licence; and
- (b) which relates to a matter for which works approval is not required.”.

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Amendment of licences.

10. For section 20A (4) of the Principal Act substitute:

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“(4) Where the Authority receives an application under this section which relates to a matter in respect of which a works approval is not

required, the Authority shall not later than 60 days after receiving the application—

- (a) refuse to amend the licence; or
- (b) amend the licence subject to any conditions, limitations and restrictions that the Authority considers appropriate.”. 5

Defence provision.

11. In section 30B (1) (a) of the Principal Act, after “life or limb” insert “other than an emergency arising from the negligence or action of the person charged”.

Police statements. 10

12. (1) Section 43A of the Principal Act is amended as follows:

- (a) For “43A” substitute “43A (1)”; and
- (b) At the end of the section insert—

“(2) A statement signed by a member of the police force stating that at a particular date— 15

- (a) a motor vehicle was not equipped with any device or equipment required by the regulations to be fitted to the motor vehicle so as to prevent or minimize pollution; or

- (b) a motor vehicle was capable of emitting into the atmosphere any matter that did not comply with any prescribed— 20

- (i) emission standard; or

- (ii) standard of maximum permissible concentration— 25

for visible emissions—

is **prima facie** evidence of the facts so stated.

(3) There is to be served with the summons in relation to any proceedings for an offence under this section, a copy of any statement made under sub-section (2) which the Authority intends to use in those proceedings. 30

(4) Service of a copy of a statement with a summons may be proved in any manner in which service of the summons may be proved.”.

(2) Section 48B of the Principal Act is amended as follows: 35

- (a) In sub-section (2A) for “certificate” substitute “statement”; and

- (b) After sub-section (2A) insert—

“(2B) There is to be served with the summons in relation to any proceedings for an offence against this section, a copy of any statement made under sub-section (2A) which the Authority intends to use in those proceedings. 40

(2c) Service of a copy of a statement with a summons may be proved in any manner in which service of the summons may be proved.”.

(3) Section 55 of the Principal Act is amended as follows:

5 (a) In sub-section (3CB) for “certificate” substitute “statement”;
and

(b) After sub-section (3CB) insert—

10 “(3CC) There is to be served with the summons in relation to any offence relating to the failure of a motor vehicle to comply with this Act, a copy of any statement made under sub-section (3CB) which the Authority intends to use in those proceedings.

15 (3CD) Service of a copy of a statement with a summons may be proved in any manner in which service of the summons may be proved.”.

(c) In sub-sections (3CA) and (3CB) for “motor car” (wherever occurring) substitute “motor vehicle”.

Noise control notices.

13. Section 47 (1) of the Principal Act is amended as follows:

20 (a) Omit “or” at the end of paragraph (b); and

(b) After paragraph (b) insert—

25 “(ba) where no limits referred to in paragraph (b) have been prescribed in a particular area, a proposed use of premises in that area is likely to cause an emission of noise which the Authority considers is likely to be unreasonable in the circumstances; or”.

Noisy motor vehicles.

14. In section 48B (1) of the Principal Act, after “which” insert “or the owner of an unregistered motor vehicle which”.

30 Annual return.

15. Section 54B of the Principal Act is amended as follows:

(a) For “54B” substitute “54B (1)”;

(b) At the end of the section insert—

35 “(2) Any person who fails to comply with sub-section (1) is guilty of an offence.”.

Approved testers.

16. Section 55AC of the Principal Act is amended as follows:

40 (a) In sub-section (1) (a) for “an approved tester” substitute “the approved tester or one of the approved testers specified in the notice”; and

- (b) In sub-section (1) (b)—
- (i) for “an approved tester” substitute “the approved tester”; and
 - (ii) for “send the certificate of compliance to the Authority” substitute “lodge the certificate of compliance with the Authority.”; 5
- (c) After sub-section (3) insert—
- “(3A) It is a defence to a prosecution for an offence under sub-section (3) if the person charged shows that the person had advised the Authority in writing before the date specified in the notice under sub-section (1) that the motor vehicle would not be used after the specified date except for the purpose of obtaining a certificate of compliance.”; 10
- (d) In sub-section (4) for “received by” substitute “lodged with”;
- (e) In sub-section (8) — 15
- (i) for “certificate in writing” substitute “statement in writing”; and
 - (ii) for “the Authority had not received a certificate of compliance” substitute “a certificate of compliance had not been lodged with the Authority”. 20

Reports.

17. In section 57A (2) (a) of the Principal Act, before “calculation” insert “inspection”.

Statement to be evidence.

18. Section 59A of the Principal Act is amended as follows: 25
- (a) After paragraph (ab) insert—
- “(ac) to the effect that a specified person has not been appointed by the Authority or a delegated agency as an authorized officer;”
- (b) In paragraph (d), after “certain period” (where secondly occurring) insert “or that a site was or was not licensed to accept industrial waste on a certain date or for a certain period”; 30
- (c) After paragraph (d) insert— 35
- “or
- (e) that a document, standard, rule, specification or method, a copy of which is attached to the statement is a document, standard, rule, specification or method referred to in a regulation, works approval notice, licence, approval under section 30A, permit or policy under this Act—”. 40

Service of notices.

19. After section 61 (1A) of the Principal Act insert—

“(1B) Without affecting sub-section (1), in the absence of any circumstances making it appear that an alleged offender resides or (as the case may be) carries on business elsewhere—

(a) in the case of an alleged offence arising out of the driving or use of a motor vehicle—the address appearing as the alleged offender’s address in the licence to drive (if any) produced by the alleged offender at the time of the alleged offence or upon the investigation of the alleged offence; and

(b) in the case of an offence alleged against the registered owner of a motor vehicle or motor boat—the address appearing as the address of the owner in the certificate of registration of the motor vehicle or motor boat for the time being in force under the *Road Safety Act 1986* or the *Motor Boating Act 1961* or under any corresponding Act or law of a State or Territory of the Commonwealth—

shall be taken to be the alleged offender’s usual or last known residential or business address (as the case may be).”

20 Abatement of pollution.

20. In section 62 (2) and (3) of the Principal Act for “the act or omission which caused the action to be taken took place” substitute “anything referred to in sub-section (1) (a) to (e) has occurred”.

Incorporation of documents.

21. For section 71 (3) of the Principal Act substitute—

“(3) Any regulation made under sub-section (1) for the purpose of prescribing the method by which any measurement or test is to be made for the purposes of this Act may apply, adopt or incorporate, with or without modification, the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as in force at a particular time or as in force from time to time.”.

General amendments.

22. The Principal Act is amended as follow:

(a) In section 6 (7) for “*Protectection*” substitute “*Protection*”;

(b) In section 19C (2) for “19A (3A)” substitute “19A (3A))”;

(c) In section 20C (4) omit “a” (where first occurring);

(d) In section 41 (2) insert “or” at the end of paragraph (a).

Amendment of *Environment Protection (Industrial Waste) Act 1985*.

23. In section 25 (1) (d), after ‘ ‘pollutant’’ insert ‘ ‘(where secondly occurring)’ ’.

Transitional.

24. Until the commencement of items 8.1 to 8.6 of Schedule 4 to the *Road Safety Act 1986*— 5

- (a) sections 43A (2), 55 (3CA), (3CB) and (3CC), 55AC (3A) and 61 (1B) of the Principal Act have effect as if any reference in those provisions to a motor vehicle were a reference to a motor car; and 10
- (b) section 48B (1) of the Principal Act has effect as if the reference to an unregistered motor vehicle were a reference to an unregistered motor car; and
- (c) section 61 (1B) (b) of the Principal Act has effect as if the reference to the *Road Safety Act 1986* were a reference to the *Motor Car Act 1958*. 15

