

1991

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY

WATER POLLUTION (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

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

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WATER POLLUTION (AMENDMENT) BILL 1991

The Water Pollution Act 1984 ("the Principal Act") provides for the control of water pollution in the Australian Capital Territory and imposes offences in relation to the discharge of waste into the Territory's waters.

The Principal Act, however, does not have any provisions which allow the Pollution Control Authority ("the Authority") to require preventative and remedial measures to be taken against the emission of pollutants. Presently, the Principal Act only provides for prosecution where a prescribed offence has occurred.

There are numerable cases of minor discharges and potential discharges encountered by inspectors which could readily be resolved through preventative controls. It would not be practicable to prosecute every case where the discharge has been minor. A notice issued by the inspector requiring remedial action within a specified period would be more relevant.

The Bill introduces new provisions which enable an inspector to issue pollution abatement notices in the event of a discharge occurring or where the inspector has reason to believe that a discharge is likely to occur. The issue of such a notice does not preclude prosecution for the offence where there has been a discharge of waste and failure to comply with the requirements of the notice is itself an offence.

The Bill does not have any financial implications.

Details of the Bill are included in the Attachment.

ATTACHMENT

WATER POLLUTION (AMENDMENT) BILL 1991

- Clause 1** provides that, upon enactment, the short title of the Bill is to be the Water Pollution (Amendment) Act 1991 ("the Act").
- Clause 2** provides for the commencement of the provisions of the Act.
- Sub-clause (1) provides that clauses 1 and 2 of the Act will commence operation on 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.
- 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** provides that references to "Principal Act" in the Act are to be read as references to the Water Pollution Act 1984.
- Clause 4** amends subsection 5(1) of the Principal Act, which deals with interpretation of terms, by inserting and defining new terms which are used in the proposed provisions in the Act.
- Clause 5** amends subsection 8(1) of the Principal Act which relates to the delegation by the Authority of some of his or her powers. It is amended to provide that the Authority will also not be allowed to delegate his or her powers under proposed sections 30A and 30C.
- Clause 6** inserts the following new provisions, which relate to pollution abatement notices, into Part IV of the Principal Act :
- Proposed section 30A:
- Subsection 30A(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 30A(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 30A(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 subsections 45(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 in order to comply with the requirements within that period.

Subsection 30A(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 30B 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 30C:

Subsection 30C(1) provides that the Authority may of his or her own accord, or on an application by the occupier who received a notice, vary the compliance period or other requirement of the notice or revoke a requirement.

Subsection 30C(2) provides that the Authority will not consider an application for variation of a notice where an application has been lodged with the Administrative Appeals Tribunal to review the decision in respect of the notice.

Subsection 30C(3) provides that the Authority shall have regard to similar considerations as those listed in proposed subsection 30A(2) when deciding whether a notice should be varied in any respect.

Subsection (4) requires the Authority to notify his or her decision as to whether a notice should be varied within 7 days of making the decision or receiving the application by the occupier as the case may be.

Subsection (5) requires a notice in relation to a variation of the original notice to specify the date on which it is issued.

Proposed section 30D provides that a failure to comply with the requirements of a notice within the given compliance period is an offence. It further prescribes a penalty of \$5000 in respect of an offence by a corporation and \$1000 where the offender is a person.

Clause 7 amends section 40 of the Principal Act by inserting proposed subsection 40(3). Proposed subsection 40(3) states that an application may be made to the Administrative Appeals Tribunal for a review of the Authority's or inspector's decision in respect of

- . making a requirement in a notice;
- . specifying the compliance period; and
- . varying or refusing to vary the compliance period or a requirement in a notice.

Clause 8 amends section 41 of the Principal Act which relates to the notification of decisions by the Authority or Minister.

Paragraph 8(a) amends subsection 41(1) of the Principal Act. This subsection provides that the Authority or Minister must give notification in writing of their decisions to persons whose interests are adversely affected by the decisions. Subsection 41(1) is amended so that the

Authority or inspector is not required to make such a notification in respect of a decision specifying a requirement or compliance period in a notice or to vary such a notice.

Paragraph 8(b) deletes subsection 41(2) of the Principal Act and substitutes it with the following:

Proposed paragraph 41(2)(a) provides that a notification by the Authority or Minister pursuant to subsection 41(1), an abatement notice and a notice of variation must include a statement that, subject to the Administrative Appeals Tribunal Act 1989, an application may be made to the Tribunal by a person whose interests are adversely affected for a review of the decision.

Proposed paragraph 41(2)(b) provides that an abatement notice and a notice of variation must include a statement that a person whose interests are affected by the decision may request a statement pursuant to section 26 of the Administrative Appeals Tribunal Act 1989. The inclusion of such a statement is not required where subsection 26(11) of the Administrative Appeals Tribunal Act 1989 applies. Section 26 provides that such a person may request a statement outlining the reasons for the decision from the decision maker. However, subsection 26(11) states that a person is not entitled to obtain reasons for a decision where such a statement has already been given with the decision.

Paragraph 8(c) amends subsection 41(3) of the Principal Act by providing that the validity of a decision referred to in section 40 of the Principal Act will not be affected by a failure to notify the decision in the manner required in section 41 of the Principal Act.

Clause 9

amends subsections 45(2) and (3) of the Principal Act as a consequence of proposed subsection 30A(3). Subsections 45(2) and (3) allows a document to be delivered by post. Proposed subsection 30A(3) states that an abatement notice or a notice of variation must not be posted where the specified compliance period is less than 14 days.