



AUSTRALIAN CAPITAL TERRITORY

Water Pollution (Amendment) Act 1991

No. 95 of 1991

An Act to amend the *Water Pollution Act 1984*

[Notified in ACT Gazette S 155: 24 December 1991]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Water Pollution (Amendment) Act 1991*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Water Pollution Act 1984*.¹

Interpretation

4. Section 5 of the Principal Act is amended by inserting in subsection (1) the following definitions:

- “ ‘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;
- ‘pollution abatement notice’ means a notice given under subsection 30A (1);”.

Delegation

5. Section 8 of the Principal Act is amended by inserting in subsection (1) “30A, 30C,” after “27”.

Insertion

6. After section 30 of the Principal Act the following Division is inserted in Part IV:

“Division 1A—Pollution Abatement

Pollution abatement notice

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

(a) that waste—

- (i) has been discharged;
- (ii) is being discharged; or
- (iii) is likely to be discharged;

from premises into waters of the Territory in contravention of this Act or the regulations; and

(b) that it is necessary to control the discharge of that waste 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 or 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 licence issued to the occupier under this Act;
- (b) the nature of any activity or process engaged in on the premises;
- (c) the nature of the relevant discharge;
- (d) the location of the relevant discharge; and
- (e) the nature, cost, and complexity of any action required to be taken by the occupier to control the relevant discharge.

“(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 45 (2) or (3), as the case requires, other than by sending the document 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 an 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 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

“30B. A pollution abatement notice shall, in addition to the matters required to be specified in accordance with subsection 30A (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 issued; 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

“30C. (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 licence issued to the occupier under this Act;
- (b) the nature of any activity or process engaged in on the relevant premises;
- (c) the nature of the relevant discharge;
- (d) the location of the relevant discharge; 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

“30D. 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.”.

Review of decisions

7. Section 40 of the Principal Act is amended by adding at the end the following subsection:

“(3) 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; or
- (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 a pollution abatement notice.”.

Notification of decisions

8. Section 41 of the Principal Act is amended—

- (a) by inserting in subsection (1) “, other than a decision of the Authority referred to in subsection 40 (3),” after “section 40”;
- (b) by omitting subsection (2) and substituting the following subsection:

“(2) A statement referred to in subsection (1), a pollution abatement notice and a notice under subsection 30C (4) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, a person whose interests are adversely affected by the decision to which the statement or notice relates is entitled to apply to the Tribunal for a review of the decision; and

- (b) in the case of a pollution abatement notice and a notice under subsection 30C (4), 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.”; and
- (c) by omitting subsection (3) and substituting the following subsection:

“(3) The validity of a decision referred to in section 40 shall not be taken to be affected by a failure to comply with this section.”.

Giving of notices

9. Section 45 of the Principal Act is amended by omitting from subsections (2) and (3) “subsection 28 (8)” and substituting “subsections 28 (8) and 30A (3),”.

NOTE

1. Ordinance No. 65, 1984 as amended by No. 67, 1985; No. 8, 1988; Nos. 21 and 38, 1989; Act No. 3, 1989.

[Presentation speech made in Assembly on 21 November 1991]

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