



ANNO TRICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1989

No. 27 of 1989

An Act to amend the Clean Air Act, 1984.

[Assented to 27 April 1989]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Clean Air Act Amendment Act, 1989*.
- (2) The *Clean Air Act, 1984*, is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of long title

3. The long title to the principal Act is amended by inserting "to provide for the protection of ozone in the atmosphere," after "air pollution,".

Insertion of Part IIIA

4. The following Part is inserted after section 30 of the principal Act:

**PART IIIA
OZONE PROTECTION**

Interpretation

30a. In this Part, unless the contrary intention appears—

"the Commonwealth Act" means the *Ozone Protection Act 1988* of the Commonwealth, as amended from time to time:

"prescribed substance" means—

(a) any substance referred to in schedule 1 of the Commonwealth Act;

and

(b) any substance prescribed by the regulations:

"use", includes to recycle, or to service, maintain or repair.

Prohibition of manufacture, use, etc., of prescribed substances

30b. (1) Subject to this Part, a person must not—

- (a) manufacture;
 - (b) use;
 - (c) store;
 - (d) sell or offer for sale;
- or
- (e) dispose of,

a prescribed substance or any product containing a prescribed substance, except in accordance with an exemption granted under this Part.

Penalty:

- (a) in the case of a natural person—a division 4 fine;
- (b) in the case of a body corporate—a division 1 fine.

(2) Subsection (1) does not apply in relation to the use, storage, sale by retail or disposal of a prescribed product, or a product of a prescribed class, in prescribed circumstances, if the product was purchased prior to the commencement of this section.

Exemptions

30c. (1) A person may apply to the Minister for an exemption from compliance with section 30b.

(2) The application—

- (a) must be made in a manner and form determined by the Minister;
- and
- (b) must be accompanied by the prescribed fee.

(3) The applicant must provide the Minister with such information, plans, specifications, papers or documents relevant to the application as the Minister may require.

(4) Subject to this section, the Minister may grant or refuse the exemption.

(5) If the applicant is the holder of a licence or exemption under the Commonwealth Act, the Minister will grant an exemption under this section to the applicant to such extent as is consistent with the terms of that licence or exemption.

(6) The Minister will grant an exemption under this section to a person who was, immediately before the commencement of this Act, conducting an enterprise in the course of which a prescribed substance was being manufactured, used, stored, sold, offered for sale or disposed of.

(7) An exemption under any provision of this section may be granted for such period, not exceeding two years, and subject to such conditions, as the Minister thinks fit and specifies in the instrument of exemption.

(8) The Minister may, by notice in writing to the holder of an exemption under this section, revoke, vary or waive compliance with any condition of the exemption, or add any further condition.

(9) If the Minister refuses an application for an exemption, the Minister must give written notice to the applicant of the reasons for doing so and must refund the prescribed fee to the applicant.

(10) The Minister must cause a copy of an exemption granted under this section, and of any notice given under subsection (8), to be published in the *Gazette* as soon as practicable after the exemption is granted or notice is given.

(11) The holder of an exemption granted under this section must comply with the conditions to which the exemption is subject.

Penalty:

(a) in the case of a natural person—a division 4 fine;

(b) in the case of a body corporate—a division 1 fine.

Register of exemptions

30d. (1) The Minister must keep a register of exemptions granted under this Part.

(2) A person may inspect the register during the office hours of the Department.

Revocation of exemptions

30e. If the holder of an exemption granted under this Part—

(a) is convicted of an offence against this Act;

(b) contravenes a condition of the exemption;

or

(c) has obtained the exemption improperly,

the Minister may, by notice in writing addressed to the holder of the exemption, revoke the exemption.

Minister may cause removal and disposal of prescribed substances

30f. (1) Where a prescribed substance or a product containing a prescribed substance is stored in any premises in contravention of this Act, the Minister may, by notice in writing addressed to the occupier of the premises, require the removal and disposal of such items at or within such time, and in such manner, as may be specified in the notice.

(2) A person to whom a notice under subsection (1) has been given must comply with the notice.

Penalty:

(a) in the case of a natural person—a division 4 fine;

(b) in the case of a body corporate—a division 1 fine.

(3) The Minister may, by further notice in writing, vary or revoke a notice given under this section.

(4) Where an occupier of premises has failed to comply with a requirement or direction of a notice given under this section, the Minister may cause the notice to be complied with and, for that purpose, any person authorized by the Minister in that behalf and using only such force as is reasonably necessary, may enter, or break into, and take possession of such premises or parts of premises and do, or cause to be done, such things as full and proper compliance with the notice may require.

(5) An authorized person must not exercise the power to break into premises except on the authority of a warrant issued by a justice, unless the person believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(6) A justice must not issue a warrant under subsection (5) unless he or she is satisfied, on information given on oath, that the warrant is reasonably required in all the circumstances.

(7) The Minister may recover the amount of the costs and expenses reasonably incurred in the exercise of powers under this section from the person who failed to comply with the notice, as a debt in a court of competent jurisdiction.

Minister may prohibit import of certain goods

30g. (1) The Minister may, if satisfied that it is necessary to do so to protect an industry in this State, prohibit, by notice in the *Gazette*, the sale or use within this State of any products, or products of a specified class, that have been manufactured outside of this State by a process involving the use of a prescribed substance.

(2) The Minister may, by notice in the *Gazette*, vary or revoke a notice under this section.

(3) A person who contravenes a notice under this section is guilty of an offence.

Penalty:

(a) in the case of a natural person—a division 4 fine;

(b) in the case of a body corporate—a division 1 fine.

Labelling of products containing prescribed substances

30h. A manufacturer of products containing a prescribed substance must label those products in accordance with the regulations.

Powers of authorized officers

5. Section 53 of the principal Act is amended—

(a) by inserting in paragraph (a) of subsection (1) “or the holder of an exemption under Part IIIA is carrying out any activity to which the exemption relates,” after “prescribed activity,”;

and

(b) by striking out from paragraph (i) of subsection (1) “licence or approval” and substituting “licence, approval or exemption”.

Insertion of s. 53a

6. The following section is inserted after section 53 of the principal Act:

Injunctions

53a. (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constitutes or would constitute a contravention of this Act, the Supreme Court may, on the application of the Minister, grant an injunction restraining the person from engaging in the conduct and, if in the court’s opinion it is desirable to do so, requiring the person to do any act or thing.

(2) Where—

(a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing;

and

(b) the refusal or failure is, or would be, a contravention of this Act,

the Supreme Court may, on the application of the Minister, grant an injunction requiring the person to do that act or thing.

(3) Where an application is made to the Supreme Court for an injunction under subsection (1), the court may, if in the court's opinion it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.

(4) The court may discharge or vary an injunction granted under this section.

(5) The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised—

(a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind;

or

(b) if it appears to the court that, if an injunction were not to be granted, it is likely that the person would engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to other persons if the person engages in conduct of that kind.

(6) The power of the Supreme Court to grant an injunction requiring a person to do a particular act or thing may be exercised—

(a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;

or

(b) if it appears to the court that, if an injunction were not to be granted, it is likely that the person would refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to other persons if the person refuses or fails to do that act or thing.

(7) Where the Minister makes an application to the Supreme Court for the grant of an injunction under this section, the court cannot require the Minister or any other person, as a condition of the granting of an interim injunction, to give any undertaking as to damages.

(8) The powers conferred on the Supreme Court under this section are in addition to, and not in derogation of, any other powers of the court.

Evidentiary provisions

7. Section 62 of the principal Act is amended—

(a) by striking out from paragraph (b) of subsection (1) “or of” and substituting “, an exemption under Part IIIA or”;

and

(b) by inserting in paragraph (c) of subsection (1) “, exemption” after “a licence”.

SCHEDULE

The principal Act is further amended as follows:

Section Amended	How Amended
Section 37 (2)	Strike out "Ten thousand dollars" and substitute "Division 4 fine". Strike out "Five thousand dollars" and substitute "Division 5 fine".
Section 49 (2)	Strike out "a penalty not exceeding two thousand dollars" and substitute "a division 7 fine".
Section 53 (5)	Strike out "One thousand dollars" and substitute "Division 8 fine".
Section 53 (6)	Strike out "One thousand dollars" and substitute "Division 8 fine".
Section 53 (8)	Strike out "One thousand dollars" and substitute "Division 8 fine".
Section 58	Strike out "Two thousand dollars" and substitute "Division 7 fine".
Section 59 (2) (a)	Strike out "not exceeding ten thousand dollars" and substitute "of a division 4 fine". Strike out "not exceeding two thousand dollars" and substitute "of a division 7 fine".
Section 59 (2) (b)	Strike out "not exceeding five thousand dollars" and substitute "of a division 5 fine". Strike out "not exceeding one thousand dollars" and substitute "of a division 8 fine".
Section 64 (2) (k) (iii)	Strike out "not exceeding five hundred dollars" and substitute "a division 9 fine".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor