

1991

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

AIR POLLUTION (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

**Circulated by Authority of the Minister for the
Environment, Land and Planning**

Bill Wood MLA

AIR POLLUTION (AMENDMENT) BILL 1991

The Air Pollution Act 1984 ("the Principal Act") provides for the control of air pollution in the Australian Capital Territory.

The Principal Act does not contain provisions which allow the Pollution Control Authority ("the Authority") to require preventative and remedial measures to be taken against the emission of pollutants. The present provisions only allow action to be taken after a discharge has occurred and the situation to be remedied after considerable delay.

Inspectors encounter many incidents of minor or potential discharges which may be readily resolved or avoided through preventative action. In the instance of a minor discharge, it would not be desirable to prosecute each case. It is more pertinent for the inspector to issue a notice requiring certain measures to be taken within a specified time period.

The Bill proposes to enable the Authority or an inspector to issue pollution abatement notices where an emission of polluting substances is occurring or where there is reason to believe that an emission may be prevented. Issuing an abatement notice is an additional option to prosecution where an offence of prohibited emission has occurred.

The Bill does not have any financial implications.

Details of the Bill are included in the Attachment.

ATTACHMENT

AIR POLLUTION (AMENDMENT) BILL 1991

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- Clause 1 provides that, upon enactment, the short title of the Bill is to be the Air Pollution (Amendment) Act 1991 ("the Act").
- Clause 2 provides for the commencement of the provisions of the Act.
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- Sub-clause (1) states that clauses 1 and 2 of the Act will commence operation in the day on which the Act is notified in the Gazette.
- Sub-clause (2) provides that the remaining provisions of the Act are to commence on a day notified by the Minister in the Gazette.
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- Sub-clause (3) provides that if after 6 months from the gazettal of the Act the provisions referred to in sub-clause (2) have not commenced then they are deemed to commence upon the expiration of that period.
- Clause 3 states that references to "Principal Act" in the Act are to be read as references to the Air Pollution Act 1984.
- Clause 4 amends subsection 4(1) of the Principal Act, which deals with interpretation of terms, by inserting and defining new terms used in the proposed provisions in the Act.
- Clause 5 amends subsection 10(1) of the Principal Act which relates to the delegation by the Authority of some of its powers. It is amended to provide that the Authority will not be allowed to delegate his or her powers under proposed sections 30 and 32.
- Clause 6 deletes sections 30, 31 and 32 of the Principal Act. These sections provide for the Pollution Control Authority to initiate a protracted process of preventive measures only after an emission has occurred. The following new provisions are substituted into the Principal Act to allow abatement notices to be issued:

Proposed section 30:

Subsection 30(1) provides that a pollution abatement notice shall be given to the occupier of the premises where there are reasonable grounds for believing that waste is being, has been, or is likely to be, discharged and that the discharge has to be controlled to ensure compliance with the Principal Act and the regulations.

Subsection 30(2) states that the Authority or inspector must take into consideration all the circumstances of the matter when deciding whether to issue an abatement notice including those listed in paragraphs (a) - (e) being :

- . the terms of a licence issued to the occupier under the Principal Act;
- . the nature of the activity or process engaged on the premises;
- . the nature of the discharge;
- . the location of the discharge; and
- . the nature, cost and complexity of any action to be taken by the occupier to control the discharge.

Subsection 30(3) provides that where the compliance period specified in a notice is less than 14 days then the notice may be given to the occupier using any of the methods specified in subsection 46(2) or (3) of the Principal Act except by post. This is to ensure that where a short period for compliance is specified the occupier is given the earliest notification to comply with the notice within the period.

Subsection 30(4) lists the measures to be taken by the occupier which may be set out in a notice, that is, :

- . to cease or not commence any specified process or activity;
- . to continue, modify or control any specified process or activity in a certain manner;
- . to produce to the Authority or inspector plans, specifications or other information showing how a process or activity will be carried on, modified or controlled;
- . to take certain remedial action; and
- . to provide monitoring equipment and carry out a monitoring program.

Proposed section 31 specifies further particulars that may be set out in a notice such as the :

- . address and description of the premises concerned;
- . date on which the notice is issued; and
- . period for compliance with the notice.

Proposed section 32: