

1989

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

WATER POLLUTION (AMENDMENT) BILL 1989

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for Housing and Urban Services

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Water Pollution (Amendment) Bill 1989

The Water Pollution Act 1984 (the Act) relates to the control of pollution of the waters of the Australian Capital Territory.

The Water Pollution (Amendment) Bill 1989 (the Bill) will amend the Act by bringing together existing provisions relating to the appointment and powers of analysts into a new Division 2A of Part IV.

An analyst appointed under the Bill will be empowered to accompany the person appointed as the Pollution Control Authority (the Authority) under the Air Pollution Act 1984, or an inspector appointed under the Act, for the purpose of entering premises to conduct tests.

The Authority will be obliged to issue a Water Pollution Manual (the Manual) specifying the methods to be used by analysts in analysing samples of water or waste. New section 37D will provide that the Manual and each amendment will be disallowable instruments for the purposes of section 10 of the Subordinate Laws Act 1989. A disallowable instrument must be notified in the Australian Capital Territory Gazette and laid before the Legislative Assembly within 15 sitting days after the date of such notification.

At present the sampling and analysis of water and waste is required to be undertaken in accordance with the Act and the Water Pollution Regulations. The introduction of a Manual will facilitate changes to formal requirements as sampling and analysis methods change over time.

The Bill will also provide for the use of evidentiary certificates in legal proceedings under the Act in relation to the text of the Manual and the analysis of a sample of water or waste. Such evidence relating to the analysis of a sample will be inadmissible in legal proceedings unless the sample was obtained and treated substantially in accordance with the Manual.

The Bill will have no effect on either income or expenditure.

Details of each provision of the Bill are set out in the Attachment.

ATTACHMENT

Water Pollution (Amendment) Bill 1989

Clause 1 will cite the Bill, when enacted, as the Water Pollution (Amendment) Act 1989.

Clause 2 will provide that the Bill will come into operation on a date fixed by the Minister by notice published in the Gazette.

Clause 3 will provide that a reference to the Act means the Water Pollution Act 1984.

Clause 4 will amend subsection 5(1) of the Act by amending the definition of 'waste' and inserting definitions of 'analyst', 'dissolved solids', 'Manual' and 'suspended solids'.

Clause 5 will insert a new Division 2A in Part IV of the Act. New Division 2A will consist of new sections 37A to 37H and will provide for the appointment of analysts, detail the powers of entry of an analyst and provide for a Manual relating to the analysis of samples of water and waste.

New section 37A will empower the Minister to appoint analysts by written instrument.

New section 37B will provide for the entry of an analyst to premises to conduct tests on samples of waste and water.

New subsection 37B(1) will empower an analyst to accompany the person appointed as the Pollution Control Authority (the Authority) under subsection 7(1) of the Air Pollution Act 1984 or an inspector appointed under subsection 7(1) of the Act on to premises for the purposes of conducting tests to determine whether a person is complying with the Act and the Water Pollution Regulations.

New subsection 37B(2) will make it an offence, subject to a penalty of \$1,000 or imprisonment for 6 months, or both, for a person, without reasonable excuse, to obstruct or hinder an inspector in exercising the powers conferred by new subsection 37B(1).

New subsection 37B(3) will provide that an analyst is not entitled to remain on premises if the analyst does not produce a copy of his or her instrument of appointment under new section 37A upon request by the occupier or person apparently in charge of the premises.

New section 37C will provide that the Authority is to produce a Manual that specifies the methods that may be used by an analyst

when testing samples of waste or water to establish pollution levels. The Manual and any amendment will be a subordinate law of the Territory.

New subsection 37C(1) will require the Authority to prepare a Manual.

New subsection 37C(2) will require that the Manual specify the methods to be used by analysts in analysing samples of water or waste.

New subsection 37C(3) will empower the Authority to amend the Manual by instrument.

New subsection 37C(4) will require the Authority to give the Minister a copy of the Manual or an amendment of the Manual within 7 days of completion of the Manual or amendment.

New section 37D will provide that the Manual and each amendment are disallowable instruments for the purposes of section 10 of the Subordinate Laws Act 1989.

New section 37E will provide that, unless the contrary intention appears, an expression used in the Manual has the same meaning as if the Manual were regulations made under section 47 of the Act.

New section 37F will relate to the availability of the Manual.

New subsection 37F(1) will require the Authority to keep a copy of the Manual at the Authority's office at all times.

New subsection 37F(2) will permit any person to inspect the Manual at any time when the Authority's office is open for business.

New section 37G will be an evidentiary provision in relation to the Manual.

New subsection 37G(1) will provide that evidence of the text of the Manual, as in force as at a specified date or during a specified period, may be given by producing a copy of the Manual certified by the Authority to be a true copy of the Manual as at the relevant time.

New subsection 37G(2) will provide that, for the purposes of subsection 37G(1), a certificate purporting to have been signed by the Authority shall be taken to have been signed by the Authority unless the contrary is proved.

New section 37H will be an evidentiary provision relating to the analysis of samples.

New subsection 37H(1) will provide that a certificate purporting to be signed by an analyst and stating that:

- (a) she or he has, or has had, analysed a sample from a sealed container, to which was affixed a label purporting to be signed by the Authority or by an inspector and bearing particulars of when and where the sample was taken by the Authority or the inspector;
- (b) the analysis to which the sample was subjected; and
- (c) the result of the analysis

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

New subsection 37H(2) will provide that evidence of the result of an analysis of a sample of water or waste is inadmissible in proceedings for an offence against the Act or the Water Pollution Regulations for the purpose of establishing the presence of a substance in the sample unless the sample was taken, preserved and analysed in accordance with the Manual.

New subsection 37H(3) will provide that evidence of the result of an analysis of a sample of water or waste is not rendered inadmissible by reason only that the analysis was not carried out in accordance with the Manual if the departure from its requirements was not such as could significantly affect the result of the analysis.

Clause 6 will repeal sections 42, 43 and 44 of the Act. These provisions, which relate respectively to the appointment of analysts, powers of entry of analysts and evidentiary certificates, will be superseded by the provisions of the Bill as outlined above.

Clause 7 will be a transitional provision relating to evidentiary certificates. It will ensure that, notwithstanding the repeal of section 44 of the Act, that provision will continue to apply in relation to proceedings instituted, but not completed, before the commencement of the Bill. Similarly, new section 37H will apply only in relation to proceedings instituted after the Bill has commenced.