

AUSTRALIAN CAPITAL TERRITORY

Water Pollution Ordinance 1984

No. 65 of 1984

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section

1. Short title
2. Commencement
3. Application
4. Ordinance binds Crown
5. Interpretation
6. Exemption

PART II—ADMINISTRATION

7. Inspectors
8. Delegation

PART III—WATER POLLUTION ADVISORY COMMITTEE

9. Establishment
10. Functions
11. Powers
12. Membership
13. Chairman
14. Resignation of member
15. Termination of appointment
16. Acting members
17. Meetings
18. Disclosure of pecuniary interest

PART IV—CONTROL OF POLLUTION OF WATERS

Division 1—Licences to discharge waste

19. Application

TABLE OF PROVISIONS—*continued*

Section

- 20. Grant
- 21. Conditional licence
- 22. Authority conferred by licence
- 23. Duration
- 24. Convicted person—refusal or cancellation of licence
- 25. Transfer
- 26. Requirements for licensees—records and information
- 27. Alteration of works
- 28. Emergency powers
- 29. Civil liability for waste
- 30. Authority to publish details

Division 2—Powers of entry and search

- 31. Interpretation
- 32. Powers of entry, &c.—non-residential premises
- 33. Powers of entry, &c.—premises generally
- 34. Search warrants
- 35. Entry in emergencies
- 36. Consent to entry
- 37. Obstruction of Authority or inspector

Division 3—Offences

- 38. Discharge of waste

PART V—MISCELLANEOUS

- 39. Power of Minister to determine fees
- 40. Review of decisions
- 41. Notification of decisions
- 42. Appointment of analysts
- 43. Analyst's power of entry
- 44. Evidentiary certificates
- 45. Giving of notices
- 46. Annual report
- 47. Regulations

AUSTRALIAN CAPITAL TERRITORY

Water Pollution Ordinance 1984

No. 65 of 1984

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 26 October 1984.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

TOM UREN
Minister of State for Territories and Local Government

An Ordinance relating to the control of pollution of the waters of the Territory

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Water Pollution Ordinance 1984*.¹

Commencement

2. (1) Subject to sub-section (2), this Ordinance shall come into operation on the day on which it is notified in the *Gazette*.
- (2) Section 38 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*.

Application

3. This Ordinance has effect subject to the *Careless Use of Fire Ordinance 1936* and the *Fire Brigade Ordinance 1957*.

Ordinance binds Crown

4. This Ordinance binds the Crown.

Interpretation

5. (1) In this Ordinance, unless the contrary intention appears—

“Authority” has the same meaning as in the *Air Pollution Ordinance 1984*;

“Committee” means the Water Pollution Advisory Committee established by section 9;

“faecal coliform” means a bacillus of the genus *Escherichia*;

“House of Assembly” means the Australian Capital Territory House of Assembly;

“inspector” means a person appointed as an inspector under section 7;

“licence” means a licence under this Ordinance;

“member” means a member of the Committee;

“pH value” means the negative of the logarithm of the hydronium ion concentration of a solution expressed in moles per litre;

“premises” includes vacant land;

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

“restricted substance”, in relation to any waters, means a substance declared by the regulations to be a restricted substance in relation to those waters;

“thermal waste” means a liquid which, after being used in or in connection with a trade, industry or a commercial or domestic process, has a temperature 2 degrees Celsius or more higher or lower than the temperature, taken immediately before or immediately after the taking of the temperature of the first-mentioned liquid, of similar liquid immediately before it is used in or in connection with that trade, industry or commercial or domestic process;

“Tribunal” means the Administrative Appeals Tribunal;

“waste” means—

- (a) material that, if introduced into waters, is capable of causing an increase in the biochemical or chemical oxygen demand of the waters;
- (b) material that contains—
 - (i) non-filtrable residues;
 - (ii) a gas (other than oxygen) or filtrable residues;
 - (iii) a nitrogen or phosphorus compound;
 - (iv) a methylene blue active substance;
 - (v) a restricted substance;
 - (vi) faecal coliforms;
 - (vii) a pesticide or herbicide; or
 - (viii) oil, grease or floating solids;
- (c) material that has pH value less than 6.5 or greater than 8.5;
- (d) animal matter of any description, including the carcass or any part or remains of an animal, offal, flesh or bones;
- (e) plant matter of any description, including vegetable or fruit wastes, leaves, grass, trees, wood, sawdust, shavings, chips, bark or other forest products or refuse;
- (f) inorganic matter of any description, including ashes, ballast, soil, earth, mud, stones, sand, clay residue or washings from any mineral processing or extractive operation or soil, spoil or washings from any dredging operation;
- (g) night soil, excreta, manure, septic tank wastes or urine;
- (h) scrap metal, glass, paper, plastics, rubbish, motor or other vehicles, industrial waste (whether liquid or solid) or any other refuse;
- (i) oil or inflammable liquid of any description;
- (j) chemicals or poisonous substances of any description; or

- (k) thermal waste;

“waters” means—

- (a) a river, stream, lake, lagoon, pond, reservoir or dam;
- (b) artesian or underground water (other than water contained in a sewer);
- (c) a drainage system for conveying stormwater; and
- (d) tidal waters.

(2) For the purposes of this Ordinance, a person shall be taken to discharge waste into waters if—

- (a) he causes or permits the waste to enter the waters;
- (b) he causes or permits the waste to be in a position from which the waste falls, percolates or descends, or is washed, into the waters or in a position that is covered by the waters; or
- (c) he causes or permits the waste to be in a position from which the waste is likely to fall, percolate, descend or be washed into the waters or in a place that is likely to be covered by the waters.

(3) For the purposes of this Ordinance and the regulations, the following waters are Class S waters:

- (a) the waters backed up by the Cotter Dam together with the waters of the Cotter River upstream from that dam, being the waters within an area bounded by the wall of the dam and the contour line commencing at the north-eastern end of the wall of the dam and proceeding at a height of 500.5 metres above mean sea level, to the south-western end of that wall;
- (b) the waters backed up by the Bendora Dam together with the waters of the Cotter River upstream from that dam, being the waters within an area bounded by the wall of the dam and the contour line commencing at the north-western end of the wall of the dam and proceeding at a height of 778.4 metres above mean sea level, to the south-eastern end of that wall; and
- (c) the waters of Lake Windermere, so far as they cover ground not more than 24.1 metres above mean sea level.

Exemption

6. Nothing in this Ordinance applies in relation to a dwelling-house.

PART II—ADMINISTRATION

Inspectors

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

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

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

Delegation

8. (1) The Authority may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under this Ordinance, other than his powers under sections 27, 32 and 33 and this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Ordinance, 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.

PART III—WATER POLLUTION ADVISORY COMMITTEE

Establishment

9. There is established by this Ordinance a committee by the name of the Water Pollution Advisory Committee.

Functions

10. (1) The functions of the Committee are—

- (a) to make recommendations to the Minister with respect to the control of pollution of the waters of the Territory; and
- (b) at the request of the Minister, to report to the Minister on any matter relating to pollution of water.

- (2) For the purpose of performing its functions, the Committee may—
- (a) carry out studies and investigations in relation to water pollution; and
 - (b) consult with such persons and bodies as it thinks fit.

Powers

11. The Committee has power to do all things necessarily incidental to the performance of its functions.

Membership

12. (1) The Committee shall consist of—

- (a) the Authority;
- (b) one member nominated, as occasion requires, by the House of Assembly; and
- (c) not less than 5, and not more than 11, other members.

(2) A member referred to in paragraph (1) (b) or (c) shall be appointed by the Minister.

(3) Subject to this Ordinance, the member referred to in paragraph (1) (b)—

- (a) shall be a member of the House of Assembly;
- (b) shall hold office from the date of his appointment until the first meeting of the House of Assembly held after the election of members of the House of Assembly next following his appointment; and
- (c) is eligible for re-appointment.

(4) Subject to this Ordinance, a member referred to in paragraph (1) (c)—

- (a) shall hold office for such period, not exceeding 3 years, as is specified in the instrument of his appointment; and
- (b) is eligible for re-appointment.

Chairman

13. The Authority shall be the Chairman of the Committee.

Resignation of member

14. A member (other than the Authority) may resign his office by writing signed by him and delivered to the Minister.

Termination of appointment

15. (1) The Minister may terminate the appointment of a member (other than the Authority) for misbehaviour or physical or mental incapacity.

(2) If a member (other than the Authority)—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Committee; or
- (c) being the member nominated by the House of Assembly, ceases to be a member of the House of Assembly,

the Minister shall terminate the appointment of the member.

Acting members

16. (1) Subject to sub-section (2), the Minister may appoint a person to act as a member referred to in paragraph 12 (1) (b) or (c)—

- (a) during a vacancy in the office of such a member, 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 such a member is unable to attend meetings of the Committee, is absent from the Territory or is, for any other reason, unable to perform the functions of his office,

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

(2) A person shall not be appointed to act as a member referred to in paragraph 12 (1) (b) in pursuance of this section unless he is a member of the House of Assembly who has been nominated by that House.

(3) The Minister may at any time terminate the appointment of a person under this section.

(4) The appointment of a person to act under this section ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

(5) While a person is acting under this section, he has, and may exercise, all the powers, and shall perform all the functions, of a member of the Committee.

Meetings

17. (1) The Committee shall hold such meetings as are necessary for the performance of its functions.

(2) The Chairman may, at any time, by notice in writing to the other members, convene a meeting of the Committee at the time and place specified in the notice.

(3) The Chairman shall preside at all meetings of the Committee at which he is present.

(4) If the Chairman is absent from a meeting of the Committee, the members present shall elect one of their number to preside at the meeting.

(5) At a meeting of the Committee, a quorum is constituted by a majority of the members.

(6) A question arising at a meeting of the Committee shall be determined by a majority of votes of the members present and voting.

(7) On a question arising at a meeting of the Committee, the person presiding at the meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Disclosure of pecuniary interest

18. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Committee.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Committee and the member shall not, unless the Minister or the Committee otherwise determines—

- (a) be present during any deliberation of the Committee with respect to that matter; or
- (b) take part in any decision of the Committee with respect to that matter.

(3) For the purpose of the making of a determination by the Committee under sub-section (2) in relation to a member who has made a disclosure under

sub-section (1), a member who has a direct or indirect interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Committee for the purpose of making the determination; or
- (b) take part in the making by the Committee of the determination.

(4) Where a member fails, without reasonable excuse, to comply with the requirements of this section, the Minister shall terminate the appointment of the member.

PART IV—CONTROL OF POLLUTION OF WATERS

Division 1—Licences to discharge waste

Application

19. (1) An application for a licence shall—

- (a) be in writing signed by the applicant;
- (b) specify the waters into which the applicant proposes to discharge waste;
- (c) specify the premises from which the applicant proposes to discharge waste;
- (d) set out particulars of the nature of the waste in respect of which the licence is sought;
- (e) specify—
 - (i) the total quantity of waste to be discharged in pursuance of the licence;
 - (ii) the frequency at which waste will be so discharged; and
 - (iii) the maximum quantity of waste likely to be so discharged on one day;
- (f) set out such further application (if any) as are prescribed; and
- (g) be lodged, together with the fee determined under section 39 for the purposes of this paragraph, with the Authority.

(2) Where an application has been made under sub-section (1), the Authority may, by notice in writing given to the applicant, require the applicant

to furnish the Authority with such further particulars as are specified in the notice.

(3) Sub-section (2) does not authorize the Authority to require the giving of particulars not relevant to the determination by the Authority with regard to whether a licence should be granted to the applicant or the terms in which a licence should be so granted.

(4) Where the Authority has given notice to a person under sub-section (2), the Authority is not under any obligation to deal further with the application by the person for a licence until the person has complied with the requirements of the notice.

(5) A person who knowingly makes a false or misleading statement in an application under sub-section (1) is guilty of an offence punishable on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$5,000; or
- (b) in the case of a natural person—by a fine not exceeding \$1,000 or by imprisonment for a period not exceeding 6 months.

(6) For the purposes of the application of sub-section (5) in relation to a body corporate, but without prejudice to the liability of any person other than the body corporate—

- (a) a statement made by a person acting on behalf of the body corporate shall be deemed to have been made by the body corporate; and
- (b) the knowledge of any person employed by, or concerned in the management of, the body corporate shall be deemed to be knowledge of the body corporate.

Grant

20. (1) Subject to section 24, where—

- (a) a person has made application in accordance with section 19;
- (b) the person has complied with any requirement made by the Authority under sub-section 19 (2); and
- (c) the discharge into the waters specified in the application of the waste described in the application will not constitute a contravention of any of the requirements of this Ordinance or the regulations,

the Authority shall grant a licence to the applicant.

(2) A licence shall—

- (a) be in writing signed by the Authority;
- (b) specify the nature and quantity of the waste to which the licence relates;
- (c) specify the premises from which, and the waters into which, that waste may be discharged; and
- (d) specify the conditions (if any) to which the licence is subject.

(3) For the purposes of sub-section (2), the quantity of waste to which a licence relates may be expressed as a quantity per day or other interval of time.

Conditional licences

21. (1) The Authority may grant a licence subject to such conditions (if any) as are reasonably necessary to ensure that pollution of waters arising out of the discharge of waste in pursuance of the licence is reduced to the lowest practicable level.

(2) Without limiting the generality of sub-section (1), the conditions subject to which a licence may be granted are conditions relating to—

- (a) the provision, installation, maintenance and operation of treatment works, pumps, machinery, traps, arrestors, separators, screens or filters in or on the premises specified in the licence;
- (b) the repair, alteration or replacement of any such treatment works, pumps, machinery, traps, arrestors, separators, screens or filters;
- (c) the erection, alteration or removal of any pumps, machinery, walls or other structures in or on those premises or the erection, alteration or removal of any dams, embankments, trenches or other works used in connection with those premises for the storage, treatment or disposal of waste;
- (d) the installation, maintenance and operation of apparatus or equipment for the measuring, sampling or analyzing of waste;
- (e) the recording of measurements or other information obtained by the use of equipment referred to in paragraph (d) and the furnishing of such measurements or information to the Authority; and
- (f) the marking of places where waste is discharged into waters.

(3) The Authority may grant a licence subject to the requirement that all or some of the conditions referred to in this section be complied with by the licence holder within a period of time specified in the licence.

Authority conferred by licence

22. (1) Subject to sub-section (2), a licence authorizes the holder of the licence to discharge into the waters specified in the licence waste of the nature, and in a quantity not exceeding the quantity, specified in the licence.

(2) A licence that is granted subject to conditions authorizes the holder of the licence, if he complies with those conditions, to discharge into the waters specified in the licence waste of the nature, and in a quantity not exceeding the quantity, specified in the licence.

Duration

23. Subject to this Ordinance, a licence shall be in force for such period, not exceeding 12 months, as is specified in the licence.

Convicted person—refusal or cancellation of licence

24. Where a person has been convicted of an offence under this Ordinance, the Authority may—

- (a) refuse to grant a licence to that person; or
- (b) cancel a licence granted to that person.

Transfer

25. (1) Where the holder of a licence ceases to occupy or use the premises specified in the licence, the Authority may amend the licence by deleting the name of that holder and substituting the name of another person as the holder of the licence.

(2) A licence shall not be amended in pursuance of sub-section (1) unless—

- (a) application for the amendment, in writing, signed by the holder of the licence and the person to be specified in the licence as the holder of the amended licence has been lodged with the Authority;
- (b) the application has been lodged at least 7 days before the person to be specified in the licence as the holder of the licence will commence to occupy or use, as the case may be, the premises to which the licence relates; and

- (c) the fee determined under section 39 for the purposes of this paragraph has been paid.

(3) An amendment under sub-section (1) takes effect on the day specified in the application for the amendment as the day on which the person to be specified in the licence as the holder of the licence will commence to occupy or use, as the case may be, the premises to which the licence relates.

(4) Where a licence has been amended under this section, this Ordinance applies, in respect of anything done on or after the day on which the amendment takes effect, as if the licence had been granted to the person specified in the amended licence as the holder of the licence.

Requirements for licensees—records and information

26. (1) The Authority may, by notice in writing given to the holder of a licence, require the holder of the licence—

- (a) to keep such records in relation to the discharge of waste from the premises to which the licence relates as are specified in the notice; and
- (b) to furnish the Authority, either at a particular time or from time to time, with such information in relation to the discharge of waste as is specified in the notice.

(2) A person shall comply with a requirement made of him under sub-section (1).

Penalty: \$1,000.

Alteration of works

27. (1) A person who is the holder of a licence shall not, without the approval in writing of the Authority, install, construct or modify any equipment or works in or on the premises to which the licence relates, being equipment or works—

- (a) for the discharge of waste from those premises into waters; or
- (b) for the treatment or storage of waste prior to the discharge of the waste from the premises into waters.

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

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

(3) An application for approval under sub-section (1) shall—

- (a) be in writing signed by the applicant; and
- (b) be lodged with the Authority together with—
 - (i) in the case of an application relating to the installation or construction of equipment or works—a copy of the plans or drawings of the equipment or works and the specifications for the installation or construction of the equipment or works; and
 - (ii) in the case of an application relating to the modification of equipment or works—particulars of any changes in the constituents of waste discharged from the equipment or works that will result from the modification.

(4) Where an application has been made under sub-section (3), the Authority may, by notice in writing given to the applicant, require the applicant to furnish the Authority with such information, plans or drawings as are specified in the notice.

(5) Sub-section (4) does not authorize the Authority to require a person to furnish the Authority with information, plans or drawings not relevant to an application made by the person under sub-section (3).

(6) Where—

- (a) an application has been made in accordance with sub-section (3);
- (b) the fee determined under section 39 for the purposes of this paragraph has been paid;
- (c) the applicant has complied with any requirements made of him under sub-section (4); and
- (d) the installation, construction or modification, approval of which is sought by the applicant, would not be likely to result in the discharge of waste from the premises in contravention of the requirements of this Ordinance or the regulations,

the Authority shall grant the approval sought by the application.

Emergency powers

28. (1) Where, by reason of an emergency, it is in the interest of the public that he do so, the Minister may, by notice in writing given to a person—

- (a) authorize the person to discharge into specified waters waste of the nature, and in the quantity, specified in the notice; or
- (b) suspend, for a period specified in the notice, the operation of a licence held by the person.

(2) An authority or suspension under sub-section (1) shall, unless sooner revoked, remain in force for 28 days or such period as specified in the relevant notice and may be made subject to such conditions as the Minister thinks proper and specifies in the notice.

(3) The Minister may, at any time, by notice in writing, vary or revoke an authority or suspension under this section given to the relevant person.

(4) An authority issued under paragraph (1) (a) may be expressed to take effect from a time earlier than the date of the relevant notice.

(5) The Minister shall, in considering the suspension of a licence under this section, have regard to—

- (a) the nature and quantity of the waste that may be discharged in pursuance of the licence;
- (b) the rate of flow of the waters receiving the waste;
- (c) the concentration of restricted substances in the waters receiving the waste;
- (d) the health and welfare of the public; and
- (e) the effect of the suspension of the licence on—
 - (i) the licensee; and
 - (ii) the users of the waters downstream from the licensee's discharge point.

(6) Notwithstanding any other provision of this Ordinance, a person does not commit an offence against this Ordinance by discharging waste into waters if—

- (a) the discharge of the waste is carried out in pursuance of an authority under sub-section (1); and
- (b) the person complies with any conditions to which that authority is subject.

(7) The suspension under sub-section (1) of the operation of a licence takes effect when notice in writing of the suspension is given to the holder of the licence.

(8) Notice of the suspension of the operation of a licence under sub-section (1) shall be given to a person—

- (a) in the case of a body corporate—by leaving the notice at an office or place of business of the body corporate with a person apparently employed by the body corporate and apparently not less than 16 years of age or by delivering the notice to a director, manager or secretary of the body corporate; and
- (b) in any other case—by delivering the notice to the person or by leaving the notice at the last known place of residence or business of the person with a person apparently resident or employed at that place and apparently not less than 16 years of age.

(9) Notice of the granting of an authority under sub-section (1) shall be published in the *Gazette*.

Civil liability for waste

29. A person who discharges waste into any waters is not, by reason that the discharge of the waste is authorized by a licence or by an authority under sub-section 28 (1), relieved of any liability to which he would be subject otherwise than under this Ordinance in respect of the discharge of the waste.

Authority to publish details

30. The Authority shall cause notice of details of the granting of, or the refusal to grant, a licence under this Ordinance to be published in a daily newspaper published in the Territory.

Division 2—Powers of entry and search

Interpretation

31. (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, &c.—non-residential premises

32. (1) The Authority or an inspector may, at any reasonable hour of the day or night, with such assistance as he thinks necessary, enter upon or into any premises (other than residential premises) specified in a licence.

(2) Where there are reasonable grounds for believing—

- (a) that waste is being discharged from premises (other than residential premises) into waters of the Territory; and
- (b) that the discharge of the waste is not authorized by a licence,

the Authority or an inspector may, with such assistance as he thinks necessary, enter the premises.

(3) Where the Authority or an inspector enters upon or into any premises in pursuance of sub-section (1) or (2), he is not authorized to remain on the premises if, on request by, or on behalf of, the occupier, or the person apparently in charge, of the premises, he does not produce the certificate issued to him under sub-section 7 (4) of the *Air Pollution Ordinance 1984* or a certificate issued to him for the purposes of sub-section 7 (3), as the case requires.

(4) Where the Authority or an inspector enters premises in accordance with sub-section (1) or (2), he may—

- (a) inspect the premises and any apparatus, equipment or substance on the premises;
- (b) take samples of any substance on the premises that appears to the Authority or the inspector to be waste;
- (c) take samples of any substance that appears to the Authority or the inspector—
 - (i) to be in the course of discharge from the premises into waters;
 - (ii) to be likely to be discharged from the premises into waters; or
 - (iii) to have been discharged from the premises into waters;

- (d) conduct such tests and take such measurements as are necessary for the purpose of ascertaining whether the provisions of this Ordinance and the regulations are being, or have been, complied with;
- (e) take such photographs as he considers necessary for the purposes of this Ordinance or the regulations; and
- (f) require a person apparently in charge of the premises to supply his name and address.

(5) Where the Authority or an inspector takes a sample of a substance in pursuance of sub-section (4), he shall—

- (a) divide the sample into two parts;
- (b) place each of those parts in a container and seal the container;
- (c) attach to each such container a label bearing the signature of the Authority or the inspector and particulars of the date and time when, and the place at which, the sample was taken; and
- (d) deliver one such container to the person who appears to the Authority or the inspector to be, for the time being, in charge of the premises and the other container to an analyst appointed by the Minister for the purposes of this Ordinance.

Powers of entry, &c.—premises generally

33. Subject to section 32, the Authority or an inspector may enter upon or into any premises and may search for, and exercise his powers under sub-section 32 (4) in relation to, any thing that he believes on reasonable grounds to be connected with an offence against this Ordinance that is found on or in the premises if, and only if, the search is made and those powers are exercised—

- (a) in pursuance of a warrant issued under section 34;
- (b) in circumstances of seriousness and urgency, in accordance with section 35; or
- (c) after obtaining the consent of the occupier, or the person apparently in charge, of the premises.

Search warrants

34. (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 Ordinance, and the information sets out those

grounds, the Magistrate may issue a search warrant authorizing the Authority or the inspector named in the warrant, with such assistance as he thinks necessary and if necessary by force—

- (a) to enter upon or into the premises;
- (b) to search the premises; and
- (c) to exercise any of his powers under sub-section 32 (4) in regard to such a thing.

(2) A Magistrate shall not issue a warrant under sub-section (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 the entry, search and exercise of powers under sub-section 32 (4) 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 sub-section 32 (4) 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 Ordinance, being things of a kind specified in the warrant, the Authority or an inspector finds any thing that he 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 Ordinance, and he believes on reasonable grounds that it is necessary to exercise all or any of his powers under sub-section 32 (4) 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 him to exercise those powers in relation to that thing.

Entry in emergencies

35. (1) The Authority or an inspector may enter upon or into any premises on or in which he believes on reasonable grounds that any thing connected with an offence against this Ordinance is situated and may search for and exercise all or any of his powers under sub-section 32 (4) in relation to such a thing if—

- (a) the Authority or the inspector believes on reasonable grounds that it is necessary to do so for the purposes of this Ordinance; 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 34.

(2) Where the Authority or an inspector enters upon or into premises in pursuance of sub-section (1), he is not authorized to remain on or in the premises if, on request by, or on behalf of, the occupier, or the person apparently in charge of the premises, he does not produce the certificate issued to him under sub-section 7 (4) of the *Air Pollution Ordinance 1984* or a certificate issued to him for the purposes of sub-section 7 (3), as the case requires.

Consent to entry

36. (1) Before obtaining the consent of a person for the purposes of section 33, the Authority or an inspector shall inform the person that he may refuse to give his consent.

(2) Where the Authority or an inspector obtains the consent of a person for the purposes of section 33, he shall ask the person to sign a written acknowledgment—

- (a) of the fact that he has been informed that he may refuse to give his consent;
- (b) of the fact that he has voluntarily given his consent; and
- (c) of the date on which, and the time at which, he gave his 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 33 and an

acknowledgment, in accordance with sub-section (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

37. A person who, without reasonable excuse—

- (a) obstructs or hinders the Authority or an inspector in the exercise of his powers under this Ordinance; or
- (b) fails to comply with a reasonable requirement of the Authority or an inspector who has entered upon or into any premises in pursuance of this Ordinance,

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

Division 3—Offences

Discharge of waste

38. (1) A person who discharges waste into Class S waters 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.

(2) A person who—

- (a) in discharging waste into any waters other than Class S waters, contravenes or fails to comply with a condition specified in a licence granted to him; or
- (b) discharges waste into any waters other than Class S waters if a licence, authorizing him to do so, has not been granted to him,

is guilty of an indictable offence punishable, on conviction, by a fine not exceeding—

- (c) in relation to a discharge into Class P waters—
 - (i) in the case of a body corporate—\$40,000; or
 - (ii) in the case of a natural person—\$8,000;
- (d) in relation to a discharge into Class C waters—
 - (i) in the case of a body corporate—\$30,000; or

- (ii) in the case of a natural person—\$6,000;
- (e) in relation to a discharge into Class R waters—
 - (i) in the case of a body corporate—\$20,000; or
 - (ii) in the case of a natural person—\$4,000;
- (f) in relation to a discharge into Class O waters—
 - (i) in the case of a body corporate—\$20,000; or
 - (ii) in the case of a natural person—\$4,000; and
- (g) in relation to a discharge into Class U waters—
 - (i) in the case of a body corporate—\$40,000; or
 - (ii) in the case of a natural person—\$8,000.

(3) Notwithstanding that an offence referred to in sub-section (1) or (2) is expressed to be indictable, the Court of Petty Sessions 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.

(4) Where, in accordance with sub-section (3), the Court of Petty Sessions hears and determines proceedings for an offence, then, notwithstanding sub-section (1), that Court shall not impose a fine exceeding—

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

(5) Where, in accordance with sub-section (3), the Court of Petty Sessions hears and determines proceedings for an offence, then, notwithstanding sub-section (2), that Court shall not impose a fine exceeding—

- (a) in relation to a discharge into Class P waters—
 - (i) in the case of a body corporate—\$20,000; or
 - (ii) in the case of a natural person—\$4,000;
- (b) in relation to a discharge into Class C waters—
 - (i) in the case of a body corporate—\$15,000; or
 - (ii) in the case of a natural person—\$3,000;

- (c) in relation to a discharge into Class R waters—
 - (i) in the case of a body corporate—\$10,000; or
 - (ii) in the case of a natural person—\$2,000;
- (d) in relation to a discharge into Class O waters—
 - (i) in the case of a body corporate—\$10,000; or
 - (ii) in the case of a natural person—\$2,000; and
- (e) in relation to a discharge into Class U waters—
 - (i) in the case of a body corporate—\$20,000; or
 - (ii) in the case of a natural person—\$4,000.

(6) For the purposes of this section, 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.

(7) Sub-section (6) 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.

(8) A reference in this section to Class P, Class C, Class R, Class O or Class U, waters shall be read as a reference to those waters that are declared by the regulations to be Class P, Class C, Class R, Class O or Class U, waters, as the case may be, for the purposes of this Ordinance and the regulations.

PART V—MISCELLANEOUS

Power of Minister to determine fees

39. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Ordinance.

Review of decisions

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

- (a) granting a licence;
- (b) refusing to grant a licence;

- (c) granting a licence subject to conditions;
- (d) including a particular condition in a licence;
- (e) cancelling a licence;
- (f) refusing to amend a licence; or
- (g) refusing to grant an approval under this Ordinance.

(2) Application may be made to the Tribunal for a review of a decision of the Minister—

- (a) authorizing a discharge of waste into waters;
- (b) suspending the operation of a licence; or
- (c) varying or revoking an authority or suspension.

Notification of decisions

41. (1) Where the Authority or Minister makes a decision referred to in section 40 the Authority or Minister, as the case requires, shall cause a statement in writing to be given to the person whose interests are adversely affected by the decision, setting out the decision, the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving reasons for the decision.

(2) A statement by the Authority or the Minister under sub-section (1) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, a person whose interests are adversely affected by the decision to which the statement relates is entitled to apply to the Tribunal for a review of the decision.

(3) The validity of a decision to which a statement under sub-section (1) relates shall not be taken to be affected by a failure to comply with this section.

Appointment of analysts

42. The Minister may, by instrument in writing, appoint persons to be analysts for the purposes of this Ordinance.

Analyst's power of entry

43. (1) An analyst may accompany the Authority or an inspector who has entered premises in pursuance of section 32, 33, 34, 35 or 36 in order to conduct such tests as are necessary for the purpose of determining whether the provisions of this Ordinance and the regulations are being complied with.

(2) An analyst who enters premises in pursuance of sub-section (1) is not authorized to remain on the premises if, on request by the occupier, or person apparently in charge, of the premises, he does not produce the instrument in writing referred to in section 42.

(3) A person who, without reasonable excuse obstructs or hinders an analyst in the exercise of his powers under sub-section (1) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.

Evidentiary certificates

44. In any proceedings, a certificate purporting to be signed by a person appointed by the Minister under section 42 to be an analyst for the purposes of this Ordinance and stating—

- (a) that he has analysed, or caused to be analysed, a sample from a sealed container to which was affixed a label purporting to be signed by the Authority or an inspector named in the certificate and bearing particulars of the date and time when, and the place at which, the sample was taken by the Authority or the inspector, as the case may be;
- (b) the analysis to which the sample was subjected; and
- (c) the result of the analysis,

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

Giving of notices

45. (1) A document that is required by this Ordinance 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 sub-section 28 (8), a document that is required by this Ordinance 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 sub-section 28 (8), a document that is required by this Ordinance 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 personally;
- (b) by leaving the document at his 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 him at his last known place of residence or business.

Annual report

46. 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 Ordinance during the period of 12 months ending on that day.

Regulations

47. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters required or permitted by this Ordinance to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and, in particular, may make regulations—

- (a) in relation to the discharge of waste into the waters of the Territory;
- (b) in relation to analyses of samples of water or waste for the purposes of this Ordinance; and
- (c) prescribing penalties not exceeding \$500 for offences against the regulations.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 2 November 1984.