



AUSTRALIAN CAPITAL TERRITORY

Air Pollution (Amendment) Act (No. 2) 1991

No. 94 of 1991

An Act to amend the *Air 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 *Air Pollution (Amendment) Act (No. 2) 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 *Air Pollution Act 1984*.¹

Interpretation

4. Section 4 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 30 (1);”.

Delegation

5. Section 10 of the Principal Act is amended by inserting in subsection (1) “the powers under sections 30 and 32 and” after “other than”.

Substitution

6. Sections 30, 31 and 32 of the Principal Act are repealed and the following sections substituted:

Pollution abatement notice

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

(a) that pollutants—

- (i) have been emitted into the air;
- (ii) are being emitted into the air; or
- (iii) are likely to be emitted into the air;

from premises in contravention of the requirements of this Act or the regulations; and

(b) that it is necessary to control the emission of those pollutants 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 and 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 permit issued to the occupier under section 27A;

- (b) the nature of any activity or process engaged in on the relevant premises;
- (c) the nature of the relevant emission;
- (d) the location of the relevant emission; and
- (e) the nature, cost and complexity of any action required to be taken by the occupier to control the relevant emission.

“(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 46 (2) or (3), as the case requires, other than by sending the relevant notice 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 the 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, including chimneys, 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

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

“32. (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 permit issued to the occupier under section 27A;
- (b) the nature of any activity or process engaged in on the relevant premises;
- (c) the nature of the relevant emission;
- (d) the location of the relevant emission; 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

“32A. 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 44 of the Principal Act is amended—

- (a) by omitting paragraphs (a) and (b); and
- (b) by adding at the end the following subsection:

“(2) 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;
- (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 the notice; or
- (d) revoking a requirement specified in a pollution abatement notice.”.

Notification of decisions

8. Section 45 of the Principal Act is amended by omitting from subsection (1) “or 30 (3), or section 31,” and substituting “, a pollution abatement notice under subsection 30 (1) or a notice under subsection 32 (4),”.

Giving of notices

9. Section 46 of the Principal Act is amended by omitting from subsections (2) and (3) “A document” and substituting “Subject to subsection 30 (3), a document”.

NOTE

1. Ordinance No. 59, 1984 as amended by Nos. 67 and 72, 1985; Nos. 12, 74 and 85, 1986; No. 54, 1987; No. 7, 1988; Nos. 21 and 38, 1989; Act No. 37, 1990; No. 85, 1991.

[Presentation speech made in Assembly on 21 November 1991]

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