

# Environment Protection (Amendment) Bill (No 3)

No.

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# LEGISLATIVE COUNCIL

Read 1° 20 April 1988

*(Brought from the Legislative Assembly)*

(No. 3)

## A BILL

*for*

An Act to amend the *Environment Protection Act 1970* and the *Litter Act 1987* and for other purposes.

### **Environment Protection (Amendment) Act 1988**

The Parliament of Victoria enacts as follows:

#### **Purpose.**

1. The purpose of this Act is—

5 (a) to generally amend the *Environment Protection Act 1970* and in particular to—

(i) enable the Environment Protection Authority to require the users of premises from which pollution might arise to provide it with financial assurances to cover the cost of a clean-up; and

10 (ii) facilitate prosecutions by the Authority; and

(iii) facilitate the recovery of the costs caused by pollution.

(b) to amend the *Litter Act 1987*; and

15 (c) to increase penalties for pollution offences in the *Melbourne and Metropolitan Board of Works Act 1958*, the *Sewerage Districts Act 1958* and the *Water Act 1958*.

**Commencement.**

2. This Act comes into operation on the day on which it receives the Royal Assent.

**Principal Act.**

3. In this Act, the *Environment Protection Act 1970* is called the Principal Act. 5

Act No. 8056.  
Reprinted to No.  
45/1987.

**Changes with regard to “Environmental hazard”.****4. In the Principal Act—**

(a) for section 2 (2) substitute—

“(2) This Act does not apply to any radio-active substance or radiation apparatus within the meaning of Division 2AA of Part V. of the *Health Act 1958* unless a condition of pollution or an environmental hazard has arisen or is likely to arise.”; 10

(b) in section 4 (1), for the definition of “Environmental hazard”, substitute— 15

“ “Environmental hazard” means a state of danger to human beings or the environment whether imminent or otherwise resulting from the location, storage or handling of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.”; and 20

(c) in section 27A (1), for “industrial waste” substitute “any substance”.

**Insertion of definition of “Clean up”.** 25**5. In the Principal Act—**

(a) in section 4 (1), after the definition of “Chemical substance” insert—

“ “Clean up” includes any measures—

(a) to remove, disperse, destroy, dispose of, abate, neutralize or treat any pollutant, waste, substance, environmental hazard or noise; and 30

(b) to restore the environment to a state as close as practicable to the state it was in immediately before— 35

(i) the discharge of any pollutant, waste or substance; or

(ii) the creation of an environmental hazard; or

(iii) the emission of noise.”; and

- (b) in section 62 (1), for the phrase starting “take or” and ending “or noise” substitute “conduct a clean up or cause a clean up to be conducted”; and
- 5 (c) in section 62A (1), for the phrase starting “such measures” and ending “or substance” substitute “the clean up measures”; and
- 10 (d) in section 62B (1), for “dispose of the pollutants, waste or substance” substitute “, dispose of, abate, neutralize or treat any pollutant, waste, substance, environmental hazard or noise”.

**Correction of typographical error.**

6. In section 4 (1) of the Principal Act, in the definition of “Schedule four premises”, for “19 (3A)” substitute “19A (3A)”.

**Changes to pollution offences.**

- 15 7. In the Principal Act—
- (a) in section 4 (1), after the definition of “Policy” insert—  
‘ “Pollute” includes causing or permitting pollution.’; and
- 20 (b) in section 39 (1) for “cause or permit any waters to be polluted so that the physical, chemical or biological” substitute “pollute any waters so that the”; and
- (c) in section 39 (2), for “caused waters to be polluted” substitute “polluted waters”; and
- 25 (d) in section 41 (1), for “cause or permit the atmosphere to be polluted so that the physical, chemical or biological” substitute “pollute the atmosphere so that the”; and
- (e) in section 41 (2), for “caused the atmosphere to be polluted” substitute “polluted the atmosphere”; and
- 30 (f) in section 45 (1), for “cause or permit land to be polluted so that the physical, chemical or biological” substitute “pollute land so that the”; and
- (g) in section 45 (2), for “caused the land to be polluted” substitute “polluted land”.

**Offence to do certain work to premises except in accord with works approval.**

- 35 8. In section 19A (7) of the Principal Act, for “or (2) or (3A)” substitute “(2), (3A) or (4)”.

**Provision of financial assurances where pollution might arise from use of premises.****9. (1) After section 21 (1) (b) of the Principal Act insert—**

“(ba) If the premises are—

(i) schedule four premises; or 5

(ii) premises on which more than the prescribed quantity or the prescribed concentration of a notifiable chemical are stored, processed or used—

the occupier must provide the Authority with a financial assurance satisfactory to the Authority in accordance with section 67B;” 10

**(2) After section 31A (2) of the Principal Act insert—**

“(2A) If premises are—

(a) schedule four premises; or

(b) premises on which more than the prescribed quantity or the prescribed concentration of a notifiable chemical are stored, processed or used— 15

the pollution abatement notice may require the occupier of any premises on whom it is served to provide the Authority with a financial assurance satisfactory to the Authority in accordance with section 67B.” 20

**(3) After section 53B (3) of the Principal Act insert—**

“(4) The Authority may—

(a) insert a condition in a permit requiring the applicant to provide; or

(b) make the transfer of a permit subject to the applicant providing— 25

the Authority with a financial assurance satisfactory to the Authority in accordance with section 67B.”

**(4) In section 32 (1) of the Principal Act—**

(a) in paragraph (e), omit “and” (where last occurring); and 30

(b) after paragraph (f) insert—

“; and

(g) the variation or discharge of a financial assurance under section 67B (7) -”

**(5) After section 36B of the Principal Act insert— 35****Appeals in respect of financial assurances under section 67B (7).**

“36C. A person who is aggrieved by a decision of the Authority under section 67B (7) may, within 21 days of the decision, appeal to the Administrative Appeals Tribunal against the decision.”

(6) In section 37 of the Principal Act—

(a) in paragraph (h) omit “or” (where occurring after “conditions;”); and

(b) after paragraph (i) insert—

5 “(j) in the case of an appeal under section 36C, vary or discharge a financial assurance”.

(7) After section 67A of the Principal Act insert—

**Financial assurances.**

10 “67B. (1) The financial assurances which the Authority may require under sections 21, 31A and 53B may include any of the following:

(a) A letter of credit from a bank;

(b) Certificates of title;

(c) Personal and bank guarantees;

(d) Bonds;

15 (e) Insurance;

(f) Any other form of security that the Authority considers appropriate.

(2) The Authority is to determine the type and extent of a financial assurance.

20 (3) The Authority may require the financial assurance to extend to the time when it is satisfied that no clean-up will be required as a result of the use of the premises or the vehicle.

(4) That time may extend beyond the time that the approval, licence, notice or permit to which the financial assurance applies is in force.

25 (5) If the Authority requires a financial assurance in the form of insurance, it may require that it be a joint insured or a beneficiary of the insurance policy.

(6) The Authority is deemed to have an insurable interest in the subject-matter covered by the insurance policy.

30 (7) A person may apply in writing to the Authority to have a financial assurance varied or discharged at any time.

(8) The Authority must advise the applicant of its decision on the application within 60 days of receiving the application.”

**Claims on financial assurances.**

35 “67C. (1) If the Authority incurs costs under section 62 (1) or 62B (2), it may recover those costs by making a claim on, utilizing or realizing any financial assurance, or any part of a financial assurance, in respect of any premises or vehicle directly related to the reason the costs were incurred.

(2) The Authority may do this even though the costs, or part of the costs, can be ascribed to actions taken or not taken at a time when premises were not, or a vehicle was not, the subject of the financial assurance claimed against, utilized or realized by the Authority.

(3) Any money recovered under this section is to be paid into the Consolidated Fund.” 5

**Increase in penalties for pollution offences.**

**10. In the Principal Act—**

(a) in section 27A (2), for “100” substitute “200”; and

(b) after section 67 insert— 10

**Higher penalty for certain intentional offences.**

“67AA. Regardless of anything to the contrary in this Act, if the court which convicts a person of an offence against section 27A (1) (c), 39, 41, 45 or 59D is satisfied that the offence was committed intentionally, the person is liable to a penalty of not more than 200 penalty units and, in the case of a continuing offence, to a daily penalty of not more than 80 penalty units for each day the offence continues after conviction.” 15

**Change to minor works notice procedures.**

**11. In the Principal Act—** 20

(a) in section 31B (1)—

(i) for paragraph (a) substitute—

“(a) is satisfied that a situation described in section 31A (1) exists; and”; and

(ii) in paragraph (b), for “50” substitute “100”; and 25

(b) in section 47A (1)—

(i) for paragraph (a) substitute—

“(a) is satisfied that a situation described in section 47 (1) exists; and”; and

(ii) in paragraph (b), for “50” substitute “100”. 30

**Drivers of noisy etc. cars to be liable as well as owners.**

**12. In the Principal Act—**

(a) in section 43A (1), after “motor vehicle” insert “, the owner of an unregistered motor vehicle or the driver of a motor vehicle”; and 35

(b) in section 48B (1), for “which or the owner of an unregistered motor vehicle” substitute “, the owner of an unregistered motor vehicle or the driver of a motor vehicle”.



**Proof provisions relating to use of vehicles on highways.****13. In section 43A of the Principal Act—**

(a) in sub-section (2), after “police force” insert “or an authorized officer”; and

5 (b) after sub-section (2) insert—

“(2A) A statement signed by a member of the police force or an authorized officer stating that a motor vehicle was used on a highway on a particular date is *prima facie* evidence that on that date the motor vehicle was used on the highway.”; and

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(c) in sub-section (3), after “(2)” insert “or (2A)”.

**Widening of scope of emission standards.****14. In section 43A of the Principal Act—**

(a) in sub-section (1), omit “visible”; and

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(b) in sub-section (2), omit “visible”.

**Statements of the Environment Protection Authority as evidence.****15. After section 59A (b) of the Principal Act insert—**

“(ba) to the effect that for any specified vehicle, property or person—

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(i) there was, or was not, in force a permit on a certain date or for a certain period; or

(ii) there was in force a permit which was subject to a specified condition, limitation or restriction; or

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(iii) the permit relating to the vehicle, property or person was suspended on a certain date or for a certain period;

(bb) to the effect that a label was affixed to any specified vehicle under any specified section of this Act;

(bc) to the effect that permission of any specified kind was, or was not, granted under the Act to any specified person;”.

**30 Presumption as to storage of samples.****16. After section 59AB (2) of the Principal Act insert—**

“(3) Each attribute of a sample taken for any purpose under this Act is presumed not to be materially affected by its method of storage or preservation unless evidence to the contrary is presented.

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(4) A finding by a court that an attribute of a sample was materially affected by its method of storage or preservation does not displace the presumption in relation to the other attributes of the sample.”.

**Insertion of section 59E.**

17. (1) After section 59D of the Principal Act insert—

**Offence of aggravated pollution.**

“59E. A person who intentionally or recklessly pollutes the environment or causes an environmental hazard which results in— 5

- (a) serious damage to the environment; or
- (b) a serious threat to public health; or
- (c) a substantial risk of serious damage to the environment; or
- (d) a substantial risk of a serious threat to public health—

is guilty of an indictable offence. 10

Penalty: 5 years imprisonment or a fine of 5000 penalty units or both”.

(2) In section 69 of the *Magistrates' Courts Act 1971*—

(a) after sub-section (1) (r) insert—

“(s) with an offence against section 59E of the *Environment Protection Act 1970* but subject to sub-section (7)—”; 15  
and

(b) after sub-section (6) insert—

“(7) The sentence which may be imposed by the Court under sub-section (1) in relation to an indictable offence under section 59E of the *Environment Protection Act 1970* is imprisonment for up to 2 years or a fine of up to 400 penalty units or both.”. 20

**Polluters to be strictly liable for causing pollution.**

18. In section 62 (2) of the Principal Act, for “whose acts or omissions” substitute “who”. 25

**Registration of charges and power of sale on certain property.**

19. After section 62 (3) of the Principal Act insert—

“(4) If the property charged is land, the Authority may deposit with the Registrar-General or the Registrar of Titles a certificate under seal or a memorial of such a certificate (as the case requires) describing the land charged and stating the amount of the charge. 30

(5) The Registrar-General must register a memorial of a certificate lodged under this section which complies with Part I of the *Property Law Act 1958*. 35

(6) The Registrar of Titles must enter in the register book a memorandum of a certificate lodged under this section.

(7) Despite sub-section (3), if the property charged is land, the change does not take effect until—

- (a) the Registrar-General registers a memorial of the charge; or
- (b) the Registrar of Titles enters a memorandum of the charge in the register book.

5 (8) If the property charged is land and the amount due for costs is paid or recovered, the Authority must inform the Registrar-General or the Registrar of Titles (as the case requires) in writing that the charge no longer applies.

(9) The Registrar-General or the Registrar of Titles must cancel the memorial or memorandum.

10 (10) If—

- (a) a charge under this section has existed for at least 12 months; and
- (b) an amount is still owing under the charge—

the Authority may serve a notice of intention to sell the property.

15 (11) A notice must—

- (a) be in writing; and
- (b) be served by—
  - (i) displaying a copy of the notice on the property (if this is possible); and
  - (ii) publishing a copy of the notice once in a newspaper circulating generally in the area in which the property is located and once in a newspaper circulating throughout Victoria—

not less than 1 month before the intended sale.

25 (12) If the property sold is land under the *Transfer of Land Act* 1958, section 77 of that Act applies to the sale as if—

- (a) the charge were a registered first mortgage registered in priority to other registered encumbrances; and
- (b) the Authority were a mortgagee under that mortgage; and
- 30 (c) the owner of the land were a mortgagor under that mortgage; and
- (d) the requirement relating to the giving of notice were deleted; and
- (e) sub-section (3) (d) were deleted.

35 (13) If the property sold is land not under the *Transfer of Land Act* 1958, sections 101 (1) (a), 101 (2), 104, 106 (3), 106 (4), 107 (1), 113 and 115 of the *Property Law Act* 1958 apply to the sale as if—

- (a) the charge were a mortgage by conveyance of the fee to the Authority as mortgagee; and
- 40 (b) the mortgage had priority over all other estates, interests and rights.

(14) If there is any amount left over from a sale of property after the Authority has deducted its charge and any costs associated with realizing the charge, and the owner of the property still cannot be found, the Authority must pay the amount to the Receiver of Revenue at the Treasury in Melbourne to be placed to the credit of the Unclaimed Moneys Fund. 5

(15) Any money recovered by the Authority under a charge under this section is to be paid into the Consolidated Fund.”

**Clarification of who is liable for pollution costs in certain cases.**

20. In the Principal Act— 10

(a) for section 62A (2) substitute—

“(2) On the application of the occupier of any premises which is the subject of a notice, a court of competent jurisdiction may order that the person described in sub-section (1) (b), (1) (c) or (1) (d) compensate the occupier for any costs incurred by the occupier which the court is satisfied are reasonable and were incurred in good faith in complying with the notice.”; and 15

(b) in section 62B (2), for “offender” substitute “person who caused or permitted the situation described in sub-section (1) (a)””; and 20

(c) in section 62B (3), for “offender” substitute “person who caused or permitted the situation described in sub-section (1) (a)””.

**New section 63 and consequential amendments.** 25

21. (1) In section 59 of the Principal Act—

(a) after “59.” insert “(1)””; and

(b) at the end of the section insert—

“(2) Proceedings for an offence against this Act may only be taken by a person appointed by the Authority.”. 30

(2) In the Principal Act—

(a) in section 48A (9), for “63 (1)” substitute “59 (2)””; and

(b) in section 48AB (5), for “63 (1)” substitute “59 (2)””.

(3) For section 63 of the Principal Act substitute—

**Presumption that occupier caused discharge etc.** 35

“62C. If any segment or element of the environment is polluted as a result of a discharge, emission or deposit of any substance from or on any premises on which there is conducted any commercial or industrial undertaking, the occupier of the premises is deemed to have polluted that segment or element of the environment unless the occupier proves 40

that the discharge, emission or deposit was unrelated to the commercial or industrial undertaking.”

**Owner and master of ship each guilty of pollution from ship.**

- 5 “63. If an offence is committed against this Act with respect to the discharge or emission of wastes or pollutants or noise from any ship, the owner and the master of the ship are each guilty of the offence.”.

**Extension of time for prosecutions.**

22. In section 63A of the Principal Act—
- 10 (a) in sub-section (1)—
- (i) after paragraph (a) insert—  
“(ab) section 27A;” and
- (ii) after paragraph (c) insert—  
“(d) section 59E;” and
- 15 (b) in sub-section (2), for “(1) (b) or (1) (c)” substitute “(1) (ab), (1) (b), (1) (c) or (1) (d)”.

**Power to police to issue “on the spot” fines for noise at entertainment venues.**

23. In section 63B (1) of the Principal Act, in paragraph (b) of the definition of “Prosecution officer”, after “48A (8)” insert “, 48AB (4)”.

20 **Insertion of section 65A.**

24. (1) After section 65 of the Principal Act insert—

**Orders for compensation immediately after a finding of guilt.**

‘65A. (1) For the purposes of this Act, in section 92 of the *Penalties and Sentences Act 1985*—

- 25 (a) “loss” includes the reasonable costs of a clean up; and
- (b) “compensation for the loss” and “value of the property lost” includes the estimated costs to complete a clean up or part of a clean up.
- 30 (2) The court may only make an order against a person under section 92 of the *Penalties and Sentences Act 1985* with respect to an offence under this Act if it is satisfied that the person was served with notice of—
- (a) the applicant’s intention to make the application; and
- 35 (b) the amount and details of the amount sought by the applicant—

at least 28 days before the application is made.

(3) The applicant may use an affidavit by any witness or an affidavit as to particular facts if—

- (a) the applicant served notice of intention to use the affidavit with a copy of the affidavit attached on the person at least 28 days before the application is made; and
- (b) the person did not serve notice of objection to the use of the affidavit on the applicant at least 14 days before the application is made. 5
- (4) The court may make an order even though the amount of the order exceeds the upper monetary limit of the court's civil jurisdiction.
- (5) If—
- (a) an order of the court includes an amount for estimated costs; and 10
- (b) the costs incurred are less than the estimated costs—  
the applicant must refund the difference to the person.
- (6) A person entitled to a refund may recover the refund in any court of competent jurisdiction as a debt due to the person. 15
- (7) Any money recovered by the Authority under this section is to be paid into the Consolidated Fund.
- (8) Any sum required by the Authority to refund a person under this section is to be paid out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly). 20
- (9) If any property of the Crown or resource of the State is damaged or injured in the course of the commission of an offence against this Act or the regulations, the Authority may make an application under section 92 of the *Penalties and Sentences Act* 1985 on behalf of the Crown. 25
- (10) This section applies to all proceedings where a charge was laid after the commencement of section 24 of the *Environment Protection (Amendment) Act* 1988.”
- (2) Sections 65 (2) and 65 (3) of the Principal Act are repealed.
- Substitution of section 66.** 30
25. For section 66 of the Principal Act substitute—
- Abatement of pollution by protection agency.**
- “66. (1) If any segment or element of the environment is polluted or an environmental hazard occurs, a protection agency may, and if directed by the Authority must, conduct a clean up. 35
- (2) The Authority may specify the method to be used in the clean up.
- (3) The protection agency may—
- (a) recover the costs of a clean up from any person who caused or permitted the pollution or hazard; and 40

- (b) exercise any of the rights and powers given to the Authority by this Act with respect to the recovery of costs, resulting from pollution or an environmental hazard.”.

**Insertion of section 66C.**

- 5        26. After section 66B of the Principal Act insert—

**Authority to be able to recover costs of analysis.**

- 10        “66C. (1) In this section “work conducted by the Authority” means any analysis, measurement, recording, evaluation, testing or inspection conducted by the Authority through any of its officers, employees or agents.

(2) In any proceedings under this Act in which legal costs are awarded to the Authority or a person appointed by the Authority to take proceedings, the court may include in those costs the reasonable market cost of any work conducted by the Authority.

- 15        (3) A document which—

(a) sets out charges for work similar to any work conducted by the Authority ; or

(b) purports to estimate the reasonable market cost of any work conducted by the Authority—

- 20        and which is signed by, or on behalf of, a person who purports to be a person who charges for doing any work similar to that conducted by the Authority is evidence of the reasonable market cost of work conducted by the Authority.”.

**Widening of E.P.A.’s power to delegate.**

- 25        27. In the Principal Act—

(a) in section 68A (1), after “this Act” insert “or any other Act”;  
and

(b) in section 68B (9), after “this Act” insert “or any other Act”.

**Change to power to make regulations relating to car noise.**

- 30        28. In section 71 (1) (ga) of the Principal Act, for “the construction, installation or operation” substitute “or prohibiting the construction, installation, operation, removal, replacement or repair”.

**Changes to the *Litter Act 1987*.**

29. In the *Litter Act 1987*—

- 35        (a) in section 12 (1) (d), omit “In relation to section 14 (4),”;  
and

(b) in section 14 (5), after “proceedings” insert “through its authorized officers”.

**Changes to the *Melbourne and Metropolitan Board of Works Act 1958*.**

No. 6310.  
Reprinted to No.  
10262.  
Subsequently  
amended by  
Nos. 86/1986,  
109/1986,  
110/1986,  
121/1986,  
13/1987,  
31/1987  
and 45/1987.

**30. In the *Melbourne and Metropolitan Board of Works Act 1958*—**

- (a) in section 184 (1) (*ja*)—
  - (i) for “50” substitute “200”; and
  - (ii) for “20” substitute “80”; and
- (b) in section 322 (1)—
  - (i) for “50” substitute “200”; and
  - (ii) for “20” substitute “80”.

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No. 6368.  
Reprinted to No.  
10174.  
Subsequently  
amended by Nos.  
10219, 10262,  
16/1986,  
86/1986,  
109/1986,  
110/1986,  
121/1986  
and 127/1986.

**Changes to the *Sewerage Districts Act 1958*.**

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**31. After section 154 (5) of the *Sewerage Districts Act 1958* insert—**

“(6) A by-law made under sub-section (1) (*h*) may prescribe—

- (a) a penalty of not more than 200 penalty units for any contravention of the by-law; and
- (b) a further penalty of not more than 80 penalty units for each day the offence continues after—
  - (i) the service on a person of a notice of contravention; or
  - (ii) a person is convicted of an offence against the by-law.

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(7) A person is liable for a contravention of a by-law made under sub-section (1) (*h*), regardless of any agreement made under sub-section (2), if the contravention is also a contravention of the agreement.”

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No. 6413.  
Reprinted to No.  
10174.  
Subsequently  
amended by Nos.  
10219, 86/1986,  
109/1986,  
110/1986,  
113/1986,  
121/1986,  
9/1987, 39/1987,  
41/1987  
and 45/1987.

**Changes to the *Water Act 1958*.****32. In section 379<sup>AAA</sup> of the *Water Act 1958*—**

- (a) in sub-section (1)—
  - (i) for “100” substitute “200”; and
  - (ii) for “40” substitute “80”; and
- (b) in sub-section (2), for “100 penalty units for a first offence and 200 penalty units for any second or subsequent offence” substitute “200 penalty units and a further penalty of 80 penalty units for each day that the offence continues after conviction”.

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