



Australian Capital Territory

# **Air Pollution Act 1984**

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## **About this republication**

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This is a republication of the *Air Pollution Act 1984* effective 20 May 1994 to 13 November 1994.

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Australian Capital Territory  
**AIR POLLUTION ACT 1984**

*As at 20 May 1994*

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Australian Capital Territory  
**AIR POLLUTION ACT 1984**

An Act relating to the control of air pollution

**PART I—PRELIMINARY**

**Short title**

1. This Act may be cited as the *Air Pollution Act 1984*.<sup>1</sup>

**Commencement**

2.<sup>1</sup> (1) Subject to subsection (2), this Act shall come into operation on the day on which it is notified in the *Gazette*.

(2) Sections 27 and 28 shall come into operation on such date as is fixed by the Minister of State for Territories and Local Government by notice in the *Gazette*.

**Interpretation**

4. In this Act, unless the contrary intention appears—

“access holes” means holes by means of which samples of emissions into the outdoor atmosphere may be taken;

“AS 4013” means Australian Standard 4013, “Domestic solid fuel burning appliances—Method for determination of flue gas emission”;

“Authority” means the Pollution Control Authority appointed under this Act;

“chimney”, in relation to premises, means a structure or opening designed to permit the emission of pollutants into the air from those premises or

from part of those premises, whether or not it is structurally a part of those premises;

“control equipment” means—

- (a) apparatus for separating pollutants being emitted into the air from the gas medium in which they are carried;
- (b) access holes;
- (c) an automatic device used for securing the more efficient operation of fuel-burning equipment;
- (d) a device to indicate or record air pollution or to give warning of air pollution; or
- (e) any apparatus or device that is used or that is, or would be, if properly maintained and efficiently operated, capable without modification of being used for the purpose of limiting air pollution;

“fuel-burning equipment” means a furnace, boiler, fireplace, oven, retort, incinerator, internal combustion engine, chimney or any other apparatus, device, mechanism or structure, in the operation of which combustible material is, or is intended to be, used or which is, or is intended to be, used in connection with the burning of combustible material;

“high octane unleaded petrol” means unleaded petrol that has a research octane number of more than 93.0;

“industrial plant” means plant or equipment, other than fuel-burning equipment, used for the manufacturing, processing, handling, moving, storing or disposing of materials in or in connection with any trade, industry or process;

“inspector” means a person appointed as an inspector under section 12;

“low octane unleaded petrol” means unleaded petrol that has a research octane number of not less than 91.0 and not more than 93.0;

“leaded petrol” means petrol other than unleaded petrol;

“maximum lead concentration” means the lead concentration specified in subregulation 30F (5) of the Clean Air Regulations 1964 of New South Wales;

“motor vehicle” has the same meaning as in the *Motor Traffic Act 1936*;

“occupier” means, in relation to any premises, a person who is in occupation or control of the premises whether or not that person is the owner of the premises and in relation to premises different parts of which are occupied by different persons, means the respective persons in occupation or control of each part;

“pollutant” means ash, dust, fumes, gas, smoke or solid or liquid particles of any kind;

“pollution abatement notice” means a notice given under subsection 30 (1);

“premises” includes vacant land;

“residential premises” means premises that are used exclusively or primarily for residential purposes;

“sell” includes exchange and offer for sale;

“solid fuel-burning equipment” means fuel-burning equipment that is designed to burn hard wood, soft wood or briquettes;

“Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal;

“unleaded petrol” means petrol that—

- (a) contains not more than 0.013 grams of lead per litre;
- (b) contains not more than 0.0013 grams of phosphorus per litre;
- (c) contains not more than 0.10 per cent of sulphur by weight or, while a determination under section 42A specifying a higher percentage is in force, not more than that percentage;
- (d) has a research octane number of not less than 91.0; and
- (e) has a motor octane number of not less than 82.0.

### **Effect with other laws**

**5.** This Act has effect subject to the *Building Act 1972*, the *Fire Brigade Act 1957*, the *Machinery Act 1949*, the *Scaffolding and Lifts Act 1957* and the regulations in force from time to time under any of those Acts.

**Application**

6. (1) Nothing in this Act applies in relation to a railway locomotive, vessel or aircraft.

(2) Nothing in this Act, other than Part IIIA, applies in relation to a motor vehicle.

(3) This Act, other than sections 24, 33, 34 and 35, applies in relation to residential premises.

**PART II—ADMINISTRATION*****Division 1—Pollution Control Authority*****Establishment**

7. (1) For the purposes of this Act, there shall be a Pollution Control Authority consisting of a person appointed by the Minister.

(2) Subject to this Act, a person appointed as the Authority holds office for such period, not exceeding 7 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(3) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Authority and a person shall not be appointed or re-appointed as the Authority for a period that extends beyond the date on which he or she will attain the age of 65 years.

(4) The Minister shall issue to a person appointed under subsection (1) a certificate signed by the Minister to the effect that the person is the Pollution Control Authority.

**Resignation**

8. A person appointed as the Authority may resign office by writing signed by him or her and delivered to the Minister.

**Termination of appointment**

9. (1) The Minister may terminate the appointment of a person as the Authority by reason of misbehaviour or physical or mental incapacity.

(2) If a person appointed as the Authority becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her



remuneration for their benefit, the Minister shall terminate the person's appointment.

**Delegation**

**10. (1)** The Authority may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate to a public servant any of the Authority's powers under this Act, other than the powers under sections 30 and 32 and this power of delegation.

**(2)** A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Authority.

**(3)** A delegation under this section does not prevent the exercise of a power by the Authority.

**Acting Authority**

**11. (1)** The Minister may appoint a person to act as the Authority—

- (a)** during a vacancy in the office of the Authority, whether or not an appointment has previously been made to the office; or
- (b)** during any period, or during all periods, when a person appointed as the Authority is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of his or her office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

**(2)** An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

**(3)** The Minister may at any time terminate the appointment of a person appointed under subsection (1).

**(4)** Where a person is acting as the Authority in accordance with paragraph (1) (b) and the office of the Authority becomes vacant while that person is so acting, then, subject to subsection (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

**(5)** The appointment of a person to act as the Authority ceases to have effect if the person resigns his or her appointment by writing signed by him or her and delivered to the Minister.

(6) While a person is acting as the Authority, the person has, and may exercise, all the powers, and shall perform all the functions, of the Authority under this Act or any other law.

(7) The validity of anything done by a person purporting to act under subsection (1) shall not be called in question on the ground that the occasion for his or her appointment had not arisen, that there is a defect or irregularity in, or in connection with, his or her appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

### ***Division 2—Inspectors***

#### **Inspectors**

12. (1) The Minister may, by instrument in writing, appoint persons to be inspectors for the purposes of this Act.

(2) An inspector shall, subject to this Act, perform such duties for the purposes of this Act as the Authority directs.

(3) The Minister shall issue to a person appointed under subsection (1) a certificate signed by the Minister to the effect that the person is an inspector for the purposes of this Act.

## **PART III—CONTROL OF AIR POLLUTION**

### ***Division 1—Control of Air Pollution***

#### **Emission of pollutants in excess of prescribed concentrations**

23. (1) A person shall not operate, or cause or permit to be operated, any fuel-burning equipment or industrial plant, or carry on or permit the carrying on, of any trade, industry or process, on those premises so as to cause the emission into the air through a chimney on those premises of pollutants in excess of the prescribed standard of concentration or in excess of the prescribed rate.

(2) A person shall not use, or cause or permit to be used, on those premises, a fuel that contains more than the prescribed proportion of a prescribed constituent unless the fuel is used in prescribed fuel-burning equipment.

(3) A person who contravenes subsection (1) or (2) is guilty of an indictable offence punishable, on conviction, by a fine not exceeding—

(a) in the case of a body corporate—\$50,000; or

- (b) in the case of a natural person—\$10,000.

**Fugitive emissions**

**24. (1)** Where a person operates, or causes or permits to be operated, any fuel-burning equipment or industrial plant, or carries on, or permits the carrying on of, any trade, industry or process, on those premises, the person shall take such steps as are necessary to prevent, so far as is practicable, the emission of pollutants into the air—

- (a) otherwise than through a chimney on those premises; or
- (b) where no standard of concentration or rate of emission is prescribed in relation to those pollutants.

**(2)** A person who contravenes subsection (1) is guilty of an indictable offence punishable, on conviction, by a fine not exceeding—

- (a) in case of a body corporate—\$25,000; or
- (b) in the case of a natural person—\$5,000.

**Sale of solid fuel-burning equipment**

**24A. (1)** A person shall not sell solid fuel-burning equipment, other than prescribed equipment, for use on residential premises unless—

- (a) it complies with AS 4013; and
- (b) a certificate of compliance under subsection (3) has been issued in relation to equipment of the same type by a person or body authorised by the Authority by instrument for the purposes of this paragraph.

**(2)** A person who, without reasonable excuse, contravenes subsection (1) is guilty of an indictable offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a natural person—\$3,000; or
- (b) in the case of a body corporate—\$15,000.

**(3)** For the purposes of paragraph (1) (b), an authorised person or body may certify, in relation to solid fuel-burning equipment of a particular type, that—

- (a) equipment of that type has been tested (whether by that person or body, or by another person or body) in accordance with the test procedure specified in AS 4013; and
- (b) the authorised person or body is satisfied that the equipment tested had an appliance particulate emission factor not greater than the

maximum allowable particulate emission factor specified in section 7 of AS 4013.

(4) An instrument under paragraph (1) (b) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(5) Paragraph 6 (1) (c) and subsections 6 (7), (7A) and (7B) of the *Subordinate Laws Act 1989* apply to an instrument under paragraph (1) (b) as if a reference in each of those provisions to 15 sitting days were a reference to 5 sitting days.

### **Interference with solid fuel-burning equipment or attached plates**

**24B. (1)** A person shall not alter the information on, or remove, a plate attached to solid fuel-burning equipment that contains information required to be marked on a plate in accordance with section 10 of AS 4013.

(2) A person who sells solid fuel-burning equipment for use on residential premises, or installs solid fuel-burning equipment on residential premises, shall not alter in a material way—

- (a) the structure, exhaust system or inlet air system of the equipment; or
- (b) a part of the equipment that is involved in the combustion process.

(3) Subsection (2) does not apply to the sale or installation of prescribed equipment.

(4) A person who, without reasonable excuse, contravenes subsection (1) or (2) is guilty of an indictable offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a natural person—\$3,000; or
- (b) in the case of a body corporate—\$15,000.

### **Summary proceedings for indictable offences**

**25. (1)** Notwithstanding that an offence referred to in subsection 23 (3), 24 (2), 24A (2) or 24B (4) is expressed to be indictable, the Magistrates Court may hear and determine proceedings for such an offence if—

- (a) the Court is satisfied that it is proper to do so; and
- (b) the defendant consents to it doing so.

(2) Where, in accordance with subsection (1), the Magistrates Court hears and determines proceedings for an offence, then, notwithstanding subsection 23

(3), 24 (2), 24A (2) or 24B (4), as the case requires, that court shall not impose a fine exceeding—

- (a) in the case of a body corporate—\$10,000; or
- (b) in the case of a natural person—\$2,000.

**Conduct of employee or agent of body corporate**

**26. (1)** For the purposes of sections 23, 24, 24A and 24B, conduct engaged in on behalf of a body corporate by an employee or agent of the body corporate shall be deemed to have been engaged in also by the body corporate.

**(2)** Subsection (1) does not apply where it is established that—

- (a) the body corporate did not authorize or permit the conduct by its employee or agent; and
- (b) all due diligence was exercised by or on behalf of the body corporate to prevent that conduct.

**Fires in open air**

**27. (1)** A person shall not—

- (a) burn, or cause or permit the burning of, combustible material; or
- (b) light, use or maintain a fire, or cause or permit a fire to be lit, used or maintained,

in the open air.

Penalty:

- (a) in the case of a body corporate—\$2,500; and
- (b) in the case of a natural person—\$500.

**(2)** Subsection (1) does not apply in relation to—

- (a) premises used for primary production;
- (aa) the burning of plant matter on unleased land in accordance with a permit issued under section 27A;
- (b) the burning of dry timber, clean paper, clean cardboard or dried garden waste on residential premises—
  - (i) during a prescribed period; or

- (ii) between the hours of 10 o'clock in the morning and 3 o'clock in the afternoon on any day not within a prescribed period;
- (c) the lighting, using or maintaining of a fire solely for the purpose of cooking food or heating a potable liquid;
- (ca) conduct that forms part of an educational, social or recreational activity carried on otherwise than on residential premises;
- (cb) a display, ceremony, celebration or similar activity held on—
  - (i) the second Monday in June in any year, being a public holiday in the Territory for the observance of the anniversary of the birthday of the Sovereign;
  - (ii) a day immediately preceding a day referred to in subparagraph (i); or
  - (iii) a day or part of a day specified by the Minister, by notice published in the *Gazette*, for the purposes of this subparagraph; or
- (d) the lighting of a cigar, cigarette or pipe.

(3) In this section—

“primary production” has the same meaning as in the *Income Tax Assessment Act 1936* of the Commonwealth;

“prescribed period” has the same meaning as in the *Bushfire Act 1936*.

### **Permit for burning plant matter**

**27A. (1)** On application in accordance with a form approved by it, the Authority may issue a permit for the burning of plant matter on unleased land on specified days and at specified times and subject to other specified conditions (if any).

**(2)** A permit shall not be issued unless the Authority is satisfied that:

- (a) the purpose of burning the plant matter will be:
  - (i) to reduce a fire hazard; or
  - (ii) to clear the land; and
- (b) it would not be against the public interest for the plant matter to be burned in accordance with the proposed permit.

(3) In considering the public interest in relation to a proposed permit, the Authority shall have regard to:

- (a) the quantity and type of pollutant likely to be emitted by the burning;
- (b) whether the expected meteorological conditions are such that it is likely that the pollutant would be carried to a place where it could cause damage to the health of, or discomfort to, members of the public; and
- (c) whether it would be impractical or uneconomic to remove the plant matter by some means other than burning.

(4) Where the Authority refuses to issue a permit, the Authority shall, by notice in writing, inform the applicant of the refusal.

**Fires in unfavourable meteorological conditions**

28. (1) Where the Minister is satisfied that meteorological conditions are, or are likely to become, such that the burning of combustible material, or the lighting, using or maintaining of a fire, in the open air would have an adverse effect on the environment or cause or increase pollution in the air, the Minister may, by notice—

- (a) published in a newspaper circulating in the Territory;
- (b) broadcast from a radio broadcasting station in the Territory; or
- (c) televised from a television station in the Territory,

prohibit, during the times, on the day or during the period specified in the notice, the burning of combustible material or the lighting, using or maintaining of a fire in the open air in the Territory or in the part in the Territory specified in the notice.

(2) A person shall not burn combustible material or light, use or maintain a fire in the open air in contravention of a notice referred to in subsection (1).

Penalty: \$500.

(3) Nothing in this section applies in relation to—

- (a) the lighting, using or maintaining of a fire solely for the purpose of cooking food or heating a potable liquid; or
- (b) the lighting of a cigar, cigarette or pipe.

**Powers of Chief Fire Control Officer**

**29.** Nothing in this Act affects the powers and authorities that may be exercised under section 5N of the *Bushfire Act 1936* by—

- (a) the Chief Fire Control Officer within the meaning of that Act; or
- (b) any other person authorized under subsection 5N (2) of that Act.

**Pollution abatement notice**

**30. (1)** Where there are reasonable grounds for believing—

- (a) that pollutants—
  - (i) have been emitted into the air;
  - (ii) are being emitted into the air; or
  - (iii) are likely to be emitted into the air;

from premises in contravention of the requirements of this Act or the regulations; and

- (b) that it is necessary to control the emission of those pollutants for the purpose of ensuring that the provisions of this Act and the regulations are being complied with;

the Authority or an inspector may, by notice in writing given to the occupier of those premises, require the occupier to carry out the measures specified in the notice within a specified period.

**(2)** In deciding whether to give a pollution abatement notice and in determining the period for compliance with the notice, the Authority or the inspector, as the case may be, shall have regard to all the circumstances of the matter, including—

- (a) any permit issued to the occupier under section 27A;
- (b) the nature of any activity or process engaged in on the relevant premises;
- (c) the nature of the relevant emission;
- (d) the location of the relevant emission; and
- (e) the nature, cost and complexity of any action required to be taken by the occupier to control the relevant emission.



(3) Where the period specified for compliance with a pollution abatement notice or any variation of that period is less than 14 days, that notice or the notice varying such period may be given to the occupier by any of the methods set out in subsection 46 (2) or (3), as the case requires, other than by sending the relevant notice by post to the occupier.

(4) A pollution abatement notice may require the occupier of the premises to do any one or more of the following:

- (a) to cease to carry on or not to commence any specified process or activity on the relevant premises;
- (b) to carry on, modify or control a specified process or activity in the manner specified in the notice;
- (c) to supply to the Authority or the inspector any plans, specifications or other information specified in the notice showing how a specified process or activity will be carried on, modified or controlled;
- (d) to take such measures including installation, alteration, maintenance or operation of any apparatus, plant or structures, including chimneys, as may be specified in the notice;
- (e) to provide monitoring equipment and carry out a monitoring program as specified in the notice.

#### **Further details for inclusion in notice**

**31.** A pollution abatement notice shall, in addition to the matters required to be specified in accordance with subsection 30 (4), specify—

- (a) the address and description of the premises in respect of which the notice is issued;
- (b) the date on which the notice is given to the occupier; and
- (c) the period within which a requirement specified in the notice is to be complied with by the occupier.

#### **Variation of pollution abatement notice by Authority**

**32. (1)** Where a pollution abatement notice has been given to an occupier, the Authority may, of its own motion or upon application in writing by the occupier—

- (a) vary the notice by extending the compliance period specified in the notice;

- (b) vary any other requirement specified in the notice; or
- (c) revoke a requirement specified in the notice.

(2) The Authority shall not make a decision under subsection (1) in relation to a pollution abatement notice where, as permitted by this Act, an application has been lodged with the Tribunal for the review of a decision in respect of that notice.

(3) The Authority shall not make a decision under subsection (1) in relation to a pollution abatement notice without having regard to all the circumstances of the matter including—

- (a) any permit issued to the occupier under section 27A;
- (b) the nature of any activity or process engaged in on the relevant premises;
- (c) the nature of the relevant emission;
- (d) the location of the relevant emission; and
- (e) the nature, cost and complexity of the action required to be taken by the occupier in order to comply with the notice.

(4) The Authority shall notify the occupier in writing of a decision under subsection (1) in relation to a pollution abatement notice—

- (a) in the case of a decision of its own motion—within 7 days of making the decision; and
- (b) in the case of a decision upon application by the occupier—within 7 days of receiving the application.

(5) A notice given under subsection (4) shall specify the date on which the notice is given to the occupier.

#### **Non-compliance with notice—offence**

**32A.** An occupier to whom a pollution abatement notice has been given, shall not, without reasonable excuse, fail to comply with the requirements of that notice within the specified compliance period.

Penalty:

- (a) in the case of a body corporate—\$25,000; and
- (b) in the case of a natural person—\$5,000 or imprisonment for 6 months, or both.

**Requirement to keep records**

**33. (1)** Where the Authority is satisfied that the operation of fuel-burning equipment or industrial plant, or the carrying on of any trade, industry or process, on any premises is causing, or is likely to cause, the emission of pollutants into the air in excess of the prescribed standard of concentration or in excess of the prescribed rate, the Authority may, by notice in writing given to the occupier of those premises, require the occupier—

- (a) to keep, during such period as is specified in the notice, a record in relation to the emission from the premises of such pollutants as are specified in the notice;
- (b) to furnish that record to the Authority as soon as practicable after the expiration of that period; and
- (c) to furnish to the Authority, at such times as are specified in the notice, such other information in relation to the operation of fuel-burning equipment or industrial plant or the carrying on of any trade, industry or process on the premises as is specified in the notice.

**(2)** A person who, without reasonable excuse, refuses or fails to comply with the requirements of a notice given to the person under subsection (1), is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$1,000; or
- (b) in the case of a natural person—\$200.

**Provision of access holes**

**34. (1)** Where fuel-burning equipment or industrial plant is situated on any premises, the Authority may, by notice in writing given to the occupier of those premises, require the occupier to provide, on those premises, access holes that comply with the prescribed requirements within such period (being not less than 15 days) as is specified in the notice.

**(2)** A person who, without reasonable excuse, refuses or fails to comply with the requirements of a notice given to the person under subsection (1), is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$500; or
- (b) in the case of a natural person—\$100.

**Operation and maintenance of control equipment**

**35. (1)** An occupier of premises shall ensure that all control equipment installed in or on the premises is maintained properly and operated efficiently.

**(2)** A person who contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

***Division 2—Powers of entry and search*****Interpretation**

**36. (1)** For the purposes of this Division, a thing is connected with a particular offence if it is—

- (a) a thing with respect to which the offence has been committed;
- (b) a thing that will afford evidence of the commission of the offence; or
- (c) a thing that was used, or is intended to be used, for the purpose of committing the offence.

**(2)** A reference in this Division to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.

**Powers of entry etc.—non-residential premises**

**37. (1)** The Authority or an inspector may, at any reasonable hour of the day or night, with such assistance as he or she thinks necessary, enter upon or into any premises (other than residential premises) for the purpose of ensuring that the provisions of this Act or the regulations are being complied with.

**(2)** Where the Authority or an inspector enters upon or into premises in pursuance of subsection (1), he or she is not authorized to remain on the premises if, on request by or on behalf of the occupier or person apparently in charge, of the premises, he or she does not produce a certificate issued to him or her under subsection 7 (4) or 12 (3), as the case requires.

**(3)** Where the Authority or an inspector enters upon or into premises in accordance with subsection (1), he or she may—

- (a) inspect the premises and any materials, fuel-burning equipment, industrial plant or control equipment on the premises;

- (b) take such measurements and conduct such tests as he or she considers necessary for the purposes of this Act or the regulations;
- (c) inspect any books, records or documents, and require any person on the premises to furnish any information, relating to the operation of fuel-burning equipment, industrial plant or control equipment kept on the premises and the emission of pollutants from those premises;
- (d) make copies of, or take extracts from, any books, records or documents referred to in paragraph (c);
- (e) take samples of any materials on the premises;
- (f) take samples of any pollutants that are being or have been emitted from the premises;
- (g) take such photographs as he or she considers necessary for the purposes of this Act or the regulations;
- (h) require a person apparently in charge of the premises to supply his or her name and address.

**Powers of entry etc.—premises generally**

**38.** Subject to section 37, the Authority or an inspector may enter upon or into any premises and may search for, and exercise all or any of the powers under subsection 37 (3) in relation to, any thing which he or she believes on reasonable grounds to be connected with an offence against this Act that is found on or in those premises if, and only if, the search is made and those powers are exercised—

- (a) in pursuance of a warrant issued under section 39;
- (b) in circumstances of seriousness and urgency in accordance with section 40; or
- (c) after obtaining the consent of the occupier or person apparently in charge of the premises.

**Search warrants**

**39. (1)** Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon or in any premises a thing or things of a particular kind connected with a particular offence against a provision of this Act, and the information sets out those grounds, the Magistrate may issue a search warrant authorizing the Authority, or an inspector named in the warrant, with such assistance as he or she thinks necessary and if necessary by force, to enter upon or into those premises, to

search those premises and to exercise all or any of his or her powers under subsection 37 (3) in regard to such a thing.

(2) A Magistrate shall not issue a warrant under subsection (1) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) There shall be stated in a warrant issued under this section—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which entry, search and exercise of the powers under subsection 37 (3) are authorized;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things in relation to which the powers under subsection 37 (3) may be exercised; and
- (d) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

(4) If, in the course of searching, in accordance with a warrant issued under this section, for things connected with a particular offence against this Act, being things of a kind specified in the warrant, the Authority or an inspector finds any thing that he or she believes on reasonable grounds to be connected with the offence, although not of a kind specified in the warrant, or to be connected with another offence against this Act, and he or she believes on reasonable grounds that it is necessary to exercise all or any of his or her powers under subsection 37 (3) in relation to that thing in order to prevent the committing, continuing or repeating of the offence, or that other offence, the warrant shall be deemed to authorize the Authority or inspector to exercise those powers in relation to that thing.

### **Entry in emergencies**

**40. (1)** The Authority or an inspector may enter upon or into any premises on or in which he or she believes, on reasonable grounds, that any thing connected with an offence against this Act is situated and he or she may search

for and exercise all or any of his or her powers under subsection 37 (3) in relation to such a thing if—

- (a) the Authority or inspector believes, on reasonable grounds, that it is necessary to do so for the purposes of this Act; and
- (b) the entry is made in circumstances of such seriousness and urgency as to require and justify immediate exercise of those powers without the authority of a warrant issued under section 39.

(2) Where the Authority or an inspector enters upon or into premises in pursuance of subsection (1), he or she is not authorized to remain on or in the premises if, on request by, or on behalf of, the occupier or person apparently in charge, of the premises, he or she does not produce a certificate issued to him or her under subsection 7 (4) or 12 (3), as the case requires.

### **Consent to entry**

**41. (1)** Before obtaining the consent of a person for the purposes of section 38, the Authority or an inspector shall inform the person that he or she may refuse to give consent.

(2) Where the Authority or an inspector obtains the consent of a person for the purposes of section 38, he or she shall ask the person to sign a written acknowledgment—

- (a) of the fact that the person has been informed that he or she may refuse to give consent;
- (b) of the fact that the person has voluntarily given consent; and
- (c) of the date on which, and the time at which, the person gave consent.

(3) An entry by the Authority or an inspector by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

(4) Where it is material, in any proceedings, for a court to be satisfied of the voluntary consent of a person for the purposes of section 38 and an acknowledgment, in accordance with subsection (2), signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such a consent.

### **Obstruction of Authority or inspector**

**42.** A person who, without reasonable excuse—

- (a) obstructs or hinders the Authority or an inspector in the exercise of his or her powers under this Act; or

- (b) fails to comply with a reasonable requirement of the Authority or an inspector who has entered upon or in any premises in pursuance of this Act,

is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 or imprisonment for a term not exceeding 6 months.

### **PART IIIA—PETROL**

#### **Determination of higher sulphur content of unleaded petrol**

**42A. (1)** Where the Authority is satisfied that, by reason of the high sulphur levels present in petrol available in the Territory, there are insufficient supplies of unleaded petrol available in the Territory, the Authority may, by notice published in the *Gazette*, determine the percentage of sulphur for the purposes of paragraph (c) of the definition of “unleaded petrol” in section 4.

(2) A determination under subsection (1) remains in force for such period, not exceeding 30 days, as is specified in the notice.

(3) A determination may be expressed to come into force immediately upon the expiration of a previous determination.

#### **Sale of leaded petrol as unleaded petrol**

**42B. (1)** A person shall not, in the course of the distribution or wholesaling of petrol—

- (a) sell or distribute for sale as unleaded petrol;
- (b) offer or exhibit for sale as unleaded petrol; or
- (c) have in his or her possession for sale as, or for distribution for sale as, unleaded petrol,

petrol that, at the time it is sold, distributed, offered, exhibited or had in possession, as the case may be, is leaded petrol.

Penalty—

- (a) in the case of a body corporate—\$50,000; or
- (b) in the case of a natural person—\$10,000.

(2) A person shall not, otherwise than in the course of the distribution or wholesaling of petrol—

- (a) sell or distribute for sale as unleaded petrol;
- (b) offer or exhibit for sale as unleaded petrol; or



- (c) have in his or her possession for sale as, or for distribution for sale as, unleaded petrol,

petrol that, at the time it is sold, distributed, offered, exhibited or had in possession, as the case may be, is leaded petrol.

Penalty—

- (a) in the case of a body corporate—\$25,000; or
- (b) in the case of a natural person—\$5,000.

(3) A person (in this subsection referred to as “the defendant”) is not guilty of an offence against this section if the defendant adduces evidence that—

- (a) the petrol to which the charge relates was supplied to the defendant by another named person as unleaded petrol;
- (b) the defendant reasonably believed that the petrol to which the charge relates was unleaded petrol; and
- (c) the petrol to which the charge relates had not ceased to be unleaded petrol by reason of having been contaminated while in the defendant’s possession,

and that evidence is not rebutted by the prosecution.

(4) Subject to section 42F, an offence against this section is punishable on indictment.

### **Prohibition of sale of leaded petrol unless low lead**

**42BA. (1)** The Minister may, by notice published in the *Gazette*, declare that subsections (4) and (5) do not apply and, while the notice is in effect, those subsections do not apply.

(2) A notice under subsection (1)—

- (a) comes into effect on such date as is specified in the notice, being a date not earlier than the date when the notice is published in the *Gazette*; and
- (b) unless sooner revoked, remains in effect for such period, not exceeding 1 month, as is specified in the notice.

(3) A notice may be expressed to come into effect immediately upon the expiration of a previous notice.

(4) Unless exempted by the Authority, a person shall not, in the course of the distribution or wholesaling of petrol—

- (a) sell or distribute for sale leaded petrol;
- (b) offer or exhibit for sale leaded petrol; or
- (c) have in his or her possession for sale, or for distribution for sale, leaded petrol;

if the petrol contains more than the maximum lead concentration per litre.

Penalty:

- (a) if the offender is a natural person—\$10,000;
- (b) if the offender is a body corporate—\$50,000.

**(5)** Unless exempted by the Authority, a person shall not, otherwise than in the course of the distribution or wholesaling of petrol—

- (a) sell or distribute for sale leaded petrol;
- (b) offer or exhibit for sale leaded petrol; or
- (c) have in his or her possession for sale, or for distribution for sale, leaded petrol;

if the petrol contains more than the maximum lead concentration per litre.

Penalty:

- (a) if the offender is a natural person—\$5,000;
- (b) if the offender is a body corporate—\$25,000.

**(6)** A person who purchases leaded petrol for resale may demand from the vendor a written warranty that the petrol contains no more than the maximum lead concentration per litre.

**(7)** A vendor of petrol who refuses to furnish a warranty demanded under subsection (6) is guilty of an offence.

Penalty: \$1,000.

**(8)** It is a defence to a prosecution for an offence against this section that the petrol to which the charge relates—

- (a) was supplied to the defendant with a warranty under subsection (6); and
- (b) was sold in the state in which it had been purchased.

### **Exemption**

**42BB. (1)** Where the Authority is satisfied—

- (a) that the supply of leaded petrol is, or is likely to be, inadequate for the needs of the Territory; or
- (b) that a supplier or distributor of petrol is unable, for reasons beyond his or her control, to supply or distribute leaded petrol to the persons in the Territory to whom he or she usually supplies or distributes it;

the Authority may, by notice published in the *Gazette* and in a daily newspaper printed and published in the Territory, exempt a person or a class of persons from the provisions of subsection 42BA (4) or (5).

**(2)** An exemption—

- (a) comes into operation on such date as is specified in the notice, being a date not earlier than the date when the notice is published in the *Gazette*; and
- (b) unless sooner revoked, remains in effect for such period, not exceeding 1 month, as is specified in the notice.

**(3)** An exemption may be expressed to come into effect immediately upon the expiration of a previous exemption.

**Petrol pumps to be constructed and marked as prescribed**

**42C.** A person who sells petrol by retail shall ensure that the equipment used for or in connection with the sale of petrol is constructed and marked as prescribed.

Penalty—

- (a) in the case of a body corporate—\$10,000; or
- (b) in the case of a natural person—\$2,000.

**Petrol additives****42D. (1)** A person shall not—

- (a) sell or distribute for sale; or
- (b) advertise for sale,

a substance as a substance that is suitable for adding to petrol that is to be used in a motor vehicle if that substance contains lead, phosphorous or sulphur.

Penalty—

- (a) in the case of a body corporate—\$10,000; or
- (b) in the case of a natural person—\$2,000.

(2) Nothing in subsection (1) applies to or in relation to a substance that is sold, distributed for sale or advertised for sale as a substance that is suitable for adding to petrol to make a fuel suitable for use in engines having a two-stroke combustion cycle.

### **Type of petrol to be used**

**42E. (1)** A person shall not—

- (a) fuel with leaded petrol a motor vehicle that is designed to operate on unleaded petrol; or
- (b) except when a notice under subsection 42BA (1) or 42BB (1) is in effect, without reasonable excuse, fuel with petrol that contains more than the maximum lead concentration per litre any other motor vehicle that is designed to operate on petrol.

Penalty:

- (a) if the offender is a natural person—\$500;
- (b) if the offender is a body corporate—\$2,500.

**(2)** In this section—

- (a) a reference to a motor vehicle that is designed to operate on unleaded petrol shall be read as a reference to a motor vehicle that complies with any of the design rules known as Australian Design Rule 37, 40 or 41; and
- (b) “Australian Design Rule” has the same meaning as in section 7A of the *Motor Traffic Act 1936*.

### **Sale of high octane unleaded petrol**

**42EA. (1)** A person shall not offer high octane unleaded petrol for sale unless the person also offers low octane unleaded petrol for sale.

Penalty—

- (a) in the case of a body corporate—\$25,000; or
- (b) in the case of a natural person—\$5,000.

(2) A person is not guilty of an offence under subsection (1) if the person adduces evidence that he or she failed to offer low octane unleaded petrol for

sale for reasons beyond his or her control, and that evidence is not rebutted by the prosecution.

(3) An offence against this section is punishable on indictment.

### **Summary proceedings for indictable offences**

**42F. (1)** Notwithstanding that an offence referred to in section 42B or 42EA is expressed to be punishable on indictment, the Magistrates Court may hear and determine proceedings for such an offence if—

- (a) the Court is satisfied that it is proper to do so; and
- (b) the defendant consents to it doing so.

(2) Where, in accordance with subsection (1), the Magistrates Court hears and determines proceedings for an offence, then, notwithstanding subsection 42B (1) or (2) or subsection 42EA (1), that court shall not impose a fine exceeding—

- (a) in the case of a body corporate—\$10,000; or
- (b) in the case of a natural person—\$2,000.

## **PART IV—MISCELLANEOUS**

### **Evidentiary certificates**

**43.** In proceedings for an offence against this Act, a certificate purporting to be signed by the Authority or an inspector, as the case may be, and stating—

- (a) that he or she was, on the date or during a period specified in the certificate, the Authority or an inspector, as the case may be;
- (b) that, at a time and on a date and at premises specified in the certificate, measurements were taken and the results specified in the certificate were obtained;
- (c) that, at a time and on a date and at premises specified in the certificate, tests were conducted and, in following the prescribed procedures, the results specified in the certificate were obtained; and
- (d) that the equipment used to take the measurements and to conduct the tests conformed to the prescribed specifications and was in proper working order,

is evidence of the matters so stated and of the facts on which they are based.

### **Review of decisions**

**44. (1)** Application may be made to the Tribunal for a review of a decision of the Authority—

- (aa) refusing to issue a permit under section 27A or issuing such a permit subject to specified conditions.

**(2)** Application may be made to the Tribunal for a review of a decision of the Authority or an inspector, as the case requires—

- (a) making a requirement specified in a pollution abatement notice;
- (b) determining the period within which a pollution abatement notice is to be complied with;
- (c) varying, or refusing to vary—
  - (i) the period within which a pollution abatement notice is to be complied with; or
  - (ii) a requirement specified in the notice; or
- (d) revoking a requirement specified in a pollution abatement notice.

#### **Notification of decisions**

**45. (1)** A notice under subsection 27A (4), a pollution abatement notice under subsection 30 (1) or a notice under subsection 32 (4), shall:

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

**(2)** The validity of a decision referred to in subsection (1) shall not be taken to have been affected by a failure to comply with that subsection.

#### **Giving of notices**

**46. (1)** A document that is required by this Act to be lodged with, or given to, the Authority may be so lodged or given—

- (a) by delivering the document to the Authority personally; or
- (b) by leaving the document at the office of the Authority with a person apparently employed at that office.

(2) Subject to subsection 30 (3), a document that is required by this Act to be given to a body corporate may be so given—

- (a) by delivering the document to a director, manager or secretary of the body corporate;
- (b) by leaving the document at the registered office in the Territory of the body corporate;
- (c) by leaving the document at an office or place of business of the body corporate in the Territory with a person apparently employed at that office or place of business and apparently not less than 16 years of age; or
- (d) by sending the document by post to the body corporate at its registered office in the Territory.

(3) Subject to subsection 30 (3), a document that is required by this Act to be given to a person other than the Authority or a body corporate may be so given—

- (a) by delivering the document to him or her personally;
- (b) by leaving the document at his or her last known place of residence or business with a person apparently resident or employed at that place and apparently not less than 16 years of age; or
- (c) by sending the document by post addressed to the person at his or her last known place of residence or business.

### **Annual report**

47. The Authority shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report concerning the operation of this Act during the period of 12 months ending on that day.

### **Act of the State of New South Wales to cease to apply**

48. The Smoke Nuisance Abatement Act, 1902 of the State of New South Wales shall cease to be in force in the Territory.

### **Regulations**

49. (1) The Executive may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, may make regulations—

- (a) prescribing the manner in which, and position from which, samples of emissions of pollutants from premises are to be taken;
  - (b) prescribing the means of access to be provided by an occupier of premises to those sampling positions;
  - (c) prescribing the manner in which the concentration of pollutants is to be ascertained;
  - (d) prescribing penalties not exceeding \$500 for offences against the regulations;
  - (f) prescribing the manner in which samples of petrol are to be taken; and
  - (g) prescribing the manner in which the lead, phosphorous and sulphur content of petrol is to be ascertained.
- (2) The regulations may—
- (a) prescribe, in respect of the same process or equipment, different standards of concentration or rates for different periods or for different uses of the process or equipment; and
  - (b) prescribe periods or circumstances during which some or all of the prescribed standards or prescribed rates do not apply.
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**NOTE**

1. The *Air Pollution Act 1984* as shown in this reprint comprises Act No. 59, 1984 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

**Table of Ordinances**

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Air Pollution Ordinance 1984</i>	59, 1984	2 Nov 1984	Ss. 27 and 28: 1 Mar 1985 (see <i>Gazette</i> 1985, No. S57) Remainder: 2 Nov 1984	
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	—
<i>Air Pollution (Amendment) Ordinance 1985</i>	72, 1985	19 Dec 1985	19 Dec 1985	—
<i>Air Pollution (Amendment) Ordinance 1986</i>	12, 1986	4 June 1986	4 June 1986	—
<i>Magistrates Court (Amendment) Ordinance (No. 3) 1986</i>	74, 1986	14 Nov 1986	14 Nov 1986	—
<i>Air Pollution (Amendment) Ordinance (No. 2) 1986</i>	85, 1986	22 Dec 1986	1 Jan 1987	—
<i>Air Pollution (Amendment) Ordinance 1987</i>	54, 1987	7 Oct 1987	7 Oct 1987	—
<i>Air Pollution (Amendment) Ordinance 1988</i>	7, 1988	9 Mar 1988	9 Mar 1988	—
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—

**Self-Government day 11 May 1989**

**NOTE**—continued

Table 2

**Table of Acts**

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Motor Traffic (Amendment) Act (No. 3) 1990</i>	37, 1990	30 Oct 1990	30 Oct 1990	—
<i>Air Pollution (Amendment) Act 1991</i>	85, 1991	24 Dec 1991	24 Dec 1991	—
<i>Air Pollution (Amendment) Act (No. 2) 1991</i>	94, 1991	24 Dec 1991	Ss. 1 and 2: 24 Dec 1991 Remainder: 3 Feb 1992 (see <i>Gazette</i> 1992, No. S15)	—
<i>Statute Law Revision (Miscellaneous Provisions) Act 1992</i>	23, 1992	4 June 1992	4 June 1992	—
<i>Acts Revisions (Position of Crown) Act 1993</i>	44, 1993	27 Aug 1993	27 Aug 1993 (see s. 2)	—
<i>Bushfire (Amendment) Act 1993</i>	74, 1993	22 Oct 1993	22 Oct 1993	—
<i>Air Pollution (Amendment) Act 1993</i>	92, 1993	17 Dec 1993	17 Dec 1993	S. 12
<i>Air Pollution (Amendment) Act 1994</i>	22, 1994	20 May 1994	20 May 1994	—

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
S. 3 .....	rep. Act No. 44, 1993
S. 4 .....	am. No. 72, 1985; No. 85, 1986; No. 7, 1988; No. 38, 1989; Act No. 94, 1991; No. 23, 1992; No. 92, 1993
S. 6 .....	am. No. 72, 1985; No. 54, 1987 rs. Act No. 92, 1993
Ss. 7-9 .....	am. Act No. 92, 1993
S. 10 .....	am. No. 38, 1989; Act No. 94, 1991
S. 11 .....	am. Act No. 92, 1993
Div. 3 of Part II (ss. 13-22) .....	rep. No. 7, 1988
Ss. 13-22 .....	rep. No. 7, 1988
Ss. 23, 24 .....	am. No. 54, 1987
S. 24A .....	ad. Act No. 92, 1993 am. No. 22, 1994
S. 24B .....	ad. Act No. 92, 1993
S. 25 .....	am. No. 67, 1985; Act No. 92, 1993
S. 26 .....	am. Act No. 92, 1993

**NOTE**—continued**Table of Amendments**—continued

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
S. 27 .....	am. No. 12, 1986; No. 54, 1987; Act No. 74, 1993
S. 27A .....	ad. No. 54, 1987
S. 29 .....	am. Act No. 74, 1993
Ss. 30-32 .....	rs. Act No. 94, 1991
S. 32A .....	ad. Act No. 94, 1991
Ss. 37-42 .....	am. Act No. 92, 1993
Part III (ss. 42A-42F) .....	ad. No. 72, 1985
Heading to Part IIIA .....	am. Act No. 85, 1991
S. 42A .....	ad. No. 72, 1985
Ss. 42B .....	ad. No. 72, 1985
	am. No. 85, 1986
S. 42BA .....	ad. Act No. 85, 1991
	am. No. 92, 1993
S. 42BB .....	ad. Act No. 85, 1991
Ss. 42C, 42D .....	ad. No. 72, 1985
	am. No. 85, 1986
S. 42E .....	ad. No. 72, 1985
	am. No. 85, 1986; Act No. 37, 1990; No. 85, 1991; No. 92, 1993
S. 42EA .....	ad. No. 85, 1986
S. 42F .....	ad. No. 72, 1985
	am. Nos. 74 and 85, 1986
S. 43 .....	am. Act No. 92, 1993
S. 44 .....	am. No. 54, 1987; Act No. 94, 1991
S. 45 .....	rs. No. 54, 1987
	am. No. 38, 1989; Act No. 94, 1991
S. 46 .....	am. Act No. 94, 1991; No. 92, 1993
S. 49 .....	am. No. 72, 1985; No. 38, 1989