

# ENVIRONMENTAL PROTECTION.

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No. 63 of 1971.

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AN ACT to make provision for the establishment of an Environmental Protection Authority, a Department of Environmental Protection and an Environmental Protection Council for the prevention and control of environmental pollution and for the protection and enhancement of the environment, to repeal the Physical Environment Protection Act, 1970, and for incidental and other purposes.

[Assented to 15th December, 1971.]

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 *Environmental Protection Act, 1971*. Short title.

Commence-  
ment.

2. This Act or any provision thereof shall come into operation on such date as is or such dates as are, respectively, fixed by proclamation.

Repeal.

3. The Physical Environment Protection Act, 1970, is hereby repealed.

Definitions.

4. (1) In this Act, unless the context otherwise requires—

“Authority member” means a member of the Authority;

“Board” means an Environmental Appeal Board constituted in accordance with section 44;

“Council” means the Environmental Protection Council established under section 16;

“Council member” means a member of the Council;

“Department” means the Department of Environmental Protection referred to in section 12;

“environment” means the physical factors prevailing in the State, including the land, and the coastal waters, sea-bed and subsoil adjacent thereto, water, atmosphere, sound, odours, tastes and radiation, the social factor of aesthetics and all factors affecting animal and plant life;

“pollution” means any direct or indirect alteration of the environment to its detriment or degradation;

“public authority” means a Minister of the Crown acting in his official capacity, a State Government Department or State instrumentality, and any other person or body, whether corporate or not, who or which, under the authority of any Act, administers or carries on for the benefit of the State, or any district or part thereof, a social service or public utility;

“section” means section of this Act;

“the Authority” means the Environmental Protection Authority established under section 9;

“to discharge”, in relation to waste, includes to cause or permit waste to be, or to fail to prevent waste from being, emitted, discharged, deposited, or allowed to escape into, the environment; and the term “discharge”, whether used as noun or verb, and derivations of that term, have corresponding meanings;

“waste” includes any matter or thing prescribed to be waste, and any matter or thing of whatever kind or in whatever form, which, if discharged, causes or is likely to cause pollution.

(2) Without affecting the application of any provision of the Interpretation Act, 1918 to this Act, a reference in this Act to “this Act” includes a reference to any declaration, regulation, rule, by-law or model by-law made or in force thereunder.

5. This Act is divided into Parts as follows— Arrangement.

PART I.—PRELIMINARY, ss. 1-8.

PART II.—ESTABLISHMENT OF ENVIRONMENTAL PROTECTION BODIES, ss. 9-27.

PART III.—ENVIRONMENTAL PROTECTION POLICY, ss. 28-57.

PART IV.—CONTROL OF WASTE, ss. 58-61.

PART V.—INSPECTION AND ENFORCEMENT, ss. 62-81.

PART VI.—MISCELLANEOUS, ss. 82-88.

6. This Act binds the Crown.

Crown  
bound.

7. (1) Where any provision of this Act is inconsistent with any provision contained in, or ratified or approved by, any other Act or any regulation, by-law,

Inconsist-  
ency.

rule, Order in Council, notice, proclamation or other law made under any other Act, the first mentioned provision shall prevail.

(2) This section has no application to Acts ratifying agreements to which the State is a party.

Power of  
Authority  
to exempt.

8. (1) The Authority with the approval of the Governor may by order published in the *Gazette*, declare that all or any of the provisions of this Act do not apply according to the order, in respect of—

- (a) any area or areas of the State;
- (b) any premises, act or thing specified in the order;
- (c) all premises, acts or things comprised in a class thereof so specified or situated in a part of the State so specified; or
- (d) all or any premises, acts or things in the circumstances so specified.

(2) The Authority may subject any exemption granted under this section to such circumstances or conditions or both as it may so specify and, notwithstanding anything contained in this Act, but subject to the provisions of subsections (4) and (5) of this section, any declaration made under subsection (1) of this section has effect according to its tenor.

(3) When the circumstances and conditions subject to which an exemption has been granted under this section cease to exist or are breached, the exemption ceases to operate.

(4) The Authority shall cause a copy of any order made under this section to be laid on the Table of each House of Parliament within the first nine sitting days of the House after the publication of the order in the *Gazette*.

(5) If either House of Parliament passes a resolution of which notice has been given within the first fourteen sitting days of that House after the copy of an order under this section has been laid on the Table of that House that the order be

disallowed, the order thereupon ceases to have effect, but the disallowance of the order does not affect or invalidate anything done in good faith by the Authority or any person exercising any powers or performing any duties under this Act before the passing of the resolution.

## PART II.—ESTABLISHMENT OF ENVIRONMENTAL PROTECTION BODIES.

9. (1) For the purposes of this Act, there shall be a body to be known as the Environmental Protection Authority which shall consist of three members, namely, the Director and two other members to be appointed by the Governor.

Environ-  
mental  
Protection  
Authority.

(2) At least one of the two members of the Authority appointed by the Governor shall be a person with a knowledge of and experienced in environmental matters.

(3) The Director shall be the Chairman of the Authority and the Governor shall appoint one of the other members to be the deputy Chairman of the Authority.

(4) Any member of the Authority appointed by the Governor under subsection (1) of this section may be so appointed for a term not exceeding seven years, but is eligible for reappointment.

(5) Until the first appointment under this Act of any member, other than the Director, the Governor may appoint a person to be an interim member of the Authority and a person so appointed shall, while his appointment subsists, be deemed to be an Authority member for all purposes of this Act.

(6) An appointment under subsection (5) of this section may be terminated at any time by the Governor, and in any event expires upon the appointment under subsection (1) of this section of a person to the office of member for which the interim appointment had been made.

(7) A person appointed under subsection (1) or subsection (5) of this section or subsection (2) of section 10, shall be paid such remuneration and allowances as the Governor from time to time determines.

Vacancies,  
etc.

10. (1) Where a vacancy occurs in the office of a member of the Authority, other than the Director, the Governor may, subject to subsection (2) of section 9, appoint a person to the vacant office.

(2) Where—

- (a) any Authority member is absent or is temporarily incapable of fulfilling his duties as member; or
- (b) an office of member of the Authority has become vacant and has not yet been filled in accordance with this Act,

the Minister may appoint a person to act in the place of that member during that absence or incapacity, or until the vacancy is filled, as the case requires, and any person so appointed has, while his appointment subsists, all the powers, functions and duties of an Authority member.

Meetings  
of the  
Authority.

11. (1) The Authority shall hold meetings at such times and places as it determines, but the Minister or the Director may at any time convene a meeting of the Authority.

(2) At any meeting of the Authority—

- (a) the Director, if present, shall preside and if the Director is not present the deputy Chairman of the Authority shall preside;
- (b) two Authority members constitute a quorum;
- (c) each Authority member may cast a deliberative vote on any question; and

- (d) any question shall be decided by a majority of the votes of the Authority members present but a question shall not be decided unless at least two Authority members vote thereon.

(3) Subject to paragraph (b) of subsection (2) of this section, the performance or exercise of the functions, powers, rights, authorities, duties or obligations of the Authority shall not be affected by reason only of there being a vacancy in the office of a member of the Authority.

12. For the purposes of assisting the Authority in the exercise and performance of its powers, functions and duties under this Act, the Authority has, subject to the Minister and to the provisions of the Public Service Act, 1904, the administration and control of the department of the Public Service of the State known as the Department of Environmental Protection.

Establishment of Department of Environmental Protection.

13. Subject to subsection (3) of section 14, a person shall be appointed to the office of Director of Environmental Protection and he shall be the permanent head of the Department.

Director of Environmental Protection.

14. (1) The Director may be appointed—

Terms of appointment of Director.

- (a) by the Governor for a term not exceeding seven years, or
- (b) under and subject to the Public Service Act, 1904.

(2) Where the Director is appointed by the Governor for a term of years—

- (a) the conditions of service of the Director shall be such as the Governor determines;
- (b) the Director shall be paid such remuneration and allowance as the Governor may, from time to time determine;

- (c) the Director may be re-appointed, from time to time at the expiration of the term, unless he has previously been removed from office by the Governor under paragraph (d) of this subsection;
- (d) the Director may, at any time, be removed from office by the Governor for disability, bankruptcy, neglect of duty or misconduct, or if, without the consent of the Governor, he engages in any other remunerative employment;
- (e) the Director may at any time resign his office by writing under his hand addressed to the Governor; and
- (f) the Director, for the purposes of the Public Service Act, 1904, shall be deemed to be the permanent head of the Department and shall have the same powers and authority in relation thereto as if he were an officer and a permanent head under that Act.

(3) Notwithstanding the provisions of section 13 and subsection (1) of this section, the person appointed to the office of Director of Environmental Protection under section 9 of the Physical Environment Protection Act, 1970 and section 11 of the Interpretation Act, 1918 shall be deemed, upon the coming into operation of this section, to have been appointed to the office of Director of Environmental Protection under this section for a term expiring on the day on which that firstmentioned appointment would have expired but for the operation of section 3 of this Act.

Staff of the  
Department  
of Environ-  
mental  
Protection,  
etc.

15. (1) There shall be appointed under and subject to the Public Service Act, 1904, such officers and temporary employees as may be necessary to provide administrative, scientific, technical and other services to the Department to enable it to assist the Authority in the exercise and performance of the powers, functions and duties conferred on the Authority by this Act, and to permit the Department



to undertake studies, analysis and research concerning environmental pollution and the protection of the environment and to make investigations and reports with regard to the carrying out of this Act.

(2) The Minister may, on the request of the Authority, engage, under contract for services, such professional and technical or other assistance as may be necessary to enable the Authority and the Department to carry out effectively their functions under this Act, and enter into arrangements with—

- (i) a Minister of the Crown of any State of the Commonwealth, a Minister of State of the Commonwealth, a department or an instrumentality of the Commonwealth or any State of the Commonwealth; or
- (ii) a university or other tertiary institution; or
- (iii) any other body or person,

with respect to the conduct of any investigation, study or research that may be necessary or desirable for the purposes of this Act.

16. (1) For the purposes of this Act there shall be a council to be known as the Environmental Protection Council.

Environ-  
mental  
Protection  
Council.

(2) Subject to subsection (3) of section 25 the performance or exercise of the functions, powers, rights, authorities, duties or obligations of the Council shall not be affected by reason only of there being a vacancy or vacancies in the office of member of the Council.

17. (1) The Council shall consist of fourteen members, namely—

Constitution  
of Council.

- (a) the Director, who shall be the Chairman of the Council; and

(b) thirteen other members appointed by the Governor, of whom—

- (i) seven shall be representative of State Government Departments and State instrumentalities;
- (ii) one shall be representative of the councils of the municipalities constituted under the Local Government Act, 1960;
- (iii) two (being persons who are not employed under and subject to the Public Service Act, 1904 and who shall have special knowledge of, or experience in, environmental protection) shall be representative of individuals and bodies of persons having a special interest in environmental protection;
- (iv) one shall be representative of persons engaged in primary industry other than the industries referred to in subparagraph (vi) of this paragraph;
- (v) one shall be representative of persons engaged in secondary industry; and
- (vi) one shall be representative of persons engaged in the extraction and primary processing of mined material.

(2) Of the members referred to in paragraph (b) of subsection (1) of this section who are first appointed under that subsection, as designated by the Governor at the time of their appointment—

- (a) five shall be appointed for a period of one year;
- (b) four shall be appointed for a period of two years; and
- (c) four shall be appointed for a period of three years.

(3) After the appointment of the thirteen members first appointed as provided in paragraph (b) of subsection (1) of this section, each subsequent

appointment of a Council member, other than the Director, shall, subject to section 18, be for a period of three years.

18. If a Council member ceases to hold office before the expiration of the period of his appointment, another person may, if he has the qualifications, if any, required to be held by the member in whose place he is being appointed, be appointed by the Governor in the place of that member for the remainder of that period and shall be representative of the same interests as that member.

Appoint-  
ments to fill  
casual  
vacancies.

19. (1) The Governor shall appoint one of the members of the Council to be the Deputy Chairman of the Council.

Deputy  
Chairman.

(2) The appointment of a member as Chairman or Deputy Chairman of the Council may be terminated at any time by the Governor.

20. (1) If the Director is absent or the office of Director is vacant, the Deputy Chairman of the Council shall, subject to subsection (2) of this section, act as Chairman of the Council during the period of the absence or vacancy.

Acting  
Chairman.

(2) The Council may appoint a Council member, other than the Director or the person who is the Deputy Chairman of the Council to act as Chairman of the Council during any period when—

- (a) the Director is absent on leave of absence or the office of Director is vacant; and
- (b) the Deputy Chairman of the Council is absent on leave of absence or the office of Deputy Chairman of the Council is vacant,

and the Deputy Chairman of the Council or a member appointed to act as Chairman of the Council under this subsection has, when acting as such, all the powers, functions and duties conferred by this Act on the Chairman of the Council.

Deputies of  
members.

21. (1) The Governor may appoint a person to be a deputy of a Council member and may terminate such an appointment at any time.

(2) A person so appointed is, in the event of the absence from a meeting of the Council of the Council member of whom he is the deputy, entitled to attend that meeting and, when so attending, has all the powers, functions and duties of a Council member.

Remunera-  
tion, etc., of  
members and  
deputies.

22. (1) Subject to subsection (2) of this section, Council members and their deputies, other than the Director, shall be paid such remuneration and allowances as the Governor determines.

(2) The Governor shall not determine the remuneration and allowances to be paid—

- (a) to a Council member or a deputy of Council member; or
- (b) to a person appointed a member of a committee under section 27,

who is a person to whom the Public Service Act, 1904 applies except with the prior approval, in writing, of the Chairman of the Public Service Board.

Vacation of  
Office.

23. If a member of the Council—

- (a) is an undischarged bankrupt or person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) becomes permanently incapable of performing his duties as a member;
- (c) resigns his office by writing under his hand addressed to the Governor;
- (d) absents himself, except on leave duly granted by the Minister, from three consecutive meetings of the Council,

the office of that member becomes vacant.

24. (1) The Council shall hold meetings at such times and places as the Council determines.

Convening  
of meetings  
of Council.

(2) The Minister or the Authority or any three or more Council members may at any time require the Director to convene a meeting of the Council.

25. (1) The Director shall preside at all meetings of the Council at which he is present, and the Deputy Chairman of the Council shall preside at any meeting at which he, but not the Director, is present.

Meetings of  
Council.

(2) Where the Director and the Deputy Chairman of the Council are both absent from a meeting of the Council, the Council members present shall appoint one of their number present to act as chairman at the meeting.

(3) At a meeting of the Council, a majority of the Council members for the time being holding office constitutes a quorum.

(4) A question arising at a meeting of the Council shall be decided by a majority of the votes of the Council members present and voting.

(5) At a meeting of the Council at which the Director presides, the Director does not have a deliberative vote but in the event of an equality of votes has a casting vote.

26. (1) An Authority member or a Council member who has a direct or indirect pecuniary interest in any matter that is before a meeting of the Authority or the Council for consideration shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to the members present at the meeting and such disclosure shall be recorded in the record of the meeting.

Interest and  
records.

(2) Any such member who has disclosed his interest in any matter may take part in the consideration or discussion, but shall not vote.

(3) Where an Authority member or a Council member in the opinion of the chairman of the meeting has a material pecuniary interest in any matter, the chairman may call upon the member to disclose the nature of his interest and, in default of any such disclosure, may thereupon determine that such an interest exists.

(4) Every determination that a member is so interested in any matter shall be recorded in the record of the proceedings of the meeting at which it is made.

(5) Where the chairman determines that a member has an undisclosed interest in any matter before the meeting for consideration that member may take part in the consideration or discussion but shall not vote.

(6) In all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure or order, or as to the determination of an interest, then, subject to the Minister, the decision of the chairman shall be final and conclusive.

(7) A record of the proceedings of every meeting shall be kept in such manner as the Minister may direct or approve, and shall be certified as correct by the member presiding at that or the next succeeding meeting.

**Committees.**

27. (1) The Council, may from time to time, appoint a committee or committees, consisting in each case of two or more persons, to advise the Council on such matters relating to its functions as are referred by the Council to the committee.

(2) A person may be appointed to be a member of any such committee notwithstanding that he is not a member of the Council.

(3) Subject to subsection (2) of section 22, members of any such committee shall be paid such remuneration and allowances as the Governor may determine.

PART III.—ENVIRONMENTAL PROTECTION POLICY.

28. It is the duty of the Authority to use its best endeavours— Duty of Authority.

- (a) to enhance the quality of the environment;  
and
- (b) to control and wherever practicable to prevent any act or omission which causes, or is capable of causing, pollution.

29. The functions of the Authority are— Functions of Authority.

- (a) to consider and initiate the means of enhancing the quality of the environment and the means of preventing, controlling, abating or mitigating pollution;
- (b) to carry out investigations into the problems of environmental protection;
- (c) to obtain the advice of persons having special knowledge, experience or responsibility in regard to environmental protection;
- (d) to keep under review the progress made in the attainment of the objects and purpose of this Act; and
- (e) generally, to administer and give effect to the provisions of this Act and to carry out such other functions as may be prescribed.

30. (1) The Authority has all such powers, rights and privileges as may be reasonably necessary to enable it to carry out its duties and functions. Powers of the Authority.

(2) For the purposes of this Act, the Authority may, with the consent of the Minister of the Crown having responsibility for the administration of the Act relating to a department of the government of the State or an instrumentality or agency of the Crown, make use of the services of any officer of that department, instrumentality or agency.

(3) The Authority may, on matters relevant to the purposes of this Act, confer and collaborate with Departments of the Commonwealth and the States of the Commonwealth and other bodies, instrumentalities or agencies of the Commonwealth or the States of the Commonwealth having to do with environmental protection.

(4) Without limiting the generality of the provisions of this section, the Authority may—

- (a) establish committees of such persons as the Authority may determine, but so that in every case the chairman of the committee shall be either an Authority member or a Council member;
- (b) empower a committee to investigate and report on any aspect of its functions, to implement any decision, or to carry out any administrative duty;
- (c) invite any person, subject to the approval of the Minister and on such terms and conditions as the Minister may determine, to act in an advisory capacity to the Authority in relation to all or any aspects of its functions;
- (d) with the approval of the Governor publish model by-laws for adoption by local authorities or other authorised bodies for the purposes of this Act;
- (e) with the approval of the Governor make regulations in accordance with the provisions of any declaration made under section 39 of this Act;
- (f) advise the Minister on any proposals or questions that may be referred to it with regard to environmental matters;
- (g) consider and make proposals as to the policy to be followed in the State with regard to environmental matters;



- (h) co-ordinate all activities, whether governmental or otherwise, as are necessary to protect, restore or improve the environment in the State;
- (i) conduct and promote relevant research;
- (j) establish and develop criteria for the assessment of the extent of environmental change or pollution;
- (k) specify standards and criteria, and the methods of sampling and testing to be used for any purpose;
- (l) undertake investigations, inspections and prosecutions;
- (m) publish reports and provide information for the purpose of increasing public awareness of the problems and remedies that exist in relation to environmental pollution; and
- (n) promote, encourage, co-ordinate and carry out short term and long term planning and projects in environmental management.

31. (1) The Authority may, with the approval of the Governor— Powers of delegation.

- (a) delegate to any officer of the Department, to a public authority or officer or employee thereof, or to any other person or body specified in the instrument of delegation, all or any of its powers and functions under this Act, and any regulations, rules or by-laws made under this Act, other than this power of delegation; and
- (b) vary or revoke a delegation.

(2) A power or function delegated by the Authority may be exercised or performed by the delegate—

- (a) in accordance with the instrument of delegation; and

- (b) if the exercise of the power or the performance of the function in relation to a matter is dependent upon the opinion, belief or state of mind of the Authority—upon the opinion, belief, or state of mind of the delegate in relation to that matter.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Authority.

Annual  
Report.

32. The Authority shall as soon as practicable after the thirtieth day of June in each year make to the Minister a report of the proceedings of the Authority during the year ending on that day, and the Minister shall cause the report to be laid before each House of Parliament within nine sitting days of the House after the receipt of the report by the Minister.

Duty of the  
Council.

33. It is the duty of the Council to assist and advise, and make recommendations to the Minister and to the Authority, in respect of environmental protection and enhancement generally, and the implementation of declarations as to environmental policy.

Functions of  
Council.

34. (1) The functions of the Council are—

- (a) to assist and advise the Authority in the making of proposals as to State environmental policy;
- (b) to make recommendations to the Authority with respect to any matter concerning the control of the discharge of waste, and in particular with respect to—
  - (i) the co-ordination of all activities conducted by Government bodies pertinent to that control; and
  - (ii) the selection of surveys and investigations to be undertaken by the Authority;

- (c) to investigate and report to the Authority on any matter referred to it for that purpose by the Minister or the Authority, concerning the exercise or performance by the Authority of any duty, function or power conferred on the Authority by this Act and to make recommendations to the Authority on any such matter; and
- (d) generally to advise the Authority on any matter pertaining to the responsibilities, duties, functions or powers of the Authority, irrespective of whether the matter has been referred to the Council for its advice.

(2) The Council shall as soon as practicable after the thirtieth day of June in each year make to the Minister a report of the proceedings of the Council during the year ending on that day, and the Minister shall cause the report to be laid before each House of Parliament within nine sitting days of the House after the receipt of the report by the Minister.

35. A public notice required to be published by the Authority setting out its proposals on the policy to be followed in the State with respect to environmental protection or enhancement, shall—

Notices of  
proposals  
and decisions.

- (a) be published in the *Gazette*; and
- (b) be so published in three issues of a daily newspaper circulating throughout the State that a period of not less than twenty-one days elapses between the first and the last dates of publication.

36. (1) After taking into account any relevant advice or recommendations of the Council the Authority may, from time to time, by notice published in accordance with the requirements of section 35, make known to the public its proposals on the policy to be followed with respect to any particular aspect or aspects of environmental protection or enhancement.

Proposals  
as to  
policy.

(2) Within the time specified in the notice and in the manner so specified, any person or body that wishes to make representations to the Authority

with respect to any proposal published under subsection (1) of this section may submit those representations with all relevant accompanying documents or information, to the Authority.

(3) The Authority shall consider any representation made to it under subsection (2) of this section and shall report thereon to the Minister.

Public  
inquiry.

37. (1) Where the Minister considers it expedient in the public interest after considering the report of the Authority concerning representations made to it under subsection (2) of section 36 relating to proposals published by the Authority under that section the Minister may, and where the Authority so requests, shall, appoint a Committee, by notice published in the *Gazette*, to hold a public inquiry into and report upon the proposals so published, and, where so required or authorised by the terms of the appointment to make recommendations on those proposals.

(2) A Committee appointed under subsection (1) of this section, and its Chairman, has all the powers, rights, and privileges conferred by the Royal Commissions Act, 1968, on a Commission and its Chairman, and that Act applies, with such modifications as the circumstances require, to any witness summoned by or appearing before the Committee.

(3) Where a public inquiry is held under this section, the proposals to be submitted by the Authority to the Governor for approval in accordance with section 39 shall not be inconsistent with the findings of the inquiry.

Proposals to  
be revised.

38. (1) After consideration of all representations submitted to the Authority under section 36, and after consultation with such public authorities and persons as appear to the Authority to be likely to be affected and as the Authority considers requisite, the Authority may revise the proposals published under section 36.

(2) The proposals published under section 36 as revised by the Authority after consideration of any representations and the findings of any inquiry

shall, following the completion of the consultations considered requisite, be—

- (a) made known to the public by notice published in accordance with section 35;
- (b) further revised, if so required by the decision of an Environmental Appeal Board; and
- (c) thereafter submitted to the Governor for approval under section 39.

39. (1) Where a proposal has been prepared by the Authority in accordance with this Part, and any relevant appeal and revision procedures have been completed, the Authority shall submit the proposal to the Governor for approval.

Governor's approval.

(2) Unless and until published in accordance with subsection (3) of this section, a proposal shall be construed only as a notification of intent and is of no other effect in law.

(3) The Governor may, by declaration published as a notice in the *Gazette*, approve a proposal submitted to him in accordance with this Part and any such declaration has the force of law as though it had been enacted as part of this Act either—

- (a) on and from the day on which it is published in the *Gazette*; or
- (b) on and from such subsequent day as is prescribed in the declaration.

(4) A declaration published under this section may be revoked by the Governor by notice published in the *Gazette* but may only be varied in accordance with the procedures required by this Part for the preparation of a new proposal.

40. (1) Where a declaration of the State environmental protection policy is made under section 39, the provisions of that declaration establish the basis upon which the Authority will act to preserve or enhance the environment to which that declaration relates.

Content of Declaration.

(2) A declaration may specify beneficial uses that the Authority will endeavour to protect or promote, and detrimental uses or practices that the Authority is empowered to prohibit or control, and may set out the measures by which those objectives are to be attained and maintained.

(3) A declaration may delineate programmes for the improvement or restoration of the environment and the prevention, abatement or control of pollution.

(4) A declaration may relate to any activity for the enhancement or protection of the environment, whether related to land, air, sea or other waters, noise, vibration, or the discharge of waste, or otherwise.

(5) A declaration may empower the Authority, or any other person or body authorised by the Authority, with the approval of the Governor, to make regulations for the purposes of the enforcement of the provisions of the declaration including a power to impose pecuniary and other penalties.

Declarations  
to be  
reviewed.

41. (1) A declaration of policy published under section 39 shall be reviewed—

- (a) if the Minister by notice in the *Gazette* so directs, at the time and to the extent so directed; and
- (b) unless the Minister by notice in the *Gazette* otherwise directs, within a period of seven years from the date on which it was last published in the *Gazette* by authority of the Governor.

(2) The review of a declaration in accordance with the provisions of subsection (1) of this section shall be effected in accordance with the procedures required by this Part for the preparation of a new proposal.

(3) Where two or more declarations of policy are consolidated the provisions of this section apply to those declarations as so consolidated with effect from the date on which they were last published in the *Gazette* by authority of the Governor.

42. (1) Where a person considers that the provisions of a proposal (whether or not declared in accordance with the provisions of section 39) are not applicable in any particular case he may refer the matter to the Supreme Court, or a Judge, for the opinion of the Court and shall at the same time seek the direction of the Court as to the persons upon whom notice should be served or who should be represented.

Opinion as to application.

(2) An application made under subsection (1) of this section may be treated by the Court as an application made on behalf of all persons who might be affected by the decision and, if the Court so orders, all such persons shall be bound by the opinion of the Court.

43. (1) No appeal lies against a proposal submitted to the Governor in accordance with subsection (3) of section 37 following a public inquiry to the extent to which such proposal is consistent with the findings of that inquiry.

Appeals by persons aggrieved.

(2) Subject to the provisions of subsection (1) of this section, a person or body having cause to be aggrieved by a proposal published under section 38 may, within twenty-one days after the last date of the publication under section 35 of the notice containing the proposal, appeal to an Environmental Appeal Board against such proposal.

(3) A person or body is deemed not to have cause to be aggrieved by a proposal unless—

- (a) the Board is satisfied to the contrary; or
- (b) the Board is satisfied that the appellant—

- (i) carries on a business which is or is likely to be affected by the proposal;

- (ii) resides in the particular area to which the proposal relates or sufficiently near thereto for the proposal, or a particular aspect of the proposal, to have a disturbing effect on his physical, mental, or social well-being;
- (iii) made representations or submitted information to the Authority with respect to the proposal and represents not fewer than twenty-five persons likely to be affected by the proposal, whether or not interested by way of business or residence;
- (iv) is a person representative of any two or more of the persons referred to in subparagraphs (i), (ii) or (iii);
- (v) is a public authority having a duty in relation to the proposal;
- (vi) is an appropriate authority of the Commonwealth or any other State of the Commonwealth; or
- (vii) is a person prescribed for the purposes of this section as a person deemed to have cause to be aggrieved.

Environ-  
mental  
Appeal  
Boards.

44. (1) For the purposes of this Act there shall be constituted from time to time one or more Boards to hear and determine appeals against the proposals of the Authority as to environmental protection policy.

(2) A Board constituted in accordance with this section shall be known as an Environmental Appeal Board.

(3) A Board consists of a President and two other members, appointed by the Governor, one of whom shall be a legal practitioner of not less than seven years' standing who shall be the President of the Board.



(4) If before the determination of an appeal to a Board any member of the Board dies or becomes incapable of acting, or resigns or refuses to act, the Governor shall appoint another person to act as a member of the Board instead of that member and the appeal shall proceed and be determined as if no change in members of the Board had taken place.

(5) The President of the Board shall appoint the time and place for the sittings of the Board and may adjourn its sittings from time to time and shall, not less than seven days before the first sitting on an appeal, cause a notice of the time and place for that sitting to be given to each other member and to each party.

(6) Where a party—

- (a) after a notice of the first sitting of a Board on an appeal is given to him; or
- (b) with knowledge of the time and place appointed for any subsequent sitting of the Board on the appeal,

fails to appear at the time and place appointed, the Board may proceed to hear and determine the appeal in his absence.

45. (1) An appeal to an Environmental Appeal Board is commenced by giving notice, including the grounds of the appeal, in the manner prescribed to the Authority and to such other persons and bodies as are prescribed.

Appeal to  
Environ-  
mental  
Appeal  
Board.

(2) Within fourteen days after receiving a notice under subsection (1) of this section the Authority may, by giving notice in the prescribed manner, object to a Board hearing the appeal on the grounds that upholding the appeal would be contrary to environmental protection principles, in general or in respect of land the subject of the appeal, and would tend to prejudice the public interest, or that the appeal is frivolous or vexatious.

Governor's  
power to  
negative  
appeals.

(3) Where the Authority objects under subsection (2) of this section—

- (a) the appeal shall not be further maintained until at least thirty days after the Authority so objects;
- (b) the Governor, within thirty days after the Authority so objects, may by notice in the *Gazette* declare that upholding the appeal would be contrary to environmental protection principles, in general or in respect of the land the subject of the appeal, and would tend to prejudice the public interest, or that the appeal is frivolous or vexatious, and thereupon the appeal shall not be heard or determined by the Board;
- (c) a declaration made under paragraph (b) of this subsection shall be laid before each House of Parliament within the nine sitting days of such House next following the date of its publication and shall be subject to the same procedures as to disallowance, amendment, variation, and substitution as are provided in relation to a regulation by section 36 of the Interpretation Act, 1918;
- (d) if the Governor does not, within thirty days after the Authority so objects, make a declaration under paragraph (b) of this subsection, or if a declaration is disallowed under paragraph (c) of this subsection, the appeal shall be heard and determined by the Board.

Procedure.

46. (1) On the hearing of an appeal the Board shall act according to the substantial merits of the case and without regard to legal forms or technicalities and is not bound by the rules of evidence but, subject to the requirements of justice, may inform itself on any matter in any manner it thinks fit.

(2) All proceedings before a Board, other than interlocutory proceedings, shall be conducted in public unless the Board determines, as it is hereby authorised to do on the application of any party, that any part of the proceedings shall be in camera.

(3) The President of a Board has jurisdiction to hear and determine all interlocutory proceedings before the Board and for that purpose has the same powers as a Judge and may sit in chambers and alone.

(4) Subject to this Act, the procedure and rules to be adopted in relation to an appeal to a Board under this Part shall be as prescribed.

(5) A party may appear before a Board personally, or by counsel or a solicitor.

47. (1) On the hearing of an appeal against a proposal as to environmental protection policy a Board may— Determinations.

(a) confirm the proposal;

(b) set aside the proposal either generally or in respect of the land the subject of the appeal; or

(c) vary the proposal.

(2) Subject to section 49, the determination of an appeal by the Board is final and shall be given effect.

(3) On determining an appeal the Board shall deliver to each party a statement in writing of the reasons for the determination.

48. If a Board is unable, by a majority, to agree upon a determination of an appeal, the President of the Board shall dissolve the Board and cause notice thereof to be given to each party to the appeal and there shall, under this Part, be constituted a fresh Board, which shall rehear the appeal. Failure to agree.

49. The President of a Board may, on his own motion or on the application of any party, state a case for the decision of the Full Court of the Supreme Court on any question of law arising on the appeal and a decision of the Full Court on a case stated binds the Board in making its determination on the appeal. Cases stated.

Costs.

50. Subject to the powers of the Full Court of the Supreme Court in relation to a case stated, a Board may award such costs as it thinks fit, and any costs so awarded may be recovered in a court of competent jurisdiction as a debt due.

Witnesses  
and powers.

51. (1) A Board may summon all persons required by a party or by the Board to give evidence before it, and may examine those persons on oath or affirmation, and may require the production of any documents or other evidence in the custody or control of any party.

(2) The parties and their counsel, solicitors, witnesses, and all other persons attending a Board shall have the same rights and privileges, and shall be subject to the same obligations, fines, and penalties, as in the trial of an action at law in the Supreme Court.

(3) A Board has, until it has made its determination, all the powers of the Supreme Court so far as may be necessary for hearing and determining the appeal to it.

Indemnity as  
to want of  
jurisdiction.

52. No action shall lie or be brought against any member of a Board in respect of any act or decision done or made in the belief that it was within the jurisdiction of the Board.

Remunera-  
tion and  
expense.

53. (1) A member of a Board shall be paid such remuneration and allowances as the Governor determines.

(2) Any cost incurred by or in respect of a member of a Board in carrying out his functions shall be paid out of the Consolidated Revenue Fund which is hereby appropriated accordingly.

54. (1) The Authority may from time to time request the Minister of the Crown (in this section referred to as "the Minister for Lands"), administering the Land Act, 1933, or any Act amending or in substitution for that Act, to submit to the Authority particulars of—

Reserved  
land.

- (a) each application or proposal for the exercise of powers under Part III of the Land Act, 1933, which would constitute or include the reservation of any land, the classification of any reserved land, the leasing or vesting of any reserved land, the alteration of the boundaries of any reserved land or the alteration of the purpose for which any reserved land is reserved or for the exercise of powers under Part IV, V, VI or VII of that Act, which would constitute or include the alienation or grant, by or on behalf of the Crown, of any interest in land; or
- (b) such types or classes only of those applications and proposals as the Authority specifies in its request,

and the Minister for Lands shall thereupon cause the request made by the Authority to be complied with.

(2) Where particulars of an application or proposal referred to in subsection (1) of this section are submitted to the Authority pursuant to that subsection—

- (a) the Authority shall consider the matters so submitted to it and may for that purpose consult with the Minister for Lands; and
- (b) the Authority shall furnish the Minister for Lands with its recommendations in writing as to whether the application or proposal ought to be carried into effect and whether or to what extent the Authority

considers that the application or proposal ought to be modified, and the reasons on which the Authority's recommendations are based.

(3) The Authority may at any time after it has furnished its recommendations to the Minister for Lands under subsection (2) of this section, publish in any manner which it considers appropriate the terms of those recommendations.

(4) In considering any request or proposal, referred to it under subsection (1) of this section, and in making its recommendations and generally exercising its powers under subsection (2) of this section, the Authority shall, in particular, have regard to the terms of any relevant declaration of environmental protection policy made under section 39.

(5) Unless and until the Minister for Lands has received and considered the recommendations of the Authority under this section, he shall not exercise any power of the kind referred to in subsection (1) of this section in relation to any such land.

**Mining.**

55. (1) The Authority may from time to time request the Minister of the Crown (in this section referred to as "the Minister for Mines"), administering the Mining Act, 1904, or any Act amending or in substitution for that Act, to submit to the Authority particulars of—

- (a) each application or proposal for the exercise of a power which could result in the grant of any right, title, tenement, estate, or interest in any land to be used for the purpose of mining or a purpose ancillary thereto; or
- (b) such types or classes only of those applications and proposals as the Authority specifies in the request,

and the Minister for Mines shall thereupon cause the request made by the Authority to be complied with.

(2) Where particulars of an application or proposal referred to in subsection (1) of this section are submitted to the Authority pursuant to that subsection—

- (a) the Authority shall consider the matters so submitted to it and may for that purpose consult with the Minister for Mines; and
- (b) the Authority shall furnish the Minister for Mines with its recommendations in writing as to whether the application or proposal ought to be carried into effect and whether or to what extent the Authority considers that the application or proposal ought to be modified, and the reasons on which the Authority's recommendations are based.

(3) The Authority may at any time after it has furnished its recommendations to the Minister for Mines under subsection (2) of this section, publish in any manner which it considers appropriate the terms of those recommendations.

(4) In considering any request or proposal, referred to it under subsection (1) of this section, and in making its recommendations and generally exercising its powers under subsection (2) of this section, the Authority shall, in particular, have regard to the terms of any relevant declaration of environmental protection policy made under section 39.

(5) Unless and until the Minister for Mines has received and considered the recommendations of the Authority under this section, he shall not exercise any power of the kind referred to in subsection (1) of this section in relation to any such land.

56. (1) The Authority may from time to time request a town planning authority, that is to say—

**Town  
Planning.**

- (a) the Minister of the Crown administering the Town Planning and Development Act, 1928, or any Act amending or in substitution for that Act;

- (b) the Metropolitan Region Planning Authority constituted under the Metropolitan Region Town Planning Scheme Act, 1959;
- (c) the Town Planning Board constituted under the Town Planning and Development Act, 1928; or
- (d) a Responsible authority within the meaning given to that expression by the Town Planning and Development Act, 1928,

to submit to the Authority particulars of—

- (e) each application or proposal for the exercise of a power to approve—
  - (i) a town planning scheme;
  - (ii) an interim development order;
  - (iii) the subdivision or amalgamation of any lot or lots;
  - (iv) the development of any land;
  - (v) the change of use of any land taken for parks or open spaces; or
- (f) such types or classes only of those applications and proposals as the Authority specifies in the request,

and the person or body so requested shall thereupon cause the request made by the Authority to be complied with.

(2) Where particulars of an application or proposal referred to in subsection (1) of this section are submitted to the Authority pursuant to that subsection—

- (a) the Authority shall consider the matters so submitted to it and may for that purpose consult with the town planning authority; and
- (b) the Authority shall furnish the town planning authority with its recommendations in writing as to whether the application or proposal ought to be carried into effect and whether or to what extent the



Authority considers that the application or proposal ought to be modified, and the reasons on which the Authority's recommendations are based.

(3) The Authority may at any time after it has furnished its recommendations to the town planning authority under subsection (2) of this section, publish in any manner which it considers appropriate the terms of those recommendations.

(4) In considering any request or proposal, referred to it under subsection (1) of this section, and in making its recommendations and generally exercising its powers under subsection (2) of this section, the Authority shall, in particular, have regard to the terms of any relevant declaration of environmental protection policy made under section 39.

(5) Unless and until the town planning authority has received and considered the recommendations of the Authority under this section, it shall not exercise any power of the kind referred to in subsection (1) of this section in relation to any such land.

57. (1) Where it comes to the notice of a Minister of the Crown that a proposed development, project, industry, or other thing, may have a detrimental effect on the environment he shall so advise the Authority and shall thereafter in relation to that matter furnish to the Authority and to the Council all such aid, information and facilities as are practicable and the Authority shall report to the Minister on the matter when and as often as the Minister requires.

General  
referral.

(2) Any person or body may refer in writing to the Authority any matter which gives rise to concern as a possible cause of pollution.

(3) Where any matter is referred to the Authority under subsection (2) of this section the Authority shall consider the matter and may report and make recommendations thereon to any Minister of the Crown to whose administration the matter relates.

PART IV.—CONTROL OF WASTE.

**Definitions.**

58. In this Part,—

“statutory permit” means a licence, permit, consent, approval, or exemption, of any kind issued or granted by or under any Act, regulation, rule, or by-law, other than under this Act, by which the discharge of waste is authorised, and includes—

- (a) a licence granted under the Clean Air Act, 1964;
- (b) a permit issued under the Swan River Conservation Act, 1958; and
- (c) any permit, consent, or approval issued or granted under the Metropolitan Water Supply, Sewerage and Drainage Board by-laws; and

“permit holder” means the person or body to whom a statutory permit has been issued or granted.

**Authorised discharge.**

59. (1) Where the Authority considers that the discharge of waste authorised by a statutory permit is causing pollution, it may, in writing, recommend to the public authority responsible for the issue of that permit that—

- (a) the permit holder is required to cease, within such time as the Authority specifies, to discharge waste; or
- (b) conditions, limitations or restrictions, to the extent and within the time specified by the Authority, be imposed upon the operations authorised by the statutory permit.

(2) Before making any recommendation under subsection (1) of this section the Authority shall consult with the public authority responsible and with the permit holder as to the practicability of the measures proposed to be taken, but where, after such consultation, a public authority receives a recommendation from the Authority it is, by force of this

section and notwithstanding the provisions of any other Act, regulation, rule, or other law of the State, hereby empowered to do or require to be done all such acts and things as are necessary to give effect to the recommendation.

60. (1) Where the Authority considers that the discharge of waste by any person or body, not being a permit holder, is causing pollution, it may where the discharge is not subject to control by any other statutory authority, in writing,—

Unauthorised  
discharge.

- (a) require that person or body, within such time as the Authority specifies, to cease or modify the discharge; or
- (b) subject to the requirements of section 8, grant to that person an exemption from the provisions of any relevant declaration subject to such conditions, limitations or restrictions as the Authority considers requisite.

(2) The Authority shall not, pursuant to paragraph (a) of subsection (1) of this section, require a person or body to cease or modify a discharge of waste unless it has first consulted with that person or body, and—

- (a) the Authority and that person or body are unable to agree as to the measures to be taken to prevent pollution; or
- (b) the measures agreed have not been implemented within the time specified by the Authority.

(3) The Authority may, in lieu of requiring a person or body, pursuant to paragraph (a) of subsection (1) of this section, to cease or modify a discharge of waste, recommend to the Minister of the Crown to whose administration the matter relates that the laws of the State be so amended, or such other measures be taken, as to enable that discharge to be prevented or controlled.

Monitoring.

61. (1) The Authority may, by notice in writing or by way of a condition imposed pursuant to this Part, direct a person or body discharging waste—

- (a) to furnish to the Authority, or to the nominee of the Authority, such information regarding that waste or the manner of discharge as the Authority specifies;
- (b) to provide monitoring equipment and a monitoring programme satisfactory to the Authority, and to furnish to the Authority, or to its nominee, all data and information so obtained at such times and in such manner as the Authority specifies.
- (c) the cost of any monitoring equipment and monitoring programme which a person or body is directed to provide under this section shall be shared by the Authority and the person or body concerned on a basis to be agreed, or in the event of a failure to agree, as determined by the Governor.

(2) The information to be furnished under subsection (1) of this section may include information as to the characteristics of the receiving environment in addition to information as to the characteristics, volume and effect of the waste discharged.

PART V.—INSPECTION AND ENFORCEMENT.

Analysts.

62. (1) The Minister may appoint analysts for the purpose of making analyses of samples taken to detect the presence, quantity, characteristics and nature of waste or pollution and the effect on the receiving environment.

(2) In any proceedings under this Act the production of a certificate purporting to be signed by an analyst that any costs (which for the purposes of this section include charges and expenses) of an amount stated have been incurred in or incidental to the obtaining of an analysis under this Act, is sufficient *prima facie* evidence that the costs were duly incurred and that the amount so stated is the correct amount.

(3) On receipt of a substance for analysis under this Act the analyst shall as soon as practicable analyse that substance and shall furnish his certificate of the results of that analysis to the Authority and to the person from whose place of business such substance was obtained.

(4) A certificate of the results of an analysis carried out under this Act shall be signed by the analyst, but the analysis may be made by a person acting under the direction of the analyst.

63. (1) The Authority may publish the result of the analysis of any substance submitted for analysis under this Act, together with the name and address or place of business of the person from whom such substance was obtained, or the place where it was obtained, and any other particulars relating thereto together with any explanation and comment upon the result of the analysis which the Authority thinks desirable in the public interest and no action shall lie in respect of that publication.

Analysis may  
be published.

(2) Any proprietor or manager of a newspaper or public print may republish any report which has been published by the Authority in accordance with the provisions of subsection (1) of this section, and no action shall lie against such proprietor or manager in respect of the republication.

(3) Where the Authority has published the result of an analysis and a Court is satisfied that the publication of the result or any particular, explanation or comment has prejudiced the proper determination of any proceeding under this Act the Court may dismiss the proceeding.

64. (1) At the hearing of any proceedings with respect to a substance analysed under the provisions of this Act the production of a certificate purporting to be signed by an analyst under this Act, without proof of the signature of the person appearing to have signed the certificate or that he is an analyst, is sufficient *prima facie* evidence—

Evidence of  
analysis and  
relation of  
sample to  
bulk.

(a) of the identity of the substance analysed;

- (b) of the result of the analysis;
- (c) of the matters relevant to such proceedings stated in the certificate; and
- (d) of the prescribed method of analysis (if any) having been followed by the analyst in making the analysis,

unless the defendant by not less than three days' notice in writing delivered to the plaintiff or prosecutor and by a like three days' notice delivered to the analyst (opportunity to deliver which notices shall be afforded the defendant) requires the analyst to attend as a witness.

(2) Where in any proceedings under this Act a contravention of any of the provisions of this Act is proved with respect to a proper or representative sample taken in accordance with accepted sampling practices delivered for analysis, the contravention is deemed to have been proved with respect to the bulk from which the sample was taken, and it is no defence that the sample though exceeding or not conforming to prescribed standards in one or more respects was not so in other respects.

Evidence of  
qualifica-  
tions.

65. In any proceedings under this Act production of a certificate in the prescribed form is conclusive evidence in any court of the appointment of the analyst to whom that certificate relates and of his authority to exercise the powers conferred upon an analyst under this Act.

Appointment  
of inspectors.

66. (1) The Minister may appoint any person to be an inspector under this Act.

(2) Every person appointed to be an inspector under this Act shall be furnished with a certificate in the prescribed form evidencing his appointment and shall produce such certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act.

(3) Production of a certificate in the prescribed form is conclusive proof in any court of the appointment of the inspector to whom that certificate relates and of his authority to exercise the powers conferred upon an inspector appointed under this Act.

67. (1) In any proceedings in which a person seeks to establish that pollution was at a specified level a person or body prescribed for the purposes of this section may give a certificate in the prescribed form for the purpose of those proceedings and any such certificate is evidence of the matters therein set out.

Evidentiary  
provisions as  
to pollution  
levels.

(2) In any proceeding such as is mentioned in subsection (1) of this section, evidence by an inspector that—

- (a) the apparatus used by him was apparatus of a kind prescribed for the purposes of this Act;
- (b) the apparatus was, on the occasion of its use, in proper working order and was operated by him in a proper and efficient manner; or
- (c) at the material time, all regulations relating to the use of apparatus for the purposes of this Act were complied with,

is evidence of that fact.

(3) Where evidence of the measurement of the level of pollution is accepted by the court or any person exercising judicial functions and the calculation or finding is that the level—

- (a) did not exceed any relevant level prescribed in relation to the circumstances of the case by more than such excess as is prescribed in relation thereto, the calculation or finding is evidence to be considered by the

court or that person, together with such other relevant and admissible evidence as may be given in that proceeding, but does not of itself give rise to any presumption as to whether or not, at that time, an offence was being committed;

- (b) exceeded any relevant level prescribed in relation to the circumstances of the case by more than such excess as is prescribed in relation thereto, the calculation or finding is evidence, at that time, of the commission of an offence.

(4) Nothing in this section shall be construed as excluding or restricting the introduction of any competent evidence, whether in addition to, or independent of, any evidence for which provision is made by this section, bearing on the question of whether a person was or was not guilty of an offence against this or any other Act.

(5) Judicial notice shall be taken of a certificate purporting to be given by the person or body prescribed under the provisions of subsection (1) of this section by all courts and persons exercising judicial functions.

(6) In subsection (1) of this section "specified" means specified in the certificate.

Powers of  
members of  
Authority,  
and  
inspectors.

68. (1) Any member of the Authority 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 equipment, industrial plant, or process; and



- (b) make such examination and inquiry and tests, and ask such questions, and request such information as he considers necessary or desirable,

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

(2) In the exercise of his powers under subsection (1) of this section a person shall conform so far as is practicable to such reasonable requirements of the person owning or using the premises in question as are necessary to prevent the working of the business or the conduct of operations on the premises being obstructed.

69. The occupier of any premises and any person in charge or apparently in charge of any premises shall furnish to any member of the Authority 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.

70. (1) The Authority, by notice in writing served on the occupier of any premises, may require the occupier to furnish to the Authority within seven days or such longer period as may be specified in the notice, such information as to any equipment, industrial plant, or process in or on the premises as the Authority requires by the notice for the purposes of this Act.

Occupier of  
premises to  
furnish  
information.

(2) A person who, when required to give any information to the Authority under subsection (1) of this section, knowingly makes any false or misleading statement in relation thereto, or in relation to any objection, investigation or inquiry made in accordance with the provisions of this section, commits an offence against this Act.

Penalty: One thousand dollars.

Trade  
secrets.

71. (1) Where under the provisions of this Part a person is obliged to supply information to the Authority, or to any member of the Authority or any inspector, and the owner or occupier of the premises concerned is of the opinion that compliance with the obligation will result in the disclosure of a trade secret, the owner or occupier may within seven days declare in writing to the Minister that he objects to the obligation in so far as it relates to that trade secret.

(2) On receipt of an objection made under subsection (1) of this section the Minister may after such investigation and inquiry as he thinks fit by notice under his hand exempt the person concerned of the obligation either generally in relation to the trade secret alleged or to such extent as he may therein specify.

(3) Where the Minister refuses to exempt a person, either generally or to such extent as he may specify, under subsection (2) of this section from the obligation to supply information, he shall cause notice in writing of his decision to be served on the person objecting who may within twenty-one days of receiving that notice appeal to a Judge against the decision of the Minister.

(4) An appeal made under subsection (3) of this section to a Judge shall be heard in Chambers, and the Judge may confirm, alter or reverse the decision of the Minister and may make such order as to the costs of, and incidental to, the appeal as the Judge thinks fit.

(5) In determining an appeal under subsection (4) of this section, a Judge may, if declining to reverse the decision of the Minister, make an order—

- (a) prohibiting the Authority and every person who is, becomes or has been a member of the Authority or the Council, officer of the Department or other employee, servant or agent of the Authority, from disclosing any

information relating to the trade secret supplied in compliance with the obligation, except in the circumstances specified in the order;

- (b) prohibiting, where any information so supplied is subsequently adduced in evidence in any proceedings, the publication of that evidence,

and any order so made shall be complied with notwithstanding anything to the contrary contained in this Act.

72. 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—

*Secrecy.*

- (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 and with the prior permission of the Minister; or
- (c) subject to the provisions of subsection (3) of section 73, 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: One thousand dollars.

73. (1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.

*Persons obstructing execution of this Act*

Penalty: Five hundred dollars.

(2) A person who fails to give to any person acting in the execution of this Act any assistance which that person may reasonably request him to give, or any information which that person is expressly authorised by this Act to call for or may reasonably require, or who, when required to give any such information, knowingly makes any false or misleading statement in relation thereto, shall be treated as having wilfully obstructed that person.

(3) 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.

**Vicarious  
liability.**

74. (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In the case of any prosecution in respect of an offence deemed to have been committed under the provisions of subsection (1) of this section it shall be a defence for any person who would otherwise be liable to the penalties prescribed for that offence to prove that neither he nor any agent or servant of his did, or knew of the doing of, any act that constituted the offence or can reasonably be regarded as having been the cause or amongst the causes of it, or omitted to do, or knew of an omission to do, any act the omission whereof constituted the offence or the doing whereof can reasonably be regarded as a precaution that would have prevented it.

75. (1) Where on the hearing of any prosecution for an offence under this Act the court records a finding to the effect that the defendant has satisfied the court that—

Recovery of  
penalty and  
costs.

- (a) being an agent or servant, he had acted without knowledge, and could not reasonably be expected to have known, that any provision of this Act had been contravened or had not been complied with; or
- (b) being a principal or employer, he had used due diligence to enforce the execution of this Act and that without his connivance or consent and in contravention of his orders the provisions of this Act were contravened or not complied with by his agent or servant,

and whether or not any other person has been convicted or punished in relation to the same matter, the defendant may recover in any court of competent jurisdiction from any person directly responsible for that contravention of, or failure to comply with, those provisions, the amount of any pecuniary penalty imposed on his conviction and paid or payable by him, together with the costs, fees, charges, and other expenses ordered to be paid upon his conviction and paid or payable by him in or in relation to his defence to the prosecution.

(2) Where a person satisfies the court in accordance with the provisions of subsection (1) of this section, the court may if it thinks fit suspend the operation of the conviction for any period not exceeding three months to enable the defendant to effect such recovery.

76. (1) In this section "owner of the source" includes the owner, charterer, or master of any ship and any person having an estate, right, or interest in possession in any property from which waste is discharged or which the Authority otherwise considers to be a source of pollution.

Powers to  
prevent  
pollution.

(2) The Authority may, by notice in writing, direct the owner of the source, or any person or public authority or other body which the Authority considers has the means and equipment to do so, to take such action in relation to any pollution as is specified in that notice.

(3) Where the owner of the source cannot, or cannot conveniently, be found the Authority may take or authorise to be taken such action to abate the pollution as it considers necessary—

- (a) where the Authority determines that an emergency exists—immediately; and
- (b) in any other case—after advertising its intention in three issues of a newspaper circulating in the locality.

Public  
authority  
powers.

77. (1) Where the environment is polluted in contravention of this Act a public authority may with the consent of the Authority, and if directed by the Minister on the recommendation of the Authority shall, take or authorise such action as is necessary to remove, disperse, destroy or mitigate the pollution and may recover from the offender all costs and expenses incurred in connection with any such action.

(2) Where so directed by the Minister, a public authority shall act in accordance with the direction of the Minister as to the particular action to be taken.

Recovery of  
expense.

78. Where action is taken or is authorised to be taken in accordance with the provisions of section 76 or section 77, any costs and expenses incurred in connection with that action—

- (a) are a debt due to the person or body by whom they were incurred and may be recovered in a court of competent jurisdiction; and

- (b) become a charge on the property of the offender after advertisement in the prescribed form.

79. Nothing in this Act in any way affects any right any person has at law to restrict or prevent pollution or to obtain damages. Saving of rights at law.

80. (1) Any person who contravenes or fails to comply with any provision of this Act or with any requirement or direction made or given thereunder commits an offence. Offences and penalties.

(2) A person convicted of an offence against this Act is liable on conviction, where no penalty is expressly provided for the offence—

- (a) if he has not been previously convicted of any offence against this Act, to a fine of five hundred dollars;
- (b) if he has been previously convicted of an offence against this Act, to a fine of one thousand dollars; and
- (c) in the case of a continuing offence, whether of commission or of omission, to a daily penalty of one hundred dollars for every day that the offence continues after the offender is convicted.

(3) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do, or to refrain from doing, anything within a particular period, that offence is deemed to continue so long as the thing so required or directed remains undone, or continues to be done, as the case may be, notwithstanding that the particular period has elapsed.

(4) Where any minimum penalty is provided by regulations, that penalty is irreducible in mitigation, notwithstanding the provisions of any other Act.

Award of  
prosecution  
expenses.

81. The court by or before which a person is convicted of an offence against this Act may, whether or not it imposes any other punishment, order that the person convicted pay the reasonable costs of and incidental to any measurement, analysis, or other matter undertaken by or on behalf of the prosecution towards the investigation of the offence and the giving of evidence relating thereto, and may make such order as the court thinks just as to those costs.

#### PART VI.—MISCELLANEOUS.

Gifts, etc.

82. The Minister may accept any gift, devise or bequest of any property that is made for the purpose of carrying out the objects of this Act, and the Minister may, subject to any trusts relating thereto, apply the proceeds of the property in any manner he thinks fit towards preventing and reducing pollution or the enhancement of the quality of the environment.

Disputes.

83. Any question, difference or dispute arising or about to arise between the Authority and any public authority with respect to the exercise of any rights, powers or authorities or the discharge of any duties by either or both of them may be finally and conclusively determined by the Governor.

By-laws.

84. (1) A local authority may, of its own motion, and may, when the Minister on the recommendation of the Authority so requires, make by-laws for carrying into effect the provisions of this Act within its district, and may repeal, amend, vary or suspend the operation of any by-law if the Minister so requires.

(2) The Governor may cause to be prepared and published in the *Gazette* model by-laws for the purpose of carrying into effect the provisions of this Act.



(3) A local authority may, by resolution, adopt the whole or any portion of a model by-law, with or without modification.

(4) Any by-law may be restricted in its operation to any defined portion of a district.

(5) A resolution by a local authority to adopt a model by-law shall be published in the *Gazette* and thereupon operates to extend the by-law, as so adopted, to the district.

(6) A by-law made or adopted pursuant to the provisions of this section shall have the same legal effect and, with the necessary modifications, be subject to the same procedures and requirements as if it had been passed by the local authority and duly brought into effect under the provisions of the Local Government Act, 1960.

(7) Where a local authority adopts the whole or any part of a model by-law, the by-law so adopted shall in all courts be deemed to be within the powers conferred on the local authority.

(8) Where there is conflict or inconsistency between the provisions of a by-law and the provisions of regulations made under this Act, the provisions of the regulations prevail to the extent of the conflict or inconsistency.

85. All penalties and other moneys recovered on the complaint of a local authority or its officers shall be paid to the local authority within whose district the penalties are incurred to the credit of the local authority revenues, and in all other cases shall be paid into the consolidated revenue.

Application  
of penalties.

86. (1) In all proceedings in which any notice, order, or other document required or authorised to be given or served under this Act has to be proved, the defendant is deemed to have received notice to produce it, and, until the contrary is shown, the document and its due service may be sufficiently proved by the production of what purports to be

Proof of  
documents.

a copy, bearing what purports to be a certificate under the hand of the person authorised to issue the original or of the secretary to the public authority, or the secretary to the Authority, as the case may be, that the copy is a true copy of the original and that the original was served on the date specified in the certificate.

(2) The validity of any notice, order, or other document or of its service is not affected by any error, misdescription, or irregularity which is not calculated to mislead, or which in fact does not mislead.

**General  
Indemnity.**

87. A person who is or has been—

- (a) an Authority member or a Council member, or a deputy of such a member;
- (b) an officer, employee, servant or agent of the Authority, the Department or the Council;
- (c) a delegate of the Authority,

is not personally liable for any act of the Authority, the Department or the Council or of the member, deputy member, officer, employee, agent or servant acting as such.

**Regulations.**

88. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters required or permitted by this Act for carrying out or giving effect to the objects of this Act, and any such regulation may confer upon a specified person or body a discretionary authority.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section, the Governor may make regulations for or with respect to—

- (a) the remuneration and allowances that are to be paid to an Authority member or a Council member for his services;

- (b) the forms to be used for the purposes of this Act, and the manner of, and time for, their completion including a requirement that information supplied be verified by statutory declaration;
- (c) the taking of measurements for the purposes of this Act;
- (d) the conduct and methods of testing the extent of the discharge of waste and of pollution;
- (e) the apparatus to be used for the purposes of tests;
- (f) the persons who are authorised to use approved apparatus;
- (g) the matters that may be set out in a certificate given in accordance with the provisions of subsection (1) of section 67;
- (h) the classification of standards, including standards for the purposes of subsection (3) of section 67;
- (i) the extent of the discharge of waste or of pollution that is, in the Authority's opinion, reasonable in relation to any area, premises, act or thing;
- (j) the times within which specified levels may be exceeded, or not exceeded;
- (k) the means to be used for the prevention, and for counteracting the effect, of pollution, in relation to any premises, act or thing, including the laying down of minimum requirements;
- (l) the level of pollution that shall constitute the commission of an offence in relation to any area, premises, act or thing;
- (m) the periodic testing of things and places for the purpose of investigating the occurrence or progress of pollution or damage;

- (n) the imposition of penalties not exceeding those specified in section 80;
- (o) the application for and the grant, issue, renewal, cancellation, suspension or variation of orders of exemption from the provisions of this Act;
- (p) the conditions, restrictions and limitations to be imposed on any exemption order;
- (q) any other purpose that the Governor deems necessary for safeguarding the public and the public interest in relation to the objects of this Act; and
- (r) such transitional, incidental or supplementary provisions as the Governor deems necessary or expedient for the purposes of this Act.

(3) Any regulations made under this Act may be of general or limited application according to time, place or circumstance, and may require a matter affected by them to be—

- (a) in accordance with a specified standard or specified requirement; or
- (b) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body.

(4) Any regulations made under this Act may provide that, in specified cases or a specified class of case, whether on specified conditions or unconditionally, persons, acts or things, or a class of persons, acts or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified.

(5) In subsection (4) of this section “specified” means specified in the regulations.