

AUSTRALIAN CAPITAL TERRITORY

AIR POLLUTION ORDINANCE 1984  
ORDINANCE NO. 59 OF 1984

EXPLANATORY STATEMENT

The Air Pollution Ordinance 1984 is designed to control the pollution of the atmosphere of the Australian Capital Territory and Jervis Bay Territory by industrial gases and smoke from open-air burning. The legislation binds the Crown and will be enforced by the Pollution Control Authority established by the Ordinance and by air pollution inspectors who have power to enter premises and conduct tests for pollution. An Air Pollution Advisory Committee has been established to conduct research into air pollution and to make recommendations to the Minister.

Sections 1-6 of the Ordinance deal with preliminary formal matters and interpretation.

Section 7 establishes the Pollution Control Authority, who is to be a person appointed by the Minister for a period not exceeding seven years.

By section 8, the Authority may resign his office by notice in writing delivered to the Minister.

Section 9 enables the Minister to terminate the Authority's appointment on the grounds of misbehaviour, physical or mental incapacity or bankruptcy.

Section 10 enables the Authority to delegate his powers under the Ordinance.

Section 11 allows the Minister to appoint a person to act as the Authority for up to twelve months when the occasion arises.

Section 12 empowers the Minister to appoint inspectors, who are to be given certificates of appointment.

Section 13 establishes the Air Pollution Advisory Committee.

Section 14 permits the Committee to make recommendations to the Minister with respect to air pollution, to report to him on related matters at his request, to engage in research and consultation for these purposes and to promote public awareness of air pollution issues.

Section 15 gives the Committee power to do all things necessarily incidental to the performance of its functions.

Section 16 provides for the Committee to consist of the Authority, a member of the House of Assembly nominated by the House, and between four and nine other members appointed by the Minister. All are eligible for re-appointment.

Section 17 provides for the Authority to be Chairman of the Committee.

Section 18 allows members of the Committee (other than the Authority) to resign by giving notice in writing to the Minister.

Section 19 allows the Minister to terminate a Committee member's appointment by reason of misbehaviour, incapacity, bankruptcy, absence from three consecutive meetings of the Committee or ceasing to be a member of the House of Assembly (in the case of the member nominated by the House).

Section 20 permits the Minister to appoint acting members of the Committee for up to twelve months during vacancies or when regular members are unable to perform their functions.

Section 21 sets out formal requirements for meetings of the Committee.

Section 22 requires Committee members to disclose pecuniary interests in matters under consideration by the Committee, and to refrain from participating in deliberations on such matters, unless authorised to do so by the Minister or the Committee.

Section 23 prohibits an occupier of premises from causing the emission of pollutants through a chimney on premises in excess of the prescribed rate and from using fuels with excessive amounts of prescribed constituents, except in prescribed fuel-burning equipment.

Section 24 prohibits the emission of pollutants other than through chimneys (i.e. fugitive emissions) except insofar as such emission is unavoidable.

Section 25 provides that the indictable offences created by sections 23 and 24 may be disposed of summarily by consent.

Section 26 provides that, in respect of sections 23 and 24, conduct engaged in on behalf of a body corporate by its employee or agent is to be deemed to have been engaged in also by the body corporate.

Section 27 prohibits burning in the open air apart from normal household burning and fires used for cooking.

Section 28 empowers the Minister to prohibit absolutely burning in the open air on days of adverse meteorological conditions.

Section 29 preserves the powers of the Chief Fire Control Officer, in relation to fire control, given by the Careless Use of Fire Ordinance 1936.

Section 30 allows the Authority to require occupiers of premises to submit particulars of measures to be taken to reduce air pollution caused by activities on the premises, and to approve such measures if he considers them to be adequate.

Section 31 enables the Authority to direct occupiers to carry out appropriate measures to reduce air pollution in cases where particulars are not submitted or are found to be inadequate.

Section 32 compels occupiers to comply with directions given under section 31.

By section 33, the Authority may require occupiers of polluting premises to keep records of the emission of pollutants and to furnish relevant information.

Section 34 enables the Authority to require the provision of access holes in fuel-burning equipment.

Section 35 requires occupiers to maintain and operate control equipment properly and efficiently.

Section 36 is an interpretation provision.

Section 37 enables the Authority and inspectors to enter non-residential premises to check compliance with the Ordinance. They may then conduct inspections, measurements and tests, take samples, photographs and copies of documents, and require the name and address of a person apparently in charge of the premises.

Section 38 gives a general power of entry onto premises exercisable by the Authority and inspectors pursuant to a warrant, a situation of emergency, or the consent of the occupier.

Section 39 sets out the conditions for the issue of a search warrant referred to in section 38, viz. that there are reasonable grounds for suspecting the existence on the premises of something connected with an offence against the Ordinance. The warrant must contain a statement of its purposes and limitations, and may be valid for up to one month from its issue.

Section 40 sets out further details of the emergency entry power given by section 38.

Section 41 requires consent to entry under section 38 to be evidenced by a statement signed by the consenting person.

Section 42 prohibits a person from obstructing, delaying or threatening the Authority or an inspector in the exercise of his powers under the Ordinance.

Section 43 allows for evidentiary certificates which will facilitate proof of technical matters arising in relation to prosecutions under the Ordinance.

Section 44 gives a right of appeal to the Administrative Appeals Tribunal against decisions of the Authority in relation to pollution control measures approved or required to be undertaken.

Section 45 requires the Authority to notify in writing persons adversely affected by his decision of the decision, the facts on which it was based and the reasons for the decision. The person must also be informed of the appeal rights given by section 44.

Section 46 sets out the formal requirements for delivery of documents which are required by the Ordinance.

Section 47 requires the Authority to provide an annual report.

Section 48 reveals the Smoke Nuisance Abatement Act 1902 of New South Wales in its application to the A.C.T.

Section 49 contains the regulation-making power. Penalties not exceeding \$500 may be included in the Regulations.

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