

Environment Protection (Amendment) Bill (No. 3)

EXPLANATORY MEMORANDUM

Clause 1 sets out the purpose of the Act.

Clause 2 provides for the Act, other than section 16 (3), to come into operation on Royal Assent.

Clause 3 identifies the *Environment Protection Act* as the Principal Act.

Clause 4 broadens the definition of "environmental hazard" to include environmental hazards caused by any substance.

Clause 5 defines an environmental "clean up" and inserts that term in various provisions.

Clause 6 corrects a typographical error in the definition of Schedule 4 premises.

Clause 7 simplifies the wording of pollution offences.

Clause 8 makes it an offence to convert premises into scheduled premises without the required approval.

Clause 9 allows the Environment Protection Authority to require a financial assurance for environmental clean ups in works approvals, licences, pollution abatement notices and transport permits. In relation to works approvals, licences and pollution abatement notices, an assurance can only be required in respect of schedule four premises or premises which handle more than the prescribed quantity or concentration of notifiable chemical. The type of assurance required is inclusively defined. In respect of insurance policies, the Authority is deemed to have an insurable interest and is a joint insured. There are appeal rights to the Administrative Appeals Tribunal against the requirement of an assurance and refusal to vary or release the assurance.

Clause 10 increases the maximum penalty for certain pollution offences.

Clause 11 increases the limit below which minor works pollution abatement notices and minor works noise control notices may be issued to 100 penalty units. It also simplifies the administrative procedure for their issue.

Clause 12 makes the driving as well as the owning of a vehicle which does not have the prescribed emission control equipment fitted or is noisy an offence.

Clause 13 makes housekeeping amendments in relation to statements used as evidence in motor vehicle prosecutions.

Clause 14 makes housekeeping amendments in relation to vehicle emission control prosecutions.

Clause 15 allows statements by the Authority to be used as evidence in relation to permits, affixing of labels on vehicles and permissions given by the Authority.

Clause 16 creates a presumption as to the integrity of samples taken for the purpose of proceedings under the Act.

Clause 17 creates an offence of aggravated pollution. The offence involves intentionally or recklessly creating serious risk or damage to the environment or to public health. The offence is indictable triable summarily. Maximum penalties are 400 penalty units and/or 2 years imprisonment if dealt with by a Magistrates' Court and 5000 penalty units and/or 5 years imprisonment if dealt with in a higher court. Consequential amendments are made to the *Magistrates' Court Act 1971*.

Clause 18 ensures that there is strict liability for clean-up costs.

Clause 19 is a machinery provision for the registration and enforcement of charges on real property for clean up costs.

Clause 20 clarifies liability for clean up costs as between the occupier and the person who caused or permitted the pollution.

Clause 21 (1) and (2) are housekeeping amendments.

Clause 21 (3) clarifies the wording of a presumption in relation to pollution arising from commercial or industrial premises and a deeming provision in relation to ships.

Clause 22 extends the time limit for commencing prosecutions for offences which by their nature may not be detected for lengthy periods.

Clause 23 empowers police to issue on the spot penalties for the offence of failing to comply with their directions to abate noise from an entertainment venue.

Clause 24 provides for courts making an order that a person found guilty of an offence under the Act is liable for the environmental clean up costs, including estimated costs, resulting from that offence. The orders are made as an order for criminal compensation under the *Penalties and Sentences Act 1985*. An order can only be made if a defendant is given notice that an application for an order is intended to be made. Affidavits can be used to prove the claim upon notice being given and the defendant not objecting. Magistrates' Courts are not limited in their jurisdiction in making an order.

Clause 25 makes housekeeping amendments to the provision which allows the Authority to direct a protection agency to conduct a clean up and allows the agency to recover its costs.

Clause 26 allows the Authority to recover its internal laboratory analysis costs which it necessarily incurs in proceedings under the Act as part of its legal costs.

Clause 27 empowers the Authority to delegate its powers and functions under any other Act.

Clause 28 widens a head of regulation making power in relation to noisy vehicles.

Clause 29 makes housekeeping amendments to the *Litter Act 1987*. The amendments make authorised officers of the Authority authorised for all purposes under the *Litter Act* and make it clear that proceedings under the *Litter Act* by a council or the Authority is through their authorised officers.

Clause 30 increases the maximum penalties for certain pollution offences in the *Melbourne and Metropolitan Board of Works Act 1958*.

Clause 31 increases the maximum penalties for certain pollution offences under the *Sewerage Districts Act 1958*.

Clause 32 increases the maximum penalties for certain offences in the *Water Act 1958*.