

# AUSTRALIAN CAPITAL TERRITORY

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## Air Pollution Ordinance 1984

No. 59 of 1984

### TABLE OF PROVISIONS

#### PART I—PRELIMINARY

##### Section

1. Short title
2. Commencement
3. Ordinance binds Crown
4. Interpretation
5. Effect with other laws
6. Exemption

#### PART II—ADMINISTRATION

##### *Division 1—Pollution Control Authority*

7. Establishment
8. Resignation
9. Termination of appointment
10. Delegation
11. Acting Authority

##### *Division 2—Inspectors*

12. Inspectors

##### *Division 3—Air Pollution Advisory Committee*

13. Establishment
14. Functions

## Section

- 15. Powers
- 16. Membership
- 17. Chairman
- 18. Resignation of member
- 19. Termination of appointment
- 20. Acting member
- 21. Meetings
- 22. Disclosure of pecuniary interest

## PART III—CONTROL OF AIR POLLUTION

*Division 1—Control of Air Pollution*

- 23. Emission of pollutants in excess of prescribed concentrations
- 24. Fugitive emissions
- 25. Summary proceedings for indictable offences
- 26. Conduct of employee or agent of body corporate
- 27. Fires in open air
- 28. Fires in unfavourable meteorological conditions
- 29. Powers of Chief Fire Control Officer
- 30. Approval of preventive measures
- 31. Direction to carry out preventive measures
- 32. Carrying out preventive measures
- 33. Requirement to keep records
- 34. Provision of access holes
- 35. Operation and maintenance of control equipment

*Division 2—Powers of entry and search*

- 36. Interpretation
- 37. Powers of entry, &c.—non-residential premises
- 38. Powers of entry, &c.—premises generally
- 39. Search warrants
- 40. Entry in emergencies
- 41. Consent to entry
- 42. Obstruction of Authority or inspector

## PART IV—MISCELLANEOUS

- 43. Evidentiary certificates

## Section

- 44. Review of decisions
- 45. Notification of decisions
- 46. Giving of notices, &c.
- 47. Annual report
- 48. Act of the State of New South Wales to cease to apply
- 49. Regulations



# AUSTRALIAN CAPITAL TERRITORY

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## Air Pollution Ordinance 1984

**No. 59 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

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An Ordinance relating to the control of air pollution

### **PART I—PRELIMINARY**

#### **Short title**

1. This Ordinance may be cited as the *Air Pollution Ordinance 1984*.<sup>1</sup>

#### **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) Sections 27 and 28 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*.

#### **Ordinance binds Crown**

3. This Ordinance binds the Crown.

**Interpretation**

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

“access holes” means holes by means of which samples of emissions into the outdoor atmosphere may be taken;

“Authority” means the Pollution Control Authority appointed under this Ordinance;

“Chairman” means the Chairman of the Committee;

“chimney”, in relation to premises, means a structure or opening designed to permit the emission of pollutants into the air from those premises or from part of those premises, whether or not it is structurally a part of those premises;

“Committee” means the Air Pollution Advisory Committee established under this Ordinance;

“control equipment” means—

- (a) apparatus for separating pollutants being emitted into the air from the gas medium in which they are carried;
- (b) access holes;
- (c) an automatic device used for securing the more efficient operation of fuel-burning equipment;
- (d) a device to indicate or record air pollution or to give warning of air pollution; or
- (e) any apparatus or device that is used or that is, or would be, if properly maintained and efficiently operated, capable without modification of being used for the purpose of limiting air pollution;

“fuel-burning equipment” means a furnace, boiler, fireplace, oven, retort, incinerator, internal combustion engine, chimney or any other apparatus, device, mechanism or structure, in the operation of which combustible material is, or is intended to be, used or which is, or is intended to be, used in connection with the burning of combustible material;

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

“industrial plant” means plant or equipment, other than fuel-burning equipment, used for the manufacturing, processing, handling, moving, storing or disposing of materials in or in connection with any trade, industry or process;

“inspector” means a person appointed as an inspector under section 12;

“member” means a member of the Committee;

“motor vehicle” has the same meaning as in the *Motor Traffic Ordinance 1936*;

“pollutant” means ash, dust, fumes, gas, smoke or solid or liquid particles of any kind;

“premises” includes vacant land;

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

“Tribunal” means the Administrative Appeals Tribunal.

### **Effect with other laws**

5. This Ordinance has effect subject to the *Building Ordinance 1972*, the *Fire Brigade Ordinance 1957*, the *Machinery Ordinance 1949*, the *Scaffolding and Lifts Ordinance 1957* and the regulations in force from time to time under any of those Ordinances.

### **Exemption**

6. (1) Nothing in this Ordinance applies in relation to—

- (a) a motor vehicle, railway locomotive, vessel or aircraft; or
- (b) a dwelling-house.

(2) Nothing in this Ordinance applies in relation to fuel-burning equipment on residential premises that is used solely for the purpose of cooking food or heating a potable liquid.

(3) Nothing in this Ordinance, other than sections 27 and 28, applies in relation to fuel-burning equipment that is used solely for heating or cooling residential premises.

## **PART II—ADMINISTRATION**

### ***Division 1—Pollution Control Authority***

**Establishment**

7. (1) For the purposes of this Ordinance, there shall be a Pollution Control Authority consisting of a person appointed by the Minister.

(2) Subject to this Ordinance, a person appointed as the Authority holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(3) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Authority and a person shall not be appointed or re-appointed as the Authority for a period that extends beyond the date on which he will attain the age of 65 years.

(4) 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 the Pollution Control Authority.

**Resignation**

8. A person appointed as the Authority may resign his office by writing signed by him and delivered to the Minister.

**Termination of appointment**

9. (1) The Minister may terminate the appointment of a person as the Authority by reason of misbehaviour or physical or mental incapacity.

(2) If a person appointed as the Authority 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, the Minister shall terminate his appointment.

**Delegation**

10. (1) The Authority may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer or employee within the meaning of the *Public Service Act 1922* any of his powers under this Ordinance, other than 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.



### **Acting Authority**

**11. (1)** The Minister may appoint a person to act as the Authority—

- (a) during a vacancy in the office of the Authority, 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 the Authority is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of his office,

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

**(2)** An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

**(3)** The Minister may at any time terminate the appointment of a person appointed under sub-section (1).

**(4)** Where a person is acting as the Authority in accordance with paragraph (1) (b) and the office of the Authority becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

**(5)** The appointment of a person to act as the Authority ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

**(6)** While a person is acting as the Authority, he has, and may exercise, all the powers, and shall perform all the functions, of the Authority under this Ordinance or any other law.

**(7)** The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in, or in connection with, his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

### ***Division 2—Inspectors***

#### **Inspectors**

**12. (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.

### ***Division 3—Air Pollution Advisory Committee***

#### **Establishment**

13. There is established by this Ordinance a committee by the name of the Air Pollution Advisory Committee.

#### **Functions**

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

- (a) to make recommendations to the Minister with respect to the control of air pollution in the Territory;
- (b) at the request of the Minister, to report to the Minister on any matter relating to air pollution; and
- (c) to promote public awareness of the effects of air pollution and the measures available for its control in the Territory.

(2) For the purpose of performing its functions, the Committee may—

- (a) carry out studies and investigations in relation to air pollution; and
- (b) consult with such persons and bodies as it thinks fit.

#### **Powers**

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

#### **Membership**

16. (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 4, and not more than 9, 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**

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

### **Resignation of member**

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

### **Termination of appointment**

19. (1) The Minister may terminate the appointment of a member (other than the Authority) for misbehaviour or for 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 member**

**20. (1)** Subject to sub-section (2), the Minister may appoint a person to act as a member referred to in paragraph 16 (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 16 (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 as a member 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 as a member under this section, he has, and may exercise, all the powers, and shall perform all the functions, of a member of the Committee.

**Meetings**

**21. (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 4 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**

22. (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 pecuniary 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 III—CONTROL OF AIR POLLUTION**

### ***Division 1—Control of Air Pollution***

#### **Emission of pollutants in excess of prescribed concentrations**

23. (1) An occupier of premises shall not operate, or cause or permit to be operated, any fuel-burning equipment or industrial plant, or carry on or permit the carrying on, of any trade, industry or process, on those premises as to cause the emission into the air through a chimney on those premises of

pollutants in excess of the prescribed standard of concentration or in excess of the prescribed rate.

(2) An occupier of premises shall not use, or cause or permit to be used, on those premises, a fuel that contains more than the prescribed proportion of a prescribed constituent unless the fuel is used in prescribed fuel-burning equipment.

(3) A person who contravenes sub-section (1) or (2) 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.

### **Fugitive emissions**

24. (1) Where an occupier of premises operates, or causes or permits to be operated, any fuel-burning equipment or industrial plant, or carries on, or permits the carrying on of, any trade, industry or process, on those premises, the occupier shall take such steps as are necessary to prevent, so far as is practicable, the emission of pollutants into the air—

- (a) otherwise than through a chimney on those premises; or
- (b) where no standard of concentration or rate of emission is prescribed in relation to those pollutants.

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

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

### **Summary proceedings for indictable offences**

25. (1) Notwithstanding that an offence referred to in sub-section 23 (3) or 24 (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.

(2) Where, in accordance with sub-section (1), the Court of Petty Sessions hears and determines proceedings for an offence, then, notwithstanding sub-section 23 (3) or 24 (2), as the case requires, that court shall not impose a fine exceeding—

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

**Conduct of employee or agent of body corporate**

**26. (1)** For the purposes of sections 23 and 24, 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.

**(2)** Sub-section (1) 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.

**Fires in open air**

**27. (1)** A person shall not—

- (a) burn, or cause or permit the burning of, combustible material; or
- (b) light, use or maintain a fire, or cause or permit a fire to be lit, used or maintained,

in the open air.

Penalty: \$500.

**(2)** Sub-section (1) does not apply in relation to—

- (a) premises used for primary production;
- (b) the burning of dry timber, clean paper, clean cardboard or dried garden waste on residential premises—
  - (i) during a prescribed period; or
  - (ii) between the hours of 10 o'clock in the morning and 3 o'clock in the afternoon on any day not within a prescribed period;
- (c) the lighting, using or maintaining of a fire solely for the purpose of cooking food or heating a potable liquid; or
- (d) the lighting of a cigar, cigarette or pipe.

**(3)** In this section—

“primary production” has the same meaning as in the *Income Tax Assessment Act 1936*;

“prescribed period” has the same meaning as in the *Careless Use of Fire Ordinance 1936*.

### **Fires in unfavourable meteorological conditions**

**28. (1)** Where the Minister is satisfied that meteorological conditions are, or are likely to become, such that the burning of combustible material, or the lighting, using or maintaining of a fire, in the open air would have an adverse effect on the environment or cause or increase pollution in the air, the Minister may, by notice—

- (a) published in a newspaper circulating in the Territory;
- (b) broadcast from a radio broadcasting station in the Territory; or
- (c) televised from a television station in the Territory,

prohibit, during the times, on the day or during the period specified in the notice, the burning of combustible material or the lighting, using or maintaining of a fire in the open air in the Territory or in the part in the Territory specified in the notice.

**(2)** A person shall not burn combustible material or light, use or maintain a fire in the open air in contravention of a notice referred to in sub-section (1).

Penalty: \$500.

**(3)** Nothing in this section applies in relation to—

- (a) the lighting, using or maintaining of a fire solely for the purpose of cooking food or heating a potable liquid; or
- (b) the lighting of a cigar, cigarette or pipe.

### **Powers of Chief Fire Control Officer**

**29.** Nothing in this Ordinance affects the powers and authorities that may be exercised under section 5N of the *Careless Use of Fire Ordinance 1936* by—

- (a) the Chief Fire Control Officer within the meaning of that Ordinance; or
- (b) any other person authorized under sub-section 5N (2) of that Ordinance.



### **Approval of preventive measures**

**30. (1)** Where the operation of fuel-burning equipment or industrial plant, or the carrying on of any trade, industry or process, on any premises is causing the emission of pollutants into the air through a chimney on those premises in excess of the prescribed standard of concentration or in excess of the prescribed rate, the Authority may, by notice in writing given to the occupier of the premises, require the occupier, within such period as is specified in the notice, to submit to the Authority for his approval particulars (including plans, drawings and specifications) of measures the occupier proposes to carry out to alter the method of operation of that fuel-burning equipment or industrial plant, to construct, install, alter or replace any fuel-burning equipment, industrial plant or control equipment on the premises or to alter any operation that forms part of, or the type of materials that are used in, the trade, industry or process.

**(2)** Where—

- (a) the operation of fuel-burning equipment or industrial plant, or the carrying on of any trade, industry or process, on any premises is causing the emission of pollutants into the air—
  - (i) otherwise than through a chimney on the premises; or
  - (ii) where no standard of concentration or rate of emission is prescribed in relation to those pollutants; and
- (b) the Authority is satisfied that the occupier has not, so far as is practicable, prevented the emission of those pollutants,

the Authority may, by notice in writing given to the occupier of the premises, require the occupier, within such period as is specified in the notice, to submit to the Authority for his approval particulars (including plans, drawings and specifications) of measures the occupier proposes to carry out to alter the method of operation of that fuel-burning equipment or industrial plant, to construct, install, control, alter or replace any fuel-burning equipment, industrial plant or control equipment on the premises or to alter any operation that forms part of, or the type of materials that are used in, the trade, industry or process.

**(3)** Where an occupier of premises submits to the Authority particulars of proposed measures, the Authority shall, by notice in writing given to the occupier—

- (a) approve those measures if he is satisfied that—

- (i) in the case of measures particulars of which were submitted in accordance with the requirements of a notice under sub-section (1)—they will be sufficient to prevent the emission of pollutants into the air from those premises in excess of the prescribed standard of concentration or in excess of the prescribed rate; and
  - (ii) in the case of measures particulars of which were submitted in accordance with the requirements of a notice under sub-section (2)—they will be sufficient to prevent, so far as is practicable, the emission of pollutants into the air from those premises; and
- (b) specify a period in which the approved measures are to be carried out.

**Direction to carry out preventive measures****31. Where—**

- (a) the Authority refuses to approve proposed measures particulars of which were submitted by an occupier of premises under section 30; or
- (b) an occupier of premises refuses or fails to submit to the Authority particulars of proposed measures in accordance with section 30,

the Authority may, by notice in writing given to the occupier, direct the occupier to carry out, within such period as is specified in the notice, the measures specified in the notice, being measures that are, in the opinion of the Authority, necessary—

- (c) where the occupier was given a notice under sub-section 30 (1)—to prevent the emission of pollutants into the air from those premises in excess of the prescribed standard of concentration or in excess of the prescribed rate; or
- (d) where the occupier was given a notice under sub-section 30 (2)—to prevent, so far as is practicable, the emission of pollutants into the air from those premises.

**Carrying out preventive measures**

**32. (1)** Where an occupier of premises has been given a notice under sub-section 30 (3) approving proposed measures particulars of which were supplied by the occupier to the Authority, the occupier shall, within such period as is specified in the notice, carry out those measures.

(2) Where an occupier of premises has been given a notice under section 31, the occupier shall, within such period as is specified in the notice, carry out the measures specified in the notice.

(3) A person who refuses or fails to comply with sub-section (1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

(4) Sub-sections (1), (2) and (3) do not apply in relation to an occupier of premises if, before the expiration of the period referred to in sub-section (1) or (2), whichever is applicable, the occupier ceased, otherwise than temporarily, to operate, or to cause or permit to be operated, the relevant fuel-burning equipment or industrial plant, or to carry on, or to permit the carrying on of, the relevant trade, industry or process, on those premises.

#### **Requirement to keep records**

**33. (1)** Where the Authority is satisfied that the operation of fuel-burning equipment or industrial plant, or the carrying on of any trade, industry or process, on any premises is causing, or is likely to cause, the emission of pollutants into the air in excess of the prescribed standard of concentration or in excess of the prescribed rate, the Authority may, by notice in writing given to the occupier of those premises, require the occupier—

- (a) to keep, during such period as is specified in the notice, a record in relation to the emission from the premises of such pollutants as are specified in the notice;
- (b) to furnish that record to the Authority as soon as practicable after the expiration of that period; and
- (c) to furnish to the Authority, at such times as are specified in the notice, such other information in relation to the operation of fuel-burning equipment or industrial plant or the carrying on of any trade, industry or process on the premises as is specified in the notice.

(2) A person who, without reasonable excuse, refuses or fails to comply with the requirements of a notice given to the person under sub-section (1), is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$1,000; or
- (b) in the case of a natural person—\$200.

**Provision of access holes**

**34. (1)** Where fuel-burning equipment or industrial plant is situated on any premises, the Authority may, by notice in writing given to the occupier of those premises, require the occupier to provide, on those premises, access holes that comply with the prescribed requirements within such period (being not less than 15 days) as is specified in the notice.

**(2)** A person who, without reasonable excuse, refuses or fails to comply with the requirements of a notice given to the person under sub-section (1), is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$500; or
- (b) in the case of a natural person—\$100.

**Operation and maintenance of control equipment**

**35. (1)** An occupier of premises shall ensure that all control equipment installed in or on the premises is maintained properly and operated efficiently.

**(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—\$5,000; or
- (b) in the case of a natural person—\$1,000.

***Division 2—Powers of entry and search*****Interpretation**

**36. (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**

**37. (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) for the purpose of ensuring that the provisions of this Ordinance or the regulations are being complied with.

(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 the premises if, on request by or on behalf of the occupier or person apparently in charge, of the premises, he does not produce a certificate issued to him under sub-section 7 (4) or 12 (3), as the case requires.

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

- (a) inspect the premises and any materials, fuel-burning equipment, industrial plant or control equipment on the premises;
- (b) take such measurements and conduct such tests as he considers necessary for the purposes of this Ordinance or the regulations;
- (c) inspect any books, records or documents, and require any person on the premises to furnish any information, relating to the operation of fuel-burning equipment, industrial plant or control equipment kept on the premises and the emission of pollutants from those premises;
- (d) make copies of, or take extracts from, any books, records or documents referred to in paragraph (c);
- (e) take samples of any materials on the premises;
- (f) take samples of any pollutants that are being or have been emitted from the premises;
- (g) take such photographs as he considers necessary for the purposes of this Ordinance or the regulations;
- (h) require a person apparently in charge of the premises to supply his name and address.

**Powers of entry, &c.—premises generally**

38. Subject to section 37, the Authority or an inspector may enter upon or into any premises and may search for, and exercise all or any of the powers under sub-section 37 (3) in relation to, any thing which he believes on reasonable grounds to be connected with an offence against this Ordinance that is found on or in those premises if, and only if, the search is made and those powers are exercised—

- (a) in pursuance of a warrant issued under section 39;

- (b) in circumstances of seriousness and urgency in accordance with section 40; or
- (c) after obtaining the consent of the occupier or person apparently in charge of the premises.

### **Search warrants**

**39. (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 an inspector named in the warrant, with such assistance as he thinks necessary and if necessary by force, to enter upon or into those premises, to search those premises and to exercise all or any of his powers under sub-section 37 (3) 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 entry, search and exercise of the powers under sub-section 37 (3) 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 37 (3) 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 37 (3) 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**

**40. (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 he may search for and exercise all or any of his powers under sub-section 37 (3) in relation to such a thing if—

- (a) he 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 39.

**(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 person apparently in charge, of the premises, he does not produce a certificate issued to him under sub-section 7 (4) or 12 (3), as the case requires.

### **Consent to entry**

**41. (1)** Before obtaining the consent of a person for the purposes of section 38, 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 38, 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 38 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**

42. 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 in 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 term not exceeding 6 months.

## **PART IV—MISCELLANEOUS**

### **Evidentiary certificates**

43. In proceedings for an offence against this Ordinance, a certificate purporting to be signed by the Authority or an inspector, as the case may be, and stating—

- (a) that he was, on a date or during a period specified in the certificate, the Authority or an inspector, as the case may be;
- (b) that, at a time and on a date and at premises specified in the certificate, measurements were taken and the results specified in the certificate were obtained;
- (c) that, at a time and on a date and at premises specified in the certificate, tests were conducted and, in following the prescribed procedures, the results specified in the certificate were obtained; and
- (d) that the equipment used to take the measurements and to conduct the tests conformed to the prescribed specifications and was in proper working order,

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



**Review of decisions**

**44.** Application may be made to the Tribunal for a review of a decision of the Authority—

- (a) specifying a period under sub-section 30 (3); or
- (b) giving a direction under section 31.

**Notifications of decisions**

**45. (1)** A notice given to an occupier of premises under sub-section 30 (3) or section 31 shall include a statement setting out the decision specifying the period or giving the direction, as the case requires, and the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

**(2)** A statement 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 referred to in sub-section (1) shall not be taken to be affected by a failure to comply with that sub-section.

**Giving of notices, &c.**

**46. (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)** 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) 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**

47. 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.

### **Act of the State of New South Wales to cease to apply**

48. The Smoke Nuisance Abatement Act, 1902 of the State of New South Wales shall cease to be in force in the Territory.

### **Regulations**

49. (1) 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) prescribing the manner in which, and position from which, samples of emissions of pollutants from premises are to be taken;
- (b) prescribing the means of access to be provided by an occupier of premises to those sampling positions;
- (c) prescribing the manner in which the concentration of pollutants is to be ascertained; and
- (d) prescribing penalties not exceeding \$500 for offences against the regulations.

(2) The regulations may—

- (a) prescribe, in respect of the same process or equipment, different standards of concentration or rates for different periods or for different uses of the process or equipment; and
  - (b) prescribe periods or circumstances during which some or all of the prescribed standards or prescribed rates do not apply.
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**NOTE**

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