

WESTERN AUSTRALIA.

CLEAN AIR.

13° Elizabeth II., No. LVI.

No. 56 of 1964.

(Affected by Act No. 113 of 1965.)

[As amended by Act:

No. 10 of 1967, assented to 20th October, 1967; and by Orders in Council published in the *Government Gazette* on 2nd June, 1967; the 16th August, 1968, and the 19th December, 1969;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT relating to the Prevention and Reduction of Air Pollution and for incidental and other purposes.

[Assented to 30th November, 1964.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Clean Air Act, 1964-1967*.

Short title.
Amended by
No. 10 of
1967, s. 1.

2. This Act shall come into operation on a date to be fixed by proclamation.¹

Commence-
ment.

¹ Came into operation 14th April, 1967. See G.G. 14/4/67, p. 941.

Arrangement. 3. This Act is divided into Parts and a Schedule as follows—

PART I.—PRELIMINARY, ss. 1-6.

PART II.—AIR POLLUTION CONTROL COUNCIL AND SCIENTIFIC ADVISORY COMMITTEE, ss. 7-22.

PART III.—SCHEDULED PREMISES, ss. 23-35.

Division 1.—Provisions relating to Licensing of Scheduled Premises, ss. 23-30.

Division 2.—Other provisions relating to Scheduled Premises, ss. 31-35.

PART IV.—PREMISES OTHER THAN SCHEDULED PREMISES, ss. 36-39.

PART V.—GENERAL PROVISIONS, ss. 40-53.

SCHEDULE.

Application of Act.

4. (1) This Act binds the Crown.

Crown bound.

(2) This Act or any Part thereof applies only to such area or areas of the State as the Governor may by proclamation¹ declare to be subject to this Act or to that Part.

(3) A proclamation made under this section may be cancelled or from time to time varied by a subsequent proclamation.

Construction.

5. (1) This Act shall be read and construed subject to the limits of the legislative powers of the State and so as not to exceed those powers, to the extent that where any enactment hereof, but for this provision would be construed as being in excess of those powers, it shall nevertheless be a valid enactment to the extent to which it is not in excess of those powers.

(2) Where there is inconsistency between the provisions of this Act in their application to any circumstance, matter or thing and the provisions

¹ See G.G. 2/6/67, p. 1487; G.G. 6/10/67, p. 2605-6.

of the Factories and Shops Act, 1963, Health Act, 1911, Local Government Act, 1960, Metropolitan Region Town Planning Scheme Act, 1959 and Town Planning and Development Act, 1928 in their application to the same circumstance, matter or thing, the provisions of this Act prevail and the former provisions to the extent of the inconsistency are inoperative with respect to the circumstance, matter or thing.

(3) A reference to the provisions of the Acts mentioned in subsection (2) of this section includes reference to the provisions of Acts amending or substituted for them and includes also the provisions of Orders in Council, Proclamations, declarations, regulations, by-laws, notices or other instruments that are made pursuant to those Acts.

6. (1) In this Act, unless the contrary intention appears— Interpre-
tation.

“air impurity” includes smoke, soot, dust, ash (including fly ash), cinders, solid particles of any kind, gases, fumes, mist and odours;

“air pollution” means the emission into the air of an air impurity;

“chimney” includes any structure or opening from or through which any air impurity may be emitted and any reference to a chimney of or used in connection with any premises includes a reference to a chimney that serves the whole or a part of the premises though structurally separate from the premises or any building thereon;

“control equipment” includes—

(a) any apparatus for separating any air impurities from the gas medium in which they are carried;

(b) any automatic device used for securing the more efficient operation of any fuel burning equipment;

Clean Air.

(c) any device to indicate or record air pollution or to give warning of excessive air pollution; and

(d) any other device used for the purpose of limiting air pollution;

“dark smoke” means smoke, which by a method prescribed by the regulations, is ascertained to be smoke that is dark smoke within a meaning prescribed by the regulations;

“department” means a department of the Public Service of the State;

“fuel burning equipment” means any furnace, boiler, fireplace, oven, retort, incinerator, open fire, vehicle, vessel, or chimney, or any other apparatus, device, mechanism or structure used or to be used in connection with the burning of any combustible material in, or in relation to, any industrial plant;

“industrial plant” means any plant used for the generation of power, or for any industrial use, or for the operation of vessels, dredges, locomotives, cranes or other machines using any combustible material for their operation;

“inspector” means a person appointed an inspector for the purposes of this Act;

“licence” means a valid and current license or renewal of a licence granted under this Act;

“local authority” means the Council of a Municipality constituted under the Local Government Act, 1960;

“occupier” means in relation to—

(a) any premises, the person in occupation or control of the premises; and

(b) any premises where different parts are occupied by different persons, means in relation to any such part, the person in occupation or control of that part;

“practicable” means reasonably practicable having regard, among other things, to local conditions and circumstances, and to the current state of technical knowledge and the term “practicable means” includes the provision and maintenance of plant and the proper use of the plant;

“premises” includes land, buildings, easements and any place or vehicle;

“scheduled premises” means any premises for the time being included in the Schedule to this Act;

“the Commissioner” means the person for the time being holding office or duly acting in the office of Commissioner of Public Health under the Health Act, 1911;

“the Committee” means the Scientific Advisory Committee established under this Act;

“the Council” means the Air Pollution Control Council established under this Act;

“vehicle” includes motor vehicle, omnibus, coach, bicycle, locomotive, aeroplane, or other means of conveyance or transit that uses combustible material for its operation;

“vessel” includes any ship, boat or other description of vessel used or designed for use for any purpose on the sea, in navigation, or on any waterway, that uses combustible material for its operation.

(2) The Governor may by Order in Council from time to time amend the Schedule to this Act by adding thereto or removing therefrom any premises or class of premises and the Schedule as so amended shall be the Schedule to this Act.

(3) A copy of each Order in Council made pursuant to this section shall be published in the *Government Gazette*.

PART II.—AIR POLLUTION CONTROL COUNCIL
AND SCIENTIFIC ADVISORY COMMITTEE.

Establish-
ment of
Air Pollution
Control
Council.

7. There is hereby established, for the purposes of this Act, a body by the name of the Air Pollution Control Council.

Constitution
of Air
Pollution
Control
Council.
Amended by
No. 10 of
1967, s. 2.

8. (1) The Council shall consist of a Chairman and fourteen other members.

(2) The Chairman shall be the Commissioner.

(3) One member shall be the Chairman for the time being of the Committee and one member shall be the person for the time being holding the office of State Mining Engineer.

(4) The remaining twelve members (called "the appointed members") shall be appointed by the Governor and shall consist of—

- (a) an officer of the State Electricity Commission constituted under the State Electricity Commission Act, 1945, nominated in writing by the Minister administering that Act;
- (b) an officer of the department known as the Department of Industrial Development so nominated by the Minister administering that department;
- (c) an officer of the department known as the Town Planning Department so nominated by the Minister administering that department;
- (d) an officer of the department known as the Local Government Department so nominated by the Minister administering that department;
- (e) an officer of the department known as the Department of Labour employed in the Factories Branch of that department so nominated by the Minister administering that department;

- (f) a person so nominated by the Minister for Mines;
- (g) a person employed on the staff of the University of Western Australia so nominated by the Senate constituted pursuant to the University of Western Australia Act, 1911;
- (h) a person so nominated by the body known as the Trades and Labour Council of Western Australia;
- (i) a person so nominated by the body known as the Local Government Association of Western Australia;
- (j) three persons so nominated by the body known as The Western Australian Chamber of Manufactures (Incorporated).

(5) If a Minister or a body referred to in subsection (4) of this section authorised to nominate an officer or person for appointment to the Council fails to do so within thirty days after the receipt by him or it respectively of a written request from the Minister so to do, the Minister may nominate for appointment as member an officer or person having a like qualification to the officer or person who should have been nominated by the Minister or the body in default, and the officer or person shall, subject to this Act, be appointed as if he had been duly nominated by the Minister or body first entitled to make the nomination.

(6) Each of the appointed members shall, subject to this Act, hold office for three years and is eligible for re-appointment.

(7) A person, other than the Chairman for the time being of the Committee, is not eligible to hold at the same time, both the office of member of the Council and member of the Committee.

(8) The exercise or performance of the functions or powers of the Council is not affected by reason only of there being any vacancy in the office of member of the Council.

Deputy
Chairman of
Council.

9. Where the Chairman of the Council is unable for any reason to attend any duly convened meeting of the Council, the person nominated in writing by the Chairman to be the Deputy of the Chairman—

(a) shall preside at that meeting; and

(b) while so presiding shall be deemed to be a member of the Council and has all the powers and duties of the Chairman of the Council.

Leave of
absence.

10. The Minister may grant leave of absence to a member of the Council upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Remunera-
tion
allowances.

11. Each member of the Council and person appointed to act in the place of, or in the vacant office of, a member, except a person employed in the State Public Service, shall be paid, in respect of his attendance at a meeting of the Council, a fee of such amount, if any, as is determined by the Minister, and is entitled to be reimbursed such expenses as he reasonably incurs in performing his functions and exercising his powers under this Act.

Acting
appoint-
ments.

12. (1) Where the Minister grants leave of absence to a member of the Council, or where there is a vacancy in the membership of the Council, the Minister may, subject to this section, appoint a person or officer as the case requires, having a like qualification or being representative of the like body as the member in whose place he is appointed, to act in the place of that member, or to act in the

vacant office, during the whole or a part of the period of absence on leave of the member, or the period of the vacancy, as the case may be, and the person so appointed has all the powers and duties of a member of the Council.

(2) Where the Minister grants leave of absence to the Deputy of the Chairman of the Council, or where there is a vacancy in the office of that Deputy, the Council may appoint a member of the Council to act in the place of the Deputy or in the office of the Deputy, during the whole of the period of absence on leave of the Deputy or of the period of vacancy, as the case may be, and the person so appointed has all the powers and duties conferred by this Act on the Deputy of the Chairman of the Council.

(3) The Minister may, at any time, terminate the appointment of a person appointed by the Minister under this section.

(4) The Council may, at any time, terminate the appointment of a person appointed by the Council under this section to be the Deputy of the Chairman of the Council.

13. The Governor may remove a member of the Council for inability, inefficiency or misbehaviour. Removal of members of the Council.

14. (1) A member of the Council may resign his office by writing under his hand addressed to the Governor. Resignation of member of the Council.

(2) A resignation under this section is not effective until accepted by the Governor.

15. A member of the Council shall be deemed to have vacated his office, if he— Vacation of office of member of the Council.

(a) dies;

(b) resigns his office as provided in section fourteen of this Act;

- (c) absents himself from four consecutive meetings of the Council of which he has received due notice, except on leave granted by the Council or the Minister; or
- (d) is removed from office by the Governor under section thirteen of this Act.

Meetings of
Council.
Amended by
No. 10 of
1967, s. 3.

16. (1) The Council shall meet as often as is necessary for the due administration of this Act at such times and places as it thinks fit, and shall conduct its business in such manner as may be prescribed, or in so far as is not prescribed, as it may from time to time determine.

(2) The Chairman of the Council—

- (a) shall convene the first meeting of the Council, as soon as practicable after the coming into operation of this Act; and
- (b) shall preside at all meetings of the Council at which he is present.

(3) The Chairman of the Council shall on receipt of a written request signed by any two members of the Council, convene a meeting of the Council.

(4) The Minister may at any time convene a meeting of the Council.

(5) At a meeting of the Council—

- (a) eight members form a quorum including the Chairman of the Council or in his absence, the Deputy of the Chairman;
- (b) a question arising at the meeting shall be decided by a majority of the votes of the members of the Council present and voting.

(6) All acts and proceedings of the Council are, notwithstanding the subsequent discovery of any defect in the appointment of a member thereof, or that any member was disqualified or disentitled to act, as valid as if that member had been duly appointed and was qualified and entitled to act and had acted as a member of the Council, and as if the Council had been duly and fully constituted.

17. (1) The functions of the Council are—
- (a) to carry out investigations into the problems of air pollution;
 - (b) to consider and initiate the means of preventing, abating or mitigating air pollution;
 - (c) to keep under review the progress made in preventing, abating or mitigating air pollution;
 - (d) to obtain the advice of persons having special knowledge, experience or responsibility in regard to prevention of air pollution;
 - (e) to advise the Minister as required upon such matters and questions relating to the prevention, abatement and mitigation of air pollution as the Minister may from time to time in writing refer to the Council for its advice;
 - (f) subject to the Minister, to administer this Act;
 - (g) to make to the Minister recommendations—
 - (i) for amending or repealing this Act;
 - (ii) for making, amending or repealing any regulation;
 - (iii) relating to the administration of this Act;
 - (iv) for proclaiming areas of the State to which this Act shall apply;
 - (v) for the addition to or removal of any premises or class of premises from the Schedule to this Act;
 - (h) to consider applications for licences for scheduled premises and to grant or refuse any such application, subject to such conditions, if any, as the Council thinks fit to impose.

Functions of Council.

"this Act" includes regulations see s. 4 Act No. 30 of 1918.

(2) The Council has power to do all things necessary or convenient to be done in connection with or as incidental to the performance of its functions.

Annual
Report of
Council.

18. (1) Before the first day of October in each year the Council shall make a written report to the Minister as to the operations of the Council under this Act up to the last preceding thirtieth day of June and the operation of this Act generally up to that day.

(2) The Minister shall lay the report of the Council before each House of Parliament within six sitting days of that House after the receipt of the report by him.

Exemption
of members
of the
Council for
personal
liability.

19. A person who is, or has been, a member of the Council or acting member of the Council, is not personally liable for anything done, or omitted to be done, in good faith in, or in connection with, the exercise or purported exercise of any power conferred, or the carrying out of any duty imposed, on the Council by this Act.

Establish-
ment of
Scientific
Advisory
Committee.
Amended by
No. 10 of
1967, s. 4.

20. (1) For the purposes of giving advice and assistance in connection with the discharge by the Council of its functions under this Act, there shall be established a Committee to be called the Scientific Advisory Committee.

Constitution
of
Committee.

(2) The Committee—

- (a) shall consist of a Chairman and seven other members; and
- (b) may, with the prior approval of the Council, co-opt a person or persons who is or are conversant with any particular matter upon which the Committee is required to advise.

(3) The eight members of the Committee shall be appointed by the Council and shall consist of—

- (a) a person who is a legally qualified medical practitioner employed in the Public Health Department, who shall be Chairman of the Committee;
- (b) a person who is a fuel technologist;
- (c) a person who is an engineer employed in the department known as the Public Works Department nominated in writing by the Chief Engineer in that department;
- (d) a person who is a qualified meteorologist;
- (e) a person who is a chemist employed on the staff of the University of Western Australia nominated in writing by the Senate constituted pursuant to the University of Western Australia Act, 1911;
- (f) two persons nominated in writing by the body known as The Western Australian Chamber of Manufactures (Incorporated) to represent the interests of industry generally;
- (g) a person who is an inspector of mines under the Mines Regulation Act, 1946, nominated in writing by the Minister for Mines.

(4) The provisions of subsections (5), (6) and (8) of section eight of this Act, sections nine, ten, eleven, twelve, thirteen, fourteen and fifteen, and subsection (6) of section sixteen of this Act, apply to the Committee and in so applying those provisions any reference therein to the Council shall be read as a reference to the Committee.

(5) The Committee shall meet as often as is necessary for carrying out its powers and duties under this Act at such times and places as it thinks fit and shall meet when and as often as it is requested to meet by the Council.

(6) The Committee shall conduct its business in such manner as it may from time to time determine.

(7) At a meeting of the Committee—

- (a) four members form a quorum including the Chairman of the Committee or in his absence, the Deputy of the Chairman; and
- (b) a question arising at the meeting shall be decided by a majority of the votes of the members of the Committee present and voting.

Functions
of the
Committee.

21. (1) The Committee shall—

- (a) as soon as may be after the coming into operation of this Act, take into consideration its provisions;
- (b) from time to time take into consideration and advise the Council on any matters and questions relating to the prevention, abatement and mitigation of air pollution that are referred to it for consideration and advice by the Council;
- (c) assist the Council in carrying out the functions of the Council referred to in section seventeen of this Act by advising the Council in relation to—
 - (i) whether or not a licence should be granted; and
 - (ii) if a licence is granted the conditions, if any, subject to which the licence should be granted.

(2) Where the Council has pursuant to this section referred a question or matter to the Committee for advice the Council shall before determining the question or matter give due consideration to the advice, of the Committee in connection therewith but the Council is not bound to act on or give effect to the advice of the Committee.

22. (1) There may from time to time be appointed under the Public Service Act, 1904, such inspectors and other officers as may be approved and required by the Council for the effective administration of this Act.

(2) With the consent of the Minister administering any department, the Council may co-opt the services of any person employed in that department upon such terms and conditions as may be agreed between that Minister and the Minister.

PART III.—SCHEDULED PREMISES.

Division 1.—Provisions relating to Licensing of Scheduled Premises.

23. (1) Except as provided in subsection (2) of this section, a person who is the occupier of any scheduled premises and who is not the holder of a licence issued in respect of those premises is guilty of an offence against this Act.

(2) The provisions of subsection (1) of this section do not apply to a person—

- (a) who on the date of the coming into operation of this Act is the occupier of scheduled premises, and within the prescribed period after that date makes application for a licence in respect of those scheduled premises;
- (b) who, at any time after the date of the coming into operation of this Act, commences to use any premises as scheduled premises and who within the prescribed period after his so commencing makes application for a licence in respect of those scheduled premises;
- (c) who, where by virtue of an Order in Council pursuant to subsection (2) of section six of this Act made after the coming into operation of this Act, premises not previously scheduled premises become scheduled premises, is, consequent upon the Order in Council the occupier of

scheduled premises, and who within the prescribed period after the publication of the Order in Council in the *Gazette* makes application for a licence in respect of those scheduled premises;

- (d) who has made application under the provisions of subsection (3) of section twenty-seven of this Act for the transfer to him of a licence in respect of any scheduled premises and made the application within the prescribed period after he became the occupier of those scheduled premises,

until his application has been finally determined.

Licences.

24. (1) An application for a licence or for any renewal or transfer thereof shall be made to the Commissioner in the prescribed form and shall be accompanied by the prescribed fee.

(2) The Commissioner shall refer the application to the Council and the Council shall refer the application to the Committee for its advice thereon.

(3) An applicant for a licence or for the renewal or transfer of a licence shall furnish in writing or otherwise such information as the Commissioner and the Council may consider necessary and relevant to the application.

(4) The Council—

- (a) shall grant any application for a licence or for a renewal or transfer thereof, either subject to conditions or unconditionally and where an application is granted subject to conditions, the conditions shall be specified in the licence to which the application relates;
- (b) may during the currency of a licence revoke or vary any condition attached to the licence or attach new conditions thereto whether in addition to or in substitution

for existing conditions and shall notify the holder of the licence of the Council's action in that behalf;

- (c) shall not grant any application for a licence in respect of scheduled premises the use whereof as such would contravene any town planning scheme, or by-law of any Local Authority respecting the use or development of land in the municipal district of the Local Authority.

(5) In any case to which paragraph (c) of subsection (4) of this section applies, the application for the licence shall for the purposes of section twenty-three of this Act, be deemed to be finally determined by the refusal to grant the application, or if an appeal is made against the refusal under section forty-five of this Act upon the determination of the appeal.

25. The Council shall, in imposing any conditions under paragraph (a) of subsection (4) of section twenty-four of this Act, or in exercising any powers under paragraph (b) of that subsection, have regard to any recommendation with respect thereto made by the Committee.

Council
to regard
recommenda-
tion of
Committee.

26. (1) Without affecting the generality of the provisions of subsection (4) of section twenty-four of this Act, any conditions attached to a licence by the Council—

Power
of Council
to attach
conditions
to licence.

(a) may require the holder of the licence—

- (i) to repair, alter or replace any fuel burning equipment in or on any scheduled premises specified in the licence;
- (ii) to install and operate control equipment in or on any scheduled premises specified in the licence;

- (iii) to repair, alter or replace any control equipment installed in or on any scheduled premises specified in the licence;
 - (iv) to erect, or alter the height of, any chimney through which air impurities may be discharged from any scheduled premises specified in the licence;
 - (v) to carry out any of the requirements imposed on him under the foregoing provisions of this paragraph within such period as may be specified in the conditions; or
- (b) may prohibit the holder of the licence from altering or replacing any control equipment installed in or on any scheduled premises specified in the licence except with the prior approval of the Council.

(2) Where under this Act a right of appeal is given against the decision of the Council attaching a condition to a licence, any condition so attached has no force until the time limited for appealing against the condition has expired and, where an appeal against the condition has been duly made under this Act, until the Court hearing the appeal confirms the decision of the Council imposing the condition.

Duration
and renewal
of licence.

27. (1) A licence shall, subject to this Act, remain in force for a period of one year from the date of its issue and may from time to time be renewed for a further period of one year upon application made within the prescribed time.

(2) The holder of a licence who desires to obtain a renewal of the licence shall at any time, not being more than one month before the date of the expiration of the licence or of the subsisting renewal thereof, as the case may be, make application in the prescribed form to the Commissioner for a renewal of the licence.

(3) Where the holder of a licence ceases to be the occupier of any scheduled premises, the occupier of those premises may make application in the prescribed form, accompanied by the prescribed fee, to the Commissioner for approval of the transfer to him of the licence in respect of those premises.

Transfer of licence.

(4) Every application for a licence or any renewal or transfer thereof shall be accompanied by the amount of the prescribed fee and if the application is not granted that amount shall be refunded to the applicant.

Applications for licence, renewal or transfer thereof.

28. The Commissioner shall cause to be kept such registers of licences as may be prescribed.

Register of licences.

29. The holder of a licence shall comply in every respect with the terms and conditions thereof.

Licensee to comply with licence.

30. (1) The fee payable for a licence or any renewal thereof shall be such amount as may be prescribed not exceeding two hundred dollars.

Fees. Amended by No. 113 of 1965, s. 8.

(2) Different fees may be prescribed according to any one or more of the following factors—

- (a) the class of scheduled premises;
- (b) the location of scheduled premises;
- (c) the number of persons employed at scheduled premises;
- (d) any other prescribed factor.

(3) Where the Commissioner is satisfied upon the recommendation of the Council that the air pollution from scheduled premises would not be such as to warrant the payment of the prescribed fee that would otherwise be payable in respect of a licence for those premises, the Commissioner may upon the application of the occupier thereof remit in whole or in part that prescribed fee.

(4) Where the aggregate of the fees that would, but for this subsection, have been payable for licences or renewals thereof in respect of any scheduled premises by any one and the same person exceeds one thousand dollars in any period of twelve months, the aggregate of the fees payable for the licences, transfers or renewals for that period shall be one thousand dollars.

(5) The fee payable in respect of the transfer of a licence shall be as prescribed.

Division 2.—Other provisions relating to Scheduled Premises.

Occupiers to maintain and operate equipment.

31. The occupier of any scheduled premises shall maintain any fuel burning equipment and any control equipment installed in or on those premises in an efficient condition and shall operate the equipment in a proper and efficient manner.

Prohibition of dark smoke from chimneys.

32. (1) The occupier of any scheduled premises shall not cause, permit or suffer the emission of dark smoke from a chimney of, or used in connection with, the scheduled premises.

(2) Emissions of smoke from any chimney lasting for such periods on any day as may be prescribed shall, in such classes of cases and subject to such limitations as may be prescribed, be left out of account for the purposes of this section.

Excess of prescribed standards of air impurities prohibited.

33. (1) The occupier of any scheduled premises shall not, unless he is exempted by the Council from the provisions of this section, conduct any trade, industry or process, or operate any fuel burning equipment or industrial plant in or on those premises in such manner as to cause, permit or suffer the emission at the prescribed point of air impurities in excess of the standard of concentration and rate of emission, or the standard of concentration or rate of emission prescribed in respect of that trade, industry, process, fuel burning equipment or industrial plant.

(2) (a) Where any such standard as is referred to in subsection (1) of this section has not been so prescribed, the occupier of any scheduled premises shall conduct any trade, industry, or process and operate any fuel burning equipment or industrial plant, in or on the scheduled premises by such practicable means as may be necessary to prevent or minimise air pollution.

(b) Subject to section forty-five of this Act, if the Council is of opinion that the occupier of scheduled premises is not complying with paragraph (a) of this subsection, it may by notice in writing signed by the Chairman thereof, served on the occupier, specify therein the practical means that the occupier shall adopt within such time as is so specified, so as in the opinion of the Council, to comply with that paragraph.

(c) Subject to section forty-five of this Act, the occupier of scheduled premises to whom the notice is given shall comply therewith.

(3) If the Council for special reasons thinks fit to do so, the Council may conditionally or unconditionally exempt the occupier of any scheduled premises from the provisions of subsection (1) of this section.

(4) The occupier of any scheduled premises who has been exempted by the Council from the provisions of subsection (1) of this section shall comply in every respect with any condition attached to the exemption.

34. (1) Except with the prior written approval of the Council or where so required to do under section thirty-five of this Act, the occupier of any scheduled premises shall not, if by so doing he is likely to cause or increase air pollution from those premises—

Certain work on scheduled premises to have prior approval.

(a) alter the method of operation of any trade, industry, process, fuel burning equipment or industrial plant in or on the premises; or

- (b) install, alter or replace any equipment or plant in or on the premises.

(2) A person shall not—

- (a) in or on any premises carry out any work that could cause those premises to become scheduled premises;
- (b) on any land construct any building designed for use for a purpose that would cause the land or building to become scheduled premises; or
- (c) except where so required to do under section thirty-five of this Act, erect or alter the height of any chimney through which air impurities may be emitted from any scheduled premises,

unless

- (d) plans and specifications of the work or building or erection or alteration, as the case may be, have been submitted to and approved by the Council; and
- (e) the site on which the work is to be carried out or the building is to be constructed or the chimney is to be erected or altered, as the case may be, has been approved by the Council.

(3) An application for any approval under this section shall be made to the Commissioner in the prescribed form and accompanied by—

- (a) the prescribed fee;
- (b) in any case to which paragraph (a) or (b) of subsection (2) of this section applies, details of the trade, industry or process proposed to be carried on in or on the premises or proposed premises, together with details of the methods intended to be adopted so as to control air pollution from those premises; and
- (c) evidence that any necessary approval in respect thereof required under the Local Government Act, 1960, has been obtained.

(4) The Commissioner—

- (a) shall refer any such application to the Council; and
- (b) may require an applicant to furnish such other information as the Commissioner and the Council may consider necessary and relevant to the application.

(5) The Council may grant any such application either subject to conditions or unconditionally.

35. (1) Where any air impurities are being, or are likely to be, emitted from any scheduled premises in or on which is conducted any trade, industry or process, or in or on which there is any fuel burning equipment, control equipment or industrial plant the Council may by notice in writing signed by the Chairman thereof, require the occupier of those premises to—

Power of Council to require work on scheduled premises.

- (a) install and operate control equipment, or additional control equipment, in or on those premises;
- (b) repair, alter, or replace any fuel burning equipment or control equipment installed in or on those premises;
- (c) erect or alter the height of, any chimney through which air impurities may be emitted from those premises,

within such time and in such manner as may be specified in the notice.

(2) The Council may by notice in writing signed by the Chairman thereof require the occupier of any scheduled premises in carrying on any trade, industry or process or in operating any fuel burning equipment or industrial plant to operate, in accordance with any directions contained in the notice, any control equipment in or on those premises.

(3) The occupier of scheduled premises to whom the notice is given under this section shall comply therewith.

PART IV.—PREMISES OTHER THAN
SCHEDULED PREMISES.Application
of this Part.

36. This Part of this Act does not apply to any Scheduled premises.

Prohibition
of dark
smoke from
chimneys.

37. (1) The occupier of any premises shall not cause, permit or suffer the emission of dark smoke from a chimney of, or used in connection with, the premises.

(2) Emissions of smoke from any chimney lasting for not longer than such periods on any day as may be prescribed, shall, in such classes of cases and subject to such limitations as may be prescribed, be left out of account for the purposes of this section.

(3) Subsections (1) and (2) of this section apply to a vessel within the limits of any harbour or in any inland navigable waters, as they apply in relation to premises other than scheduled premises, but as if for the reference to the occupier of any premises there was substituted a reference to the Master of the vessel, or the person for the time being having the command, charge or management thereof, and as if references to a chimney included any stack, structure, opening or other means whatever from, through or by means of which dark smoke has been emitted from the vessel.

Prescribed
standards
of air
impurities
not to be
exceeded.

38. The provisions of section thirty-three of this Act, other than the provisions of paragraphs (b) and (c) of subsection (2) thereof, apply to the occupier of premises other than scheduled premises and in so applying those provisions any reference therein to scheduled premises shall be read as a reference to premises.

Control
of trades
industrial
processes,
fuel burning
equipment
and indus-
trial plant.

39. (1) Where any air impurities are being or are likely to be emitted from any premises in or on which is conducted any trade, industry, or process, or in or on which there is any fuel burning equipment or industrial plant, the Council may by notice

in writing signed by the Chairman thereof, require the occupier of those premises, if in the opinion of the Council he has not taken all practicable means to prevent or to minimise the emission of air impurities from those premises,—

- (a) to install and operate control equipment in or on the premises;
- (b) to repair, alter or replace any fuel burning equipment or control equipment installed in or on the premises; or
- (c) to erect or alter the height of any chimney through which air impurities may be discharged from the premises,

within such time and in such manner as may be specified in the notice.

(2) The Council may by notice in writing signed by the Chairman thereof, require the occupier of any premises in carrying on any trade, industry or process, or in operating any fuel burning equipment or industrial plant to operate, in accordance with any directions contained in the notice, any control equipment in or on those premises.

(3) An occupier of premises to whom any notice in writing is given under this section shall comply therewith.

PART V.—GENERAL PROVISIONS.

40. The Chairman of the Council may—

Powers of
Chairman.

- (a) consult with such persons, bodies and associations as he thinks fit for the purpose of obtaining information with respect to, and developing methods of, controlling air pollution; and
- (b) give advice and assistance to the occupier of any premises or to any person operating any vehicle or vessel for the purpose of assisting the occupier or person in preventing or minimising air pollution from the premises, vehicle or vessel.

Occupier of premises to furnish information.

41. The Council, by notice in writing signed by the Chairman thereof and served on the occupier of any premises, may require the occupier to furnish to the Council within fourteen days or such longer period as may be specified in the notice, such information as to any fuel burning equipment, control equipment or industrial plant in or on the premises as the Council requires by the notice.

Offences. Refusal to furnish information, etc. Amended by No. 113 of 1965, s. 8.

42. (1) A person who, where required by the Council or by an inspector under or pursuant to this Act, to answer any question, or to furnish any information—

- (a) fails to answer the question or furnish the information; or
- (b) gives any answer or furnishes any information that is false or misleading in any material respect,

is guilty of an offence against this Act.

Penalty: Two hundred dollars.

(2) Any statement made pursuant to any requirement made pursuant to this section, shall not, if the person making the statement objected, at the time of making it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against the person for any offence not being the offence of contravening or failing to comply with the provisions of this section.

Power to prohibit the use of combustible materials, fuel burning equipment, etc.

43. The Governor may, on the recommendation of the Council, by Order in Council published in the *Government Gazette*—

- (a) prohibit the use of such combustible materials or fuel burning equipment or industrial plant or such classes of fuel or fuel burning equipment or industrial plant as may be specified in the order; or

- (b) prohibit the use of all combustible materials or fuel burning equipment or industrial plant other than such combustible materials or fuel burning equipment or industrial plant or such classes of combustible materials or fuel burning equipment or industrial plant as may be specified in the order,

within such area as may be so specified.

44. All expenses incurred in the administration of this Act, including all salaries, fees, allowances, travelling expenses and fees payable to the members or deputy members of the Council or the Committee shall be paid out of the Consolidated Revenue Fund from moneys appropriated by Parliament for the purpose.

Expenses
incurred in
administra-
tion of Act.

45. (1) Any person—

Appeals.

- (a) being the applicant for a licence or for the renewal or transfer thereof or the holder of a licence, and who is aggrieved by any decision of the Council with respect to his application or licence; or
- (b) being an applicant for the approval of the Council under section thirty-four of this Act or a person to whom a notice under section thirty-three, thirty-five, thirty-eight or thirty-nine of this Act has been given, who is aggrieved by the decision of the Council with respect to his application or by the notice,

may appeal against the decision or the notice to the Local Court constituted under the Local Courts Act, 1904 that is held nearest to the place where the premises, building or land to which the appeal relates are or is situated.

(2) An appeal under this section shall be instituted within thirty days after the giving to the applicant, holder of the licence or person to whom

a notice has been given under section thirty-three, thirty-five, thirty-eight or thirty-nine of this Act, of notice of the decision of the Council or of the notice under those sections, as the case may be.

(3) An appeal under this section shall be by way of rehearing and, subject to this Act, the decision of the Local Court shall be given effect to.

(4) An appeal under this section shall be instituted by filing with the Clerk of the Local Court having jurisdiction to hear the appeal, within the prescribed time, a notice of appeal.

(5) The power to make Rules of Court under the Local Courts Act, 1904 shall be deemed to include power to make Rules of Court providing and regulating practice and procedure in respect of appeals to the Local Court under this section but until those Rules of Court are made, or so far as the Rules of Court do not extend, the Magistrate of the Local Court hearing any appeal under this section may, in the particular case, give such directions as he may deem fit, and the directions have, according to their tenor, the force and effect of Rules of Court made under the Local Courts Act, 1904.

(6) The Local Court may allow or dismiss any appeal wholly or in part, and may make such modifications in any requisition, determination, decision or condition appealed against as it thinks fit, and may make or impose any new determination, decision or condition in substitution for or in addition to the one appealed against and make such order as to costs to be paid by any party to the appeal as it thinks just and the order may be enforced in the same manner as a judgment of the Court.

Power of
members of
Council,
Committee
and
inspectors.

46. Any member of the Council or Committee or any inspector in addition to such other powers and duties as may from time to time devolve upon him under this Act, or as may be prescribed, may

together with any person he may think competent to assist him in making any inspection or examination, enter any premises, and may therein or thereon—

- (a) examine and inspect any fuel burning equipment, control equipment and industrial plant; and
- (b) make such examination and inquiry and tests and ask such questions, and request such information as he considers necessary or desirable,

to ascertain whether the provisions of this Act or any requirement or order made under or pursuant thereto or the conditions attached to any licence or exemptions granted thereunder are being or have been complied with.

47. The occupier of any premises and any person in charge or apparently in charge of any premises shall furnish to any member of the Council or the Committee or any inspector all reasonable assistance and all such information that he is capable of furnishing or as required by that member or inspector with respect to the exercise of his powers and the discharge of his duties under this Act.

Occupier
to allow
entry and
inspection.

48. A person who—

- (a) delays or obstructs an inspector in the exercise of his powers under this Act; or
- (b) fails to facilitate by all reasonable means available to him the entry and inspection of any premises by any inspector, or the examination of any fuel burning equipment, control equipment, or industrial plant, or the making of any tests that an inspector is empowered, under this Act, to make,

Offence.
Obstruction
of inspector.
Amended by
No. 113 of
1965, s. 8.

is guilty of an offence against this Act.

Penalty: Two hundred dollars.

Exemptions.

49. (1) Any exemption granted by the Council under this Act—

- (a) shall be in writing signed by the Chairman thereof;
- (b) shall, subject to subsection (2) of this section, remain in force during such period as is specified therein; and
- (c) is subject to such conditions as are specified therein.

(2) (a) The Council may, at any time revoke or vary, whether by way of addition or substitution, any term or condition of an exemption.

(b) The Chairman of the Council shall notify in writing, the person to whom the exemption relates of any revocation or variation thereof.

(3) The Council shall cause to be kept registers of exemptions granted under this Act in such form as the Council thinks fit.

Certificate to be evidence of certain matters.

50. A certificate purporting to be signed by the Commissioner or any prescribed officer certifying that on any date or during any period mentioned in the certificate any person was or was not the holder of a licence or certain conditions were or were not attached to a licence, or that certain particulars did or did not appear on any register kept under this Act, is, without proof of the signature or of the official character of the person purporting to have signed the certificate, evidence of the matters certified in and by the certificate.

Secrecy. Amended by No. 113 of 1965, s. 8.

51. A person who discloses any information relating to any manufacturing process or trade secret used in carrying on or operating any particular undertaking or equipment or plant, that has

been furnished to him or obtained by him under this Act, or in connection with the execution of this Act, is, unless the disclosure is made—

- (a) with the consent of the person carrying on or operating the undertaking, equipment or plant;
- (b) in connection with the execution of this Act;
- (c) with the prior permission of the Minister; or
- (d) subject to the provisions of section forty-two of this Act, for the purposes of any legal proceedings arising out of this Act or of any report of such proceedings,

guilty of an offence against this Act.

Penalty: Two hundred dollars.

52. (1) A person who—

- (a) contravenes or fails to comply with any provision of this Act;
- (b) being the holder of a licence, contravenes or fails to comply with any condition or prohibition in force, and attached to the licence;
- (c) contravenes or fails to comply with any condition subject to which any approval is granted under this Act;
- (d) contravenes or fails to comply with any conditions, subject to which any exemption is granted by the Council under this Act;
- (e) contravenes or fails to comply with any requirement of, or prohibition imposed by, any order made under or pursuant to this Act,

Offences.
Amended by
No. 113 of
1965, s. 8.

is guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act is, except where no other penalty is expressly provided for the offence, liable to a penalty of two hundred dollars, and if the offence is a continuing one is liable to a further penalty not exceeding forty dollars for each day the offence continues.

Regulations.
Amended by
No. 113 of
1965, s. 8.

53. (1) The Governor may make such regulations as he deems necessary for giving effect to this Act and in particular make regulations for or with respect to—

- (a) the form and manner of applying for and granting, and the matters to be taken into consideration in respect of any application for, a licence or renewal or transfer of a licence;
- (b) giving effect to any recommendation of the Council;
- (c) the keeping of registers under this Act;
- (d) the prescribing of forms and fees under this Act;
- (e) the types of tests to be carried out and the records to be maintained by occupiers of premises with respect to the emission of air impurities from, and the consumption of fuel on, the premises;
- (f) the types of control equipment that may be used in or on any premises, and the manner in which that equipment shall be operated and maintained;
- (g) the assistance and facilities, including access to, and the means of making examinations, inspections and tests at, any prescribed point referred to in section thirty-three or thirty-eight of this Act, to be provided by the occupier of premises to enable inspectors to exercise their powers under this Act;

- (h) prescribing standards of concentration or rates of emission of air impurities; the points at which those standards of concentration or rates of emission are to be determined; the method of making tests for the purposes of ascertaining whether any of the provisions of this Act or any conditions attached to a licence or to an exemption are being or have been complied with; and providing that any such test shall only be made in accordance with the prescribed method.

(2) A regulation may—

- (a) be general in application or may be restricted in operation as to time, place or circumstance and may be general or restricted to any specified class or subject matter;
- (b) discriminate according to different premises, trades, industries, processes, fuel burning equipment or industrial plants or different classes of premises, trades, industries, processes, fuel burning equipment or industrial plants;
- (c) be made so as to operate for a limited period or without limit as to the period of operation thereof;
- (d) exempt, unconditionally or subject to prescribed conditions, the occupier of any premises or any premises from any specified provisions of the regulations;
- (e) adopt either wholly or partially either specifically or by reference any of the standard rules, codes, specifications or tests of any recognised authority specified in the regulations in relation to any matters with respect to which regulations may be made;
- (f) provide, in such cases as may be prescribed, that any document required by or under this Act to be lodged with or sent to the Commissioner, the Council or the

Committee shall be verified by statutory declaration made by such persons as may be prescribed;

- (g) impose a penalty not exceeding two hundred dollars for any offence against any regulation and, in the case of a continuing offence against the regulation, a further sum of forty dollars for each day during which the offence continues.

Section 6.
Amended by
G.G. 2/6/67,
pp. 1490-1;
G.G. 16/8/68,
p. 2432;
G.G. 19/12/69,
pp. 4154-5.

THE SCHEDULE.

Scheduled Premises.

Any premises—

(a) being used for—

bitumen works, being premises in which bitumen is mixed or prepared for use at places or premises other than at those works;

cement works, being premises in which argillaceous and calcareous materials are used in the production of cement clinker and premises in which cement clinker is ground;

ceramic works, being premises in which any product, such as bricks, tiles, pipes, pottery goods, refractories or glass are manufactured in furnaces or kilns fired by any fuel;

chemical works (class 1) being premises in which sulphuric acid, chemical fertilisers, soap, sodium silicate, lime or other calcium compounds are manufactured;

chemical works (class 2), being premises in which any chemical or chemical product not included, or referred to, in the definition of the premises or class of premises of chemical works

(class 1) is manufactured, blended, mixed or re-packaged, and in which the nature or natures of the processes carried on, or the materials used is or are likely to cause air pollution;

coke works, being premises in which coke is produced and quenched, cut, crushed and graded;

concrete works, being premises in which concrete is mixed or prepared for use at places or premises other than at those works;

ferrous and non-ferrous metal works, being premises in which metal melting processes for casting or metal coating are carried out;

gas works, being premises in which coal, coke, oil or their mixtures or derivatives are handled or prepared for carbonisation or gasification and in which such materials are subsequently carbonised or converted to combustible gas;

grinding and milling works, being premises in which rock, ores, minerals or chemicals are processed by grinding, milling or separating into different sizes by sieving, air elutriation, or in any other manner;

oil refineries, being premises in which crude shale oil or crude petroleum is refined;

primary metallurgical works, being premises in which ores are smelted to produce metal;

sandblasting works, being premises on which metal or other material is cleaned or abraded by blasting with silica sand, i.e. sand containing more than 10 per cent free silica.

scrap metal reclaiming works, being premises in which scrap is treated by heat for the recovery of metal, irrespective of whether that is the principal activity carried on on any particular premises,

Clean Air.

and including premises where metal is recovered from scrap cable by burning the insulation on that cable.

- (b) on which there is erected any boiler or boilers consuming or capable of consuming either alone or in the aggregate more than one ton of coal per hour or its equivalent heat value based on the use of coal having a calorific value of ten thousand British thermal units per pound of weight;
- (c) on which any fuel burning equipment or industrial plant is operated by The Western Australian Government Railways Commission constituted under the Government Railways Act, 1904.