

**ENVIRONMENTALLY HAZARDOUS CHEMICALS ACT,
1985, No. 14**

NEW SOUTH WALES



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SCHEDULE 1.—PROVISIONS RELATING TO THE COMMITTEE.

**ENVIRONMENTALLY HAZARDOUS CHEMICALS ACT,
1985, No. 14**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 14, 1985.

An Act to provide for control of the effect on the environment of chemicals
and chemical wastes. [Assented to, 29th March, 1985.]

See also Land and Environment Court (Environmentally Hazardous Chemicals) Amendment Act, 1985.

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

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Environmentally Hazardous Chemicals Act, 1985".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpretation.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"approved" means approved for the time being by the Commission;

"authorised officer" means a person authorised in writing by the Commission to act as an authorised officer for the purposes of this Act;

"chemical" means any chemical element or any chemical compound or complex, whether of known or unknown or variable or invariant composition, by whatever means created, discovered or obtained, including any such element, compound or complex that is a complex reaction product or a component of any mixture or that may be characterised as biological material, but does not include—

- (a) a physical mixture;
- (b) a substance of a prescribed description; or
- (c) a radioactive substance, within the meaning of the Radioactive Substances Act, 1957;

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- “chemical control order” means an order in force under section 22 or 23;
- “Commission” means the State Pollution Control Commission;
- “Committee” means the Hazardous Chemicals Advisory Committee constituted under section 6;
- “container” includes any receptacle and any covering;
- “convey”, in relation to a chemical or any chemical waste, includes carry, load, unload, transfer, transmit, pump and discharge the chemical or waste;
- “Court” means the Land and Environment Court;
- “declared chemical waste” means a substance the subject of an order in force under section 10;
- “environment” includes all aspects of the surroundings of human kind, whether natural or artificial and whether living or inanimate;
- “environmentally hazardous chemical” means a chemical (other than a declared chemical waste) the subject of a chemical control order;
- “inventory” means the inventory of chemicals referred to in section 8 (8);
- “licence” means a licence that is in force after having been granted under this Act, whether it is an original or a renewed licence;
- “licensee” means the person to whom a licence is granted under this Act;
- “listed chemical” means a chemical for the time being included in the inventory;
- “occupier”, in relation to any premises, means the person in occupation or control of the premises and, in relation to a part of any premises where different parts are occupied or controlled by different persons, means the person in occupation or control of that part;
- “plant” includes any equipment, apparatus, device, machine and mechanism;
- “premises” includes a place (whether or not a public place) and a vessel;

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“prescribed activity”, in relation to a chemical or any chemical waste, means the act of manufacturing, processing, keeping, distributing, conveying, using, selling or disposing of the chemical or waste or any act related to any such act;

“prohibited activity”, in relation to an environmentally hazardous chemical or a declared chemical waste, means a prescribed activity the carrying on of which in relation to the chemical or waste is prohibited by a chemical control order;

“public authority” means—

- (a) a public authority or local authority constituted by or under an Act; or
- (b) a person or body prescribed for the purposes of this paragraph,

but does not include an authority referred to in paragraph (a) which is exempted, for the purposes of this definition, by the regulations;

“public place” includes—

- (a) a public road or a public reserve, as respectively defined in section 4 of the Local Government Act, 1919; and
- (b) a place that is open to the public, or is used by the public, whether or not on payment of money or for any other consideration, whether or not the place is ordinarily so open or used and whether or not the public to whom the place is so open, or by whom the place is so used, consists only of a limited class of persons;

“regulations” means regulations made under this Act;

“unlisted chemical” means a chemical that is not included in the inventory;

“vehicle” includes an aircraft.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and

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- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Act binds Crown.

4. This Act binds the Crown.

Relationship to other laws.

5. (1) Subject to this section, where, by or under any other Act, any provision is made relating to a substance that is an environmentally hazardous chemical or a declared chemical waste, the provision so made shall be observed in addition to the provisions of this Act, the regulations and orders made under this Act, but no person is, by virtue of this subsection, liable to be punished twice for the same offence.

(2) Where, by or under any other Act (other than the Radioactive Substances Act, 1957), any provision is made relating to the protection of the environment from the effects of chemicals and chemical wastes, being a provision that is inconsistent with a provision of this Act, a regulation or an order made under this Act, the provision of this Act or the regulation or order shall prevail.

(3) Nothing in this Act affects the operation of the Radioactive Substances Act, 1957, or any regulation made under that Act.

PART II.

HAZARDOUS CHEMICALS ADVISORY COMMITTEE.

Constitution of the Committee.

6. (1) There shall be a Hazardous Chemicals Advisory Committee, which shall consist of 16 members.

- (2) Schedule 1 has effect in relation to the Committee.

Functions of the Committee.

7. (1) The Committee shall have the following functions:—

- (a) to facilitate the co-ordination of administrative and enforcement activities in relation to the control of chemicals;

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- (b) to advise the Commission in relation to the assessment of chemicals and the control of chemicals that are, or which the Committee considers should be dealt with as, environmentally hazardous chemicals;
 - (c) to advise the Commission on priorities to be adopted in the investigation of listed chemicals;
 - (d) to investigate and report to the Commission upon incidents involving the contamination of the environment by chemicals and chemical wastes;
 - (e) to carry out research into and report to the Commission upon any matter relating to legislation (whether of the State or other legislation) concerning the control of chemicals; and
 - (f) to investigate, carry out research into and report to the Commission upon any matter concerning chemicals and the environment.
- (2) The Committee shall have and may exercise such other functions as may be conferred or imposed upon it by or under this or any other Act.

PART III.

ASSESSMENT AND CONTROL OF CHEMICALS AND CHEMICAL WASTES.

DIVISION 1.—*Inventory of chemicals.*

Inventory of chemicals.

8. (1) The Commission shall cause to be prepared an inventory containing a list or lists of the names or descriptions of chemicals.

(2) For the purposes of subsection (1), the Commission may adopt the whole or any part of a list of chemicals prepared by any approved person or body.

(3) The Commission shall publish the inventory so prepared in the Gazette.

(4) Where the Commission has, pursuant to subsection (2), adopted the whole or any part of a list of chemicals, it shall be sufficient compliance

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with subsection (3) in relation to the publication of so much of the list as has been so adopted if the Commission, in a publication expressed to be made for the purposes of subsection (3), specifies the list, or the part thereof, so adopted by reference to another publication of that list.

(5) The Commission may from time to time, by order published in the Gazette, amend the inventory—

- (a) by inserting therein the name or description of any chemical; or
- (b) by removing therefrom or altering the name or description of any chemical included therein.

(6) Subject to subsection (7), the Commission shall, pursuant to subsection (5), insert in the inventory the name or description of any unlisted chemical it has assessed under Division 4.

(7) The name or description of an unlisted chemical which the Commission has assessed pursuant to an application under Division 3 shall not be included in the inventory until after the expiration of the prescribed period following lodgment of the application.

(8) The inventory published under subsection (3), as amended by the orders, if any, published and in force for the time being under subsection (5), shall be the inventory of chemicals for the purposes of this Act.

Activities in relation to unlisted chemicals.

9. (1) A person who, at any time after the expiry of the prescribed period following the publication, under section 8 (3), of the inventory prepared under section 8 (1)—

- (a) uses an unlisted chemical in the manufacturing of a substance or article intended to be sold or (for any commercial purpose) to be otherwise supplied or used;
- (b) manufactures an unlisted chemical—
 - (i) intending the chemical to be sold or (for any commercial purpose) to be otherwise supplied or used; or
 - (ii) while producing a substance or article intended to be sold or (for any commercial purpose) to be otherwise supplied or used;

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- (c) sells an unlisted chemical or (for any commercial purpose) otherwise supplies an unlisted chemical; or
- (d) receives, or keeps in storage, an unlisted chemical intended to be sold or (for any commercial purpose) to be otherwise supplied or used,

is guilty of an offence against this Act.

(2) A person is not guilty of an offence against this Act—

- (a) arising under subsection (1) (a), (c) or (d), if the person satisfies the court that, when the alleged offence took place, the person believed on reasonable grounds (whether by reason of a warranty given by another person or otherwise) that the chemical was identical to a particular chemical named or described in the inventory;
- (b) arising under subsection (1) (b) by reason of the person's manufacturing an unlisted chemical while producing a substance or article intended to be sold or to be otherwise supplied or used, if the person satisfies the court that the chemical was manufactured as a result of some error in the process of producing the substance or article; or
- (c) arising under subsection (1) by reason of the carrying on of any activity in relation to an unlisted chemical, if—
 - (i) the chemical has been assessed under Division 4; and
 - (ii) the activity is carried on in accordance with a written order of the Commission issued under this paragraph which is in force and authorises the carrying on of the activity.

DIVISION 2.—*Declared chemical wastes.*

Declaration of Chemical wastes.

10. (1) Where the Commission is satisfied that any chemical substance (including any mixture) is or is likely to be stored in accumulating deposits or dumped or abandoned or otherwise dealt with as chemical waste, the Commission, by order published in the Gazette, may declare that substance to be a chemical waste for the purposes of this Act.

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(2) For the purposes of an order under subsection (1), a substance or mixture may be identified by reference to any one or more of the following:—

- (a) any of its known constituents;
 - (b) any of its known chemical or toxicological properties by reason of which, in the opinion of the Commission, the substance or mixture may affect the environment;
 - (c) any process of chemical manufacture or treatment in the course of which it is produced;
 - (d) any other of its qualities or its quantity, origin or situation,
- or may be otherwise identified.

Power to control declared chemical wastes.

11. The Commission may at any time make a chemical control order in relation to a declared chemical waste.

DIVISION 3.—Applications for assessment.

Application for assessment of unlisted chemical.

12. (1) A person who proposes to carry on any prescribed activity in relation to a chemical that is for the time being an unlisted chemical may apply to the Commission in the approved form for assessment of that chemical by the Commission.

(2) Except as provided by subsection (3), an application under subsection (1) for assessment of a chemical shall be accompanied by the prescribed fee and shall contain the following information:—

- (a) the name of the applicant;
- (b) the identity of the chemical;
- (c) such particulars as to quantity, places of storage, methods of storage and handling and other matters concerning the prescribed activity proposed to be carried on in relation to the chemical as may be required in the form of application;
- (d) such information, being information within the applicant's knowledge or which the applicant could reasonably be expected to obtain, relating to the intended or likely movement and

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distribution of the chemical, the uses to which it is intended or is likely to be put and the ultimate consumption or disposal of the chemical, as may be required in the form of application; and

- (e) such further information, including the results of any prescribed or specified tests, as may be required in the form of application, being information relating to the effect on the environment of the prescribed activity proposed to be carried on in relation to the chemical,

and may contain any other information the applicant wishes to include.

(3) Where the regulations so provide, an applicant under subsection (1) for assessment of a chemical who has, pursuant to any other law, lodged any prescribed application, in relation to the same chemical, with a public authority other than the Commission or with a statutory authority constituted by or under an Act of the Commonwealth or of another State or a Territory, may lodge an application under subsection (1) which, instead of containing such of the information referred to in subsection (2) (c)–(e) as the regulations may specify, contains particulars of the prescribed application.

(4) An application under subsection (1) for assessment of an unlisted chemical may request that the disclosure of the identity of the chemical and any data of a prescribed kind relating thereto should be restricted in accordance with this Act.

Application for assessment of prohibited activity.

13. (1) A person who proposes to carry on any prescribed activity, being an activity that is for the time being a prohibited activity (or that would, if carried on otherwise than under the authority of a licence, be a prohibited activity), in relation to an environmentally hazardous chemical or a declared chemical waste may apply to the Commission in the approved form for assessment of that prescribed activity by the Commission.

(2) An application under subsection (1) for assessment of a prescribed activity in relation to a chemical or a declared chemical waste shall be accompanied by the prescribed fee and shall contain the following information:—

- (a) the name of the applicant;

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- (b) except as provided by paragraph (c)—the identity of the chemical;
- (c) where the application is for assessment of a prescribed activity in relation to a chemical waste the components of which, or the respective proportions of the components of which, are variable or otherwise difficult to specify—such particulars of the composition of the waste as the Commission may require;
- (d) the manner in which the prescribed activity is proposed to be carried on,

and may contain any other information the applicant wishes to include.

(3) An application under subsection (1) for assessment of a prescribed activity may request that the disclosure of the manner in which the prescribed activity is proposed to be carried on and any data of a prescribed kind relating thereto should be restricted in accordance with this Act.

DIVISION 4.—Assessments.**Committee to consider chemicals, chemical wastes and activities.**

14. (1) The Committee shall, if requested to do so by the Commission, make a recommendation to the Commission as to the assessment and control of a chemical or prohibited activity or as to the control of a chemical or any declared chemical waste.

(2) The Committee may at any time make a recommendation to the Commission as to the assessment and control of a listed or an unlisted chemical or of any prescribed activity carried on or proposed to be carried on in relation to any such chemical.

Commission to assess chemicals and activities.

15. (1) The Commission shall make an assessment of every unlisted chemical or prohibited activity, as the case may be, the subject of an application under Division 3.

(2) The Commission may at any time make an assessment of a listed or an unlisted chemical or of any prescribed activity carried on or proposed to be carried on in relation to any such chemical.

Request for further information.

16. At any stage of conducting an assessment for which an application has been made under Division 3, the Commission may, by notice served

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on the applicant, request such further information as it considers necessary and relevant to the assessment of the unlisted chemical or the prohibited activity, as the case may be, to which the application relates.

Commission's consideration of chemicals and activities.

17. (1) In making an assessment under this Division of a listed or an unlisted chemical or of a prescribed activity carried on or proposed to be carried on in relation to a chemical or a declared chemical waste, the Commission shall consider the effect, or the likely effect, on the environment of all aspects of the carrying on of prescribed activities in relation to the chemical or, as the case may require, the likely effect on the environment of all aspects of the carrying on of the prescribed activity the subject of the assessment.

(2) For the purposes of subsection (1), the Commission may consider, with respect to any substance which is the subject of an assessment (or, where a prescribed activity is the subject of an assessment, with respect to any substance in relation to which the activity is proposed to be carried on)—

- (a) any propensity of the substance to produce harmful effects in organisms or biological systems, whether those effects are manifested in immediate or gradual or accumulative physiological or structural damage, in the alteration of characteristics in one or more generations of human or other animal progeny or of plant life or otherwise;
- (b) any propensity of the substance adversely to affect the soil or any other physical feature of the environment;
- (c) the actual or likely exposure, and the actual or likely degree, rate and duration of any exposure, of organisms, biological systems or physical features of the environment to the substance in all stages of the carrying on of prescribed activities in relation to the substance or, as the case may require, any such exposure or increase on any such exposure likely to result from the carrying on of the prescribed activity the subject of the assessment;
- (d) where adverse effects are likely to result from any exposure or increased exposure of organisms, biological systems or physical features of the environment to the substance—the adequacy, efficiency and practicality of any methods or safeguards employed or which might be employed to prevent, or reduce the degree, rate or duration of, any such exposure; and

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- (e) where, in the opinion of the Commission, the substance or the prescribed activity, as the case may be, which is the subject of the assessment has or is likely to have adverse environmental effects—
- (i) the adequacy, efficiency and practicality of measures for the safe treatment and disposal of the substance and any associated by-product; and
 - (ii) the adequacy, efficiency and practicality of the manufacture or use of an alternative substance, or of alternative industrial or other practices relating to the substance, having regard to the purposes intended to be served by the substance or by the prescribed activity, as the case may be,

and any other matters the Commission thinks relevant to the public interest and the protection of the environment.

(3) In making an assessment under this Division of a listed or an unlisted chemical or of a prescribed activity, the Commission may take into account any information which it considers reliable and relevant furnished to it or published by any person.

(4) In making an assessment under this Division of a listed chemical, the Commission shall consider and evaluate any submissions made to it in response to a notice published under section 19 in relation to the chemical concerned as to the benefits afforded or likely to be afforded to human kind by the chemical or as to any other matter.

(5) In making an assessment under this Division of a prescribed activity proposed to be carried on in relation to any chemical or declared chemical waste, the Commission may, in addition to any other matter it is entitled to consider, have regard to the qualifications, experience and expertise of the persons to be concerned in the carrying on of the activity.

Consideration of information, etc., from applicant.

18. In making an assessment under this Division of an unlisted chemical or of a prohibited activity proposed to be carried on in relation to an environmentally hazardous chemical or any declared chemical waste, being an assessment the subject of an application under Division 3, the Commission shall, in addition to any matters to which it is required to have regard under section 17, have regard to any information or submission furnished or made by the applicant in or in connection with the application.

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Notice of Commission's intention.

19. (1) Where it intends making—

- (a) a chemical control order; or
- (b) a determination under section 20 (d),

in respect of a listed chemical or a declared chemical waste, the Commission shall cause notice of its intention to be published in the Gazette.

(2) A notice under subsection (1) shall contain the prescribed particulars and shall invite any person so disposed to make submissions to the Commission within a time specified in the notice, being a time not shorter than the prescribed time.

(3) A chemical control order or a determination under section 20 (d) is of no effect unless it is made after the expiry of the time specified, as referred to in subsection (2), in a notice published under subsection (1) in respect of the order or determination.

*DIVISION 5.—Control of chemicals and chemical wastes.***Outcome of assessment.**

20. Upon—

- (a) making an assessment of a listed or unlisted chemical; or
- (b) making an assessment of a prescribed activity in relation to an environmentally hazardous chemical or a declared chemical waste, being an assessment the subject of an application under Division 3,

the Commission may—

- (c) make a chemical control order; or
- (d) determine not to make any such order.

Notification of order or determination.

21. (1) The commission shall cause notice of the making of a chemical control order or of a determination under section 20 (d) to be published in the Gazette.

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- (2) A notice under subsection (1)—
- (a) shall describe the chemical, chemical waste or prescribed activity to which it relates;
 - (b) shall state—
 - (i) the terms of the chemical control order made by the Commission; or
 - (ii) that the Commission has determined not to make any such order,as the case may require;
 - (c) where it states the terms of a chemical control order, shall also state—
 - (i) the date of commencement of the order, being a date not earlier than the date of expiry of the time prescribed for the purposes of section 38 (1) with respect to an appeal against the making of the order; and
 - (ii) the basis on which the Commission determined to make the order; and
 - (d) where it states that the Commission has determined not to make a chemical control order, shall also state the basis on which the Commission so determined.

(3) Without prejudice to any other manner in which the Commission may comply with the requirement, the Commission, where it is required by this section to state the basis on which its determination was made, may make the statement by reference to the whole or a part of any document that is available to the public, being a document embodying a recommendation of the Committee or any other person or body.

Orders prohibiting activities in relation to chemicals and chemical wastes.

22. (1) The Commission, where it has reasonable grounds to believe that the making of an order under this section is necessary to prevent or minimise any adverse effect on the environment that may result from the carrying on of any prescribed activity in relation to a chemical it has assessed or in relation to a declared chemical waste, may make such order as it considers appropriate to prevent or minimise that effect, being an order for or with respect to the prohibition of any such prescribed activity.

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(2) An order under this section for or with respect to the prohibition of a prescribed activity in relation to a chemical the Commission has assessed or in relation to a declared chemical waste shall not be made except upon the recommendation of the Committee or with the consent in writing of the Minister.

Order permitting prescribed activity.

23. The Commission, having made an assessment of a prohibited activity in relation to an environmentally hazardous chemical or a declared chemical waste, and upon the recommendation of the Committee, may make such order, if any, as it considers appropriate permitting the carrying on of that activity unconditionally or subject to such conditions as may be imposed by the order.

Scope and content of orders.

24. (1) Without limiting the generality of sections 22 and 23, a chemical control order may be made—

- (a) so as to prohibit the carrying on of—
 - (i) any prescribed activity in relation to a chemical; or
 - (ii) any prescribed activity in relation to a declared chemical waste,
otherwise than under the authority of, and in accordance with any conditions for the time being in force in respect of, a licence;
- (b) so as to apply to or in respect of any type or description of chemicals, or declared chemical wastes, which the Commission has determined have the same or chemically analogous properties; and
- (c) so as to apply to or in respect of any prescribed type or description of mixture that contains a specified chemical or declared chemical waste, whether or not the contents of any such mixture or waste can be accurately ascertained or quantified.

(2) A chemical control order the requirements of which are inconsistent with the authority conferred by or the conditions for the time being in force in respect of a licence, in so far as the order purports to bind the licensee and to the extent of the inconsistency, shall be of no effect while the licence or condition, as the case may be, is in force.

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Order to take effect from date specified.

25. (1) A chemical control order shall, subject to section 42, take effect on and from the date specified, in the notice first published under section 21 (1) incorporating the terms of the order, as the date of commencement of the order.

(2) With the consent of the Minister, a chemical control order may be expressed to be an emergency order for the purposes of section 42.

Orders to be observed.

26. A person who, in contravention of a chemical control order, carries on a prescribed activity in relation to a chemical or a declared chemical waste is guilty of an offence against this Act.

Supply of certain later information by applicants for assessment.

27. (1) Where any information about a chemical or any chemical waste comes to the knowledge of a person who is or was an applicant under section 12 or 13 for assessment of the chemical or of a prescribed activity in relation to the chemical or the waste, as the case may be, being information that contradicts or modifies any information furnished by the person in or in connection with the person's application for assessment, the person shall forthwith supply the Commission with particulars of the firstmentioned information.

(2) A person who fails to supply information as required by subsection (1) is guilty of an offence against this Act.

PART IV.**LICENSING.****Granting of licences.**

28. (1) A person who proposes to carry on any prescribed activity with respect to an environmentally hazardous chemical or a declared chemical waste, being an activity which, by reason of a chemical control order, may lawfully be carried on only under the authority of a licence, may apply to

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the Commission for a licence authorising the carrying on of that activity by an application --

- (a) lodged in the manner and in the form approved in respect of the application; and
- (b) accompanied by the fee prescribed in respect thereof.

(2) The Commission may cause notice of an application under subsection (1) to be published in the Gazette.

(3) A notice under subsection (2)—

- (a) shall contain the prescribed particulars of the application to which it relates; and
- (b) shall invite any person so disposed to make submissions as to how the application should be determined.

(4) The Commission—

- (a) may grant an application under subsection (1) for a licence, either subject to conditions specified in the licence or unconditionally; or
- (b) may refuse to grant any such application.

(5) The Commission may at any time before determining an application under subsection (1), by notice served on the applicant, request the applicant to furnish such further particulars (including plans and specifications, where appropriate) as may be specified in the notice.

Short-term licences.

29. (1) An applicant may, in an application under section 28 for an original licence or a renewed licence, request that the licence be granted or renewed, as the case may be, for a specified period, being a period of less than 1 year.

(2) The Commission shall not grant an application made as referred to in subsection (1) unless it is satisfied that—

- (a) the act, matter or thing in respect of which the application is made is of a temporary nature; and

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- (b) it is appropriate, in all the circumstances, to grant or, as the case may be, renew a licence in respect of the act, matter or thing for the period specified in the application.

Duration of licences.

30. (1) Subject to this Part—

- (a) an original licence remains in force for the period specified by the Commission in the licence, commencing with the date of its grant; and
- (b) a renewed licence remains in force for the period specified by the Commission in the renewed licence, commencing with the date so specified.

(2) In the case of a licence applied for as referred to in section 29, a period specified for the purposes of subsection (1) shall not exceed 1 year.

Revocation or suspension of licences.

31. (1) The Commission may, by notice in writing served on the holder of a licence, revoke the licence or suspend it for such portion of its unexpired term as it thinks fit, if the holder of the licence—

- (a) has committed an offence against this Act or the regulations; or
- (b) has contravened any provision of a chemical control order relating to the chemicals or chemical wastes the subject of the licence.

(2) Except as provided by section 34 (5), a licence is not, nor is any condition attached to a licence, in force for the purposes of this Act during any period for which the licence is suspended.

Licence conditions.

32. (1) The Commission may during the currency of a licence, by service of a notice to that effect on the holder of the licence, attach further conditions to the licence or revoke or vary any conditions for the time being attached to the licence.

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(2) A person to whom a licence has been issued and who contravenes a condition in force in respect of the licence is guilty of an offence against this Act.

PART V.

CONTAMINATION OF PREMISES.

Interpretation.

33. (1) For the purposes of this Part, premises shall be deemed to be contaminated if, by reason of their being affected by a chemical or any chemical waste, they are—

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in their capacity to support plant life; or
- (c) otherwise environmentally degraded.

(2) In this Part, a reference to the taking of prescribed remedial action in respect of premises that are becoming or have become contaminated is a reference to—

- (a) removing the cause of the contamination from the premises;
- (b) reducing the contamination of the premises;
- (c) eliminating or reducing any danger arising from the contamination of the premises; and
- (d) restoring the premises.

(3) Without affecting the generality of subsection (2), prescribed remedial action in respect of premises may include any one or more of the following:—

- (a) erecting on the premises any fence, wall, bund or other barrier in any specified place;
- (b) removing from the premises, and disposing of, any soil, sand, rock, water or other solid or liquid material of whatever kind;
- (c) vacating, or ceasing to carry on any activity upon, the premises or any part thereof;

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- (d) erecting or displaying, on or near the premises or any part thereof, any sign or notice containing directions to persons not to enter into or upon the premises or not to use the premises in a specified manner or for a specified purpose or containing other directions of that kind or any other kind.

Special conditions relating to restoration of premises.

34. (1) Where it appears to the Commission that, by reason of the carrying on of an activity proposed to be carried on under the authority of a licence, any premises to be used for or in connection with the carrying on of the proposed activity or any adjacent premises may become contaminated, the Commission may, as a condition of the licence, require the licensee to take such prescribed remedial action in respect of the premises—

- (a) as is reasonable in the circumstances; and
- (b) as may be specified in the condition,

at or within a time or times (whether occurring during or after the currency of the licence or any renewed licence subsequently granted in respect of the premises) so specified.

(2) Where it appears to the Commission that, should some misadventure or other event occur in the course of the proposed conveyance, under the authority of a licence, of an environmentally hazardous chemical or any declared chemical waste, any premises would be likely to be contaminated, the Commission may, as a condition of the licence, require—

- (a) the licensee's written undertaking that, should any such misadventure or other event occur, the licensee will take such prescribed remedial action in respect of the premises—
 - (i) as is reasonable in the circumstances; and
 - (ii) as the Commission may direct to be taken,

at or within such time or times as may be specified by the Commission; and

- (b) the carrying out, upon the occurrence of any such misadventure or event, of that undertaking.

(3) Where the Commission determines to grant a licence subject to a condition of a kind referred to in subsection (1) or (2) in respect of any

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premises, it may, as a further condition of the licence, require the applicant for the licence to lodge with it security, in such amount and form as the Commission considers appropriate, for the performance of the requirements of the firstmentioned condition.

(4) A condition of a licence requiring, as referred to in subsection (3), the lodgment of security may contain any one or more of the following provisions or provisions similar to any one or more of the following:—

- (a) that the licence, notwithstanding any provision of Part IV, shall not take effect until lodgment of the security in accordance with the condition;
- (b) that the whole or a part of the value of the security shall be forfeited to the Commission in the event of a contravention by the licensee of—
 - (i) a condition, of a kind referred to in subsection (1) or (2), of the licence;
 - (ii) any specified provision of this Act, the regulations or any chemical control order; or
 - (iii) any direction given under this Act,notwithstanding any other liability of the licensee to any penalty for an offence against this Act or the regulations which arises out of any such contravention;
- (c) that the licence may be revoked or suspended by the Commission in the event that the Commission considers that the security, being security in a form other than money, cannot be realised for its value as at the date of lodgment,

and any such provisions shall, subject to section 42, have effect according to their tenor.

(5) A condition of a licence imposed under this section continues in force according to its tenor, notwithstanding that the licence may not be in force.

(6) Nothing in this section limits the generality of section 28 (4) (a).

Directions for restoration of premises.

35. (1) Where the Commission has reasonable grounds to believe that any premises used for or in connection with the carrying on of any

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prescribed activity in relation to a chemical or any chemical waste are becoming or have become contaminated by reason of the carrying on of that activity, the Commission may, by notice served on the occupier of the premises and describing the chemical or chemical waste and the nature of the contamination, direct the occupier to take such prescribed remedial action—

- (a) as is reasonable in the circumstances; and
- (b) as may be specified in the notice.

(2) A notice under subsection (1) may direct that the prescribed remedial action specified in the notice be taken—

- (a) within a time specified in the notice, not being a time expiring earlier than the time prescribed for the purposes of section 40 (1);
or

- (b) with the consent of the Minister, forthwith, but only if the Minister is satisfied—

- (i) that the premises to which the notice relates are becoming or have become so contaminated as to represent a serious danger to the health of persons or animals who or which might enter into or upon them, or as otherwise to represent a serious degradation of the environment; and

- (ii) that it is necessary that the action should forthwith be taken to eliminate or reduce any such serious danger or, as the case may require, to remedy any such serious degradation of the environment.

(3) Subsection (1) does not empower the Commission, by a notice under that subsection served on a person in respect of any premises, to give any directions the carrying out of which would prevent or unreasonably impede the carrying on by the person of any activity which the person is authorised by a licence to carry on upon those or any adjacent premises.

(4) Notwithstanding subsection (3), the powers conferred upon the Commission by subsection (1) are in addition to, and do not derogate from, the powers conferred by section 34.

(5) An occupier of premises who neglects or refuses to comply with a direction given under subsection (1) in relation to the premises is guilty of an offence against this Act.

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Powers of Commission and other authorities in relation to restoration of land.

36. (1) Where the Commission has reasonable grounds to believe that any premises are becoming or have become contaminated by reason of the carrying on of any prescribed activity in relation to a chemical or any chemical waste, the Commission may, by its servants or agents, enter into or upon the premises and take such prescribed remedial action as is reasonable in the circumstances.

(2) A public authority, other than the Commission—

- (a) where the public authority has reasonable grounds to believe that any premises are becoming or have become contaminated as referred to in subsection (1), may, with the consent of the Commission, exercise the powers of the Commission under that subsection; and
- (b) shall, if directed to do so by the Commission, exercise the like powers in relation to any specified premises,

in any case in which the Commission might lawfully do so.

(3) Costs and expenses incurred by the Commission or any other public authority in taking any action under subsection (1) or (2) in respect of any contaminated premises may, subject to subsection (4), be recovered as a debt, in any court of competent jurisdiction, from an appropriate defendant.

(4) For the purposes of subsection (3), a person is an appropriate defendant, in relation to the recovery of costs and expenses, if the costs and expenses were incurred—

- (a) in taking action in respect of premises contaminated by reason of the carrying on of any prescribed activity by or on behalf of the person;
- (b) in taking action which the person was required, by a condition imposed under section 34 (1) or (2) in relation to the premises, to take, but which the person, without reasonable excuse, neglected or refused to take; or
- (c) in taking action which the person was directed, in a notice served on the person under section 35 (1), to take, but which the person, without reasonable excuse, neglected or refused to take.

(5) Where the neglect or refusal of a person to perform a requirement referred to in subsection (4) (b) results in the forfeiture of an amount of

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money in accordance with a provision of a kind referred to in section 34 (4) (b)—

- (a) the amount so forfeited is, to the extent of the amount, a defence in any proceedings authorised by subsection (3); and
- (b) where any such proceedings are brought by a public authority other than the Commission, the amount so forfeited is, to the extent of the amount or to such lesser extent as is equivalent to the costs and expenses recovered in the proceedings, a debt due to the public authority by the Commission.

(6) A public authority (not being the Commission) exercising functions conferred or imposed upon it by or under subsection (2) shall, in so doing, be subject to any directions given to it by the Commission.

(7) No matter or thing done by or on behalf of a public authority (not being the Commission) shall, if the matter or thing was done bona fide for the purpose of carrying out a direction of the Commission purporting to be a direction under subsection (2) (b) or (6), subject the public authority, or any servant or agent thereof, personally to any action, liability, claim or demand whatever.

PART VI.

APPEALS.

Order for assessment.

37. (1) Where the Commission has failed to notify, within the prescribed time after the lodging of an application under Division 3 of Part III, the terms of a chemical control order made by it or its determination not to make any such order as provided by section 21, in respect of the unlisted chemical or the prohibited activity the subject of the application, the applicant may appeal to the Court.

(2) In determining an appeal under this section, the Court—

- (a) may order the Commission—
 - (i) to make a chemical control order; or
 - (ii) to make a determination not to make any such order,

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with respect to the unlisted chemical or prohibited activity to which the appeal relates, and to do so within a time specified in the order of the Court; or

(b) may make no order.

(3) In determining an appeal under this section, the Court is entitled to consider any request for information made to the appellant under section 16 and the result of any such request.

(4) The Commission shall, as the case may require, carry into effect any order of the Court made under subsection (2).

Appeal against order or outcome of assessment.

38. (1) A person who objects to a chemical control order or to a determination made by the Commission under section 20 (d) may, within the time prescribed, appeal to the Court—

(a) on the ground that the basis on which the order or determination was made was erroneous; or

(b) on the ground that, having regard to all the circumstances of the case—

(i) the Commission (where it made a chemical control order) ought not to have made any such order or ought to have made some other order; or

(ii) the Commission (where it determined not to make any such order) ought to have made a chemical control order.

(2) In determining an appeal under this section, the Court—

(a) may confirm any chemical control order made by the Commission against which the appeal was brought;

(b) may revoke any such order and make no further order;

(c) may revoke any such order and may make any order the Commission might have made under section 22 or 23 with respect to the chemical or chemical waste concerned; or

(d) where the appeal was brought against the Commission's determination not to make any such order—may make any order the Commission might have made under section 22 or 23 with respect to the chemical or chemical waste concerned.

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- (3) An order of the Court under subsection (2) (c) or (d)—
- (a) shall take effect on and from a date specified by the Court; and
 - (b) shall otherwise operate as if it were a chemical control order.

Appeal with respect to licence.**39. (1) A person aggrieved—**

- (a) by the Commission's refusal of the person's application for a licence or renewal of a licence;
- (b) by the imposition by the Commission of a condition on a licence granted to the person;
- (c) by the variation by the Commission of a condition for the time being attached to a licence; or
- (d) by the revocation or suspension of the person's licence.

may, within the time prescribed, appeal to the Court.

(2) In determining an appeal under this section, the Court—

- (a) may order the Commission to grant the appellant a licence or renewal of a licence unconditionally or subject to such conditions as the Court may specify;
- (b) may order that the conditions for the time being attached to a licence shall not be varied or shall be varied in the manner specified by the Court;
- (c) may, by order, rescind the revocation or suspension of a licence; or
- (d) may make no order,

as the Court thinks fit.

(3) In determining an appeal under this section, the Court is entitled to consider any request for particulars made to the appellant under section 28 (5) and the result of any such request.

(4) The Commission shall, as the case may require, carry into effect any order of the Court made under subsection (2).

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Appeal with respect to direction.

40. (1) A person to whom a direction has been given, by a notice served on the person under section 35 (1), to take action within a time specified, as referred to in section 35 (2) (a), in the notice, and who is aggrieved by the direction may, within the time prescribed for the purposes of this subsection, appeal to the Court.

(2) A person to whom a direction has been given, by a notice served on the person under section 35 (1), to take action forthwith as referred to in section 35 (2) (b), and who is aggrieved by the direction on the grounds that—

- (a) the contamination of the premises to which the direction relates was not the result of the carrying on of any prescribed activity by the person or on the person's behalf; and
- (b) at the time the person became the occupier of the premises, the person did not know and had no reason to suspect that the premises were becoming or had become contaminated as specified in the notice by which the direction was given.

may, within the time prescribed for the purposes of this subsection, appeal to the Court.

(3) In determining an appeal under this section, the Court—

- (a) may confirm the direction;
- (b) may revoke the direction and give no further direction; or
- (c) may revoke the direction and give any other direction the Commission might have given under section 35.

(4) A direction given by the Court under subsection (3) (c)—

- (a) shall take effect on and from a date specified by the Court; and
- (b) shall otherwise operate as if it were a direction given by the Commission under section 35.

Appeal to be final.

41. The decision of the Court in an appeal under this Part shall be final and binding on the appellant and the Commission.

Effect of appeal.

42. (1) A chemical control order (other than an order made as the outcome of an assessment undertaken pursuant to an application under Division 3 of Part III), the revocation or suspension of a licence or the imposition or variation of a condition of a licence, or a direction given under section 35, that is the subject of an appeal under this Part shall have no effect before the Court's determination of the appeal or until the appeal is withdrawn.

(2) Subsection (1) does not apply to or in respect of a chemical control order expressed, pursuant to section 25 (2), to be an emergency order for the purposes of this section.

PART VII.**MISCELLANEOUS.****Power to require information.**

43. (1) The Commission may, by notice in writing served on any person, being—

- (a) the occupier of any premises in or upon which any prescribed activity is carried on in relation to a chemical or any chemical waste is created, kept, treated or disposed of; or
- (b) the owner of any plant, vehicle or vessel used for the carrying on of any prescribed activity in relation to a chemical or for the creation, keeping, conveyance, treatment or disposal of any chemical waste or any person in whose care, custody or control any such plant, vehicle or vessel is for the time being.

require that person to furnish, in such manner as is specified in the notice, to the Commission within 14 days or such longer period as is specified in the notice, such information—

- (c) relating to any aspect of any such prescribed activity in relation to the chemical or, as the case may be, of any such creation, keeping, conveyance, treatment or disposal of a chemical waste; or

- (d) relating to any such plant, vehicle or vessel,

as it requires by the notice.

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(2) A person shall not, without reasonable excuse, neglect or refuse to comply with any requirement made under subsection (1).

Penalty: \$5,000.

(3) Any statement made to the Commission pursuant to a requirement made under subsection (1) shall not be admissible in evidence in any proceedings against any natural person for any offence, not being the offence of neglecting or refusing to comply with any requirement made under that subsection.

Disclosure of information.

44. (1) Subject to subsection (3), a person is guilty of an offence against this Act if the person discloses any information relating to any manufacturing or other industrial or commercial secrets or working processes and obtained in connection with the administration or execution of this Act or the regulations, unless the disclosure of information is—

- (a) made, otherwise than in contravention of subsection (4), in connection with the administration or execution of this Act or the regulations;
- (b) made with the prior permission of the Minister; or
- (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.

(2) The Minister may grant the permission referred to in subsection (1) (b) only if the Minister is satisfied that to do so would be in the public interest.

(3) An officer of the Commission authorised in writing by the Commission for the purposes of this section may communicate any matter which comes to the knowledge of the officer in the exercise of any function under this Act or the regulations—

- (a) to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to chemicals or chemical wastes; or
- (b) to any person, when communication of the matter to that person is reasonably related to the prevention of harm that may be, or the amelioration of harm that has been, caused to the public or to any person or property by a chemical or any chemical waste.

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(4) Subject to subsection (3), where an application under Division 3 of Part III for an assessment of a chemical or a prescribed activity contains a request of the kind referred to in section 12 (4) or 13 (3), in any publication, whether in writing or not, purporting to be made for the purposes of the administration or execution of this Act or the regulations—

- (a) any description of the chemical or of the manner in which it is proposed to carry on the prescribed activity, as the case may be, shall be in such terms; and
- (b) any data of the kind prescribed for the purposes of section 12 (4) or 13 (3), as the case may be, shall be limited to such particulars,

as may be agreed between the applicant and the Commission, having regard to—

- (c) the applicant's desire for confidentiality;
- (d) the purpose of this Act; and
- (e) the public interest.

or, in default of any such agreement, in such terms or with such limitations as may be settled by the Court on the application of the Commission and having regard to the like matters.

Powers of authorised officers.

45. (1) Subject to subsection (2), an authorised officer may enter—

- (a) any premises used as a factory or any premises in or upon which an industry or trade is being carried on, at any time during which any manufacturing, industrial or trade process is being carried on in or upon the premises;
- (b) any premises in or upon which the authorised officer reasonably suspects that an offence against this Act or the regulations is being or is likely to be committed, at any time; and
- (c) any other premises, at any reasonable time,

with such assistants as the authorised officer considers necessary and if need be by the use of reasonable force, and may therein—

- (d) examine any equipment or any plant or vehicles;
- (e) make such examination and inquiry and such tests as the authorised officer considers necessary to ascertain whether the provisions of this Act or the regulations or of any requirement,

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direction, order or notice made or given under or pursuant to this Act or the conditions in force and attached to any licence or exemption under this Act are being or have been complied with;

- (f) take such photographs as the authorised officer considers necessary in connection with the administration of this Act;
- (g) subject to subsection (3), take without payment, for the purpose of examination or testing, samples of any substance that the authorised officer suspects on reasonable grounds to be an unlisted chemical or an environmentally hazardous chemical or a declared chemical waste in respect of which an offence against this Act or the regulations has been or is being committed and, in exercising the power conferred by this paragraph, open any container or cause any container to be opened;
- (h) subject to subsection (3), seize and remove any substance that the authorised officer suspects on reasonable grounds to be an environmentally hazardous chemical or an unlisted chemical or a declared chemical waste in respect of which an offence against this Act or the regulations has been or is being committed and any container in which the substance is being kept or conveyed;
- (i) take without payment, for the purpose of examination or testing, samples of any soil, water, vegetation or other thing from the premises, where the authorised officer suspects on reasonable grounds that the premises have become contaminated, within the meaning of Part V, by being used for or in connection with the carrying on of any prescribed activity in relation to a chemical or a declared chemical waste;
- (j) detain a vehicle for such time as is reasonably necessary for the authorised officer to exercise any power conferred by this subsection;
- (k) for the purposes of paragraph (h), direct the occupier of any place where the substance is seized, or the owner of the substance, to retain it in that place, or in a place under the control of the occupier or owner that will, in the opinion of the authorised officer, least endanger the environment; and
- (l) give directions for or with respect to the detention of any substance or container that has been removed under paragraph (h).

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(2) Subsection (1) does not empower an authorised officer to enter any dwelling or any land used in connection with any dwelling or to do anything within any dwelling or in or on any such land otherwise than under the authority of a search warrant issued under section 46.

(3) An authorised officer is not empowered—

(a) under subsection (1) (g)—to take a sample of any substance; or

(b) under subsection (1) (h)—to remove any substance or container, that appears to the authorised officer to be in the custody of a person unless the authorised officer makes out and tenders to the person a receipt in or to the effect of the prescribed form.

(4) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to be offending against this Act or the regulations to state the person's full name and place of abode.

(5) Every authorised officer shall be provided with a certificate of appointment and, on applying for admission to any premises which the officer is empowered by this Act to enter, shall, if requested to do so, produce the certificate to the occupier of the premises.

(6) The Commission may, by notice in writing served on the occupier of any premises, require the occupier to provide such assistance and facilities as are specified in the notice within such time and in such manner as are specified in the notice, for the purpose of enabling an authorised officer to exercise the functions of an authorised officer under this Act.

(7) Any person—

(a) who wilfully delays or obstructs an authorised officer, or fails to comply with any requirement made under this section by an authorised officer, when exercising the powers of an authorised officer under this Act;

(b) who, in purported compliance with a requirement made under subsection (4), states a name that is not his or her name or a place of abode that is not his or her place of abode; or

(c) who, being the occupier of any premises—

(i) refuses to permit or to assist an authorised officer to perform or carry out the acts, matters or things, or any of the acts, matters or things, which an authorised officer is authorised to perform or carry out; or

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- (ii) refuses to comply with a requirement made under subsection (6),

is guilty of an offence against this Act and liable to a penalty not exceeding \$5,000.

Search warrant.

46. Upon a complaint made upon oath by an authorised officer stating that the authorised officer suspects that a provision of this Act, the regulations or a chemical control order has been or is being contravened within any dwelling or in or upon any land used in connection with any dwelling, a Magistrate who is satisfied that reasonable grounds are shown in the complaint for the authorised officer's statement may issue a warrant authorising an authorised officer named therein together with a member of the police force at any time or times within 14 days from the date of issue of the warrant to enter, if need be by the use of reasonable force, the dwelling named in the warrant and any such land, and therein to exercise the powers specified in section 45 (1) and to search the dwelling and any fixtures or fittings therein and any such land for evidence of such a contravention.

Forfeiture.

47. (1) Where a person is convicted of an offence against this Act or the regulations, the court may order forfeiture to the Crown of—

- (a) all or any part of the chemical or chemical waste in respect of which the offence was committed; or
- (b) any container of that chemical or waste,

if the court finds it to be the property of the person so convicted and, upon the making of the order, the chemical, waste or container becomes the property of the Crown.

(2) Subject to section 48, on application made by or on behalf of the Minister in the prescribed manner, a Local Court may order forfeiture to the Crown of any substance or container that has been seized by an authorised officer under section 45 (1) (h) and, upon the making of the order, the substance or container becomes the property of the Crown.

Retention and disposal of seized property.

48. (1) In this section, "prescribed period", in relation to any substance or container seized under section 45 (1) (h), means the period of 6 months commencing from the time of seizure of the substance or container or any other period fixed by a Local Court in relation to the substance or container upon application made by or on behalf of the Minister in the prescribed manner.

(2) During the prescribed period any substance or container seized under section 45 (1) (h)—

- (a) may be retained; or
- (b) unless during the period the substance or container has been forfeited to the Crown under section 47, may be returned to the person from whom it was seized.

(3) A substance or container seized under section 45 (1) (h) shall, at the expiration of the prescribed period, be returned to the person from whom it was seized, or to the person who appears to the Commission to be its owner, unless—

- (a) it was, during that period, forfeited to the Crown under section 47; or
- (b) the Commission causes a notice to be advertised in the prescribed manner before the expiration of the prescribed period to the effect that application will be made on a specified day for forfeiture to the Crown of the substance or container.

(4) Where a notice is advertised under subsection (3), the substance or container to which the advertisement relates shall, forthwith after the application referred to in the advertisement has been withdrawn or determined, be returned to the person from whom it was seized, or to the person who appears to the Commission to be the owner, unless the substance or container has been forfeited to the Crown.

Disposal of forfeited property.

49. (1) Any substance or container forfeited to the Crown shall be disposed of as the Minister directs.

(2) Where any substance or container is disposed of under subsection (1) by way of sale, the proceeds shall be paid into the Treasury and be carried to the Consolidated Fund.

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Service of instruments.

50. (1) Any notice or other instrument issued, made or given for the purposes of this Act may be served—

- (a) by delivering it personally to the person to whom it is addressed;
- (b) by delivering it to the place of abode or business of the person to whom it is addressed and by leaving it there with some person apparently of or above the age of 16 years for the person to whom it is addressed; or
- (c) by post.

(2) Any such notice or instrument addressed to a licensee at the place last entered in the records of the Commission as the licensee's place of abode or business shall be deemed to be properly addressed for the purpose of section 27 (i) of the Interpretation Act, 1897.

Evidence.

51. (1) In this section, "instrument" includes a notice.

(2) Any instrument purporting to be an instrument issued, made or given for the purposes of this Act (including subsections (4) and (5)) and to have been signed by the Director of the Commission, or by an officer of the Commission authorised generally or specially by the Commission to do so, is admissible in any proceedings under this Act and shall, in the absence of evidence to the contrary, be deemed to be an instrument so issued, made or given and to have been so signed.

(3) Proof shall not, in the absence of evidence to the contrary, be required of the appointment of any member of the Committee.

(4) A document certified by the Director of the Commission, or by an officer of the Commission authorised generally or specially by the Commission to do so, to be a true copy of an instrument—

- (a) issued, made or given for the purposes of this Act; and
- (b) signed by the Director of the Commission, or by an officer of the Commission authorised generally or specially by the Commission or the Director to do so,

is admissible in any proceedings under this Act as if it were the original instrument of which it purports to be a copy.

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(5) A certificate signed by the Director of the Commission, or by an officer of the Commission authorised generally or specially by the Commission to do so, and certifying any one or more of the following:—

- (a) that an instrument, a purported copy of which is set out in the certificate, being an instrument—
 - (i) issued, made or given for the purposes of this Act; and
 - (ii) signed by the Director of the Commission, or an officer of the Commission authorised generally or specially by the Commission to do so,was issued, made or given on a day specified in the certificate;
- (b) that a person was, or was not, at a time or during a period so specified, the holder of a licence issued in respect of premises so specified;
- (c) that a licence was, or was not, at a time or during a period so specified, subject to conditions so specified;
- (d) that a licence was, at a time so specified, revoked or suspended for a period so specified;
- (e) that a condition attached to a licence was, at a time so specified, revoked or varied in the manner so specified;
- (f) that an exemption was, or was not, given under this Act or the regulations in relation to any matter so specified;
- (g) that an exemption given under this Act or the regulations was, or was not, subject to conditions so specified;
- (h) that a person was, or was not, at a time or during a period so specified, an authorised officer; or
- (i) that a person was, or was not, at a time or during a period so specified, the Director or an officer of the Commission.

is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so certified.

(6) In proceedings for an offence against this Act, a certificate under subsection (5) that is admitted in evidence and that certifies that a person was, at a time or during a period specified in the certificate, the holder of a licence authorising the carrying on of an activity so specified in or upon any

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premises so specified shall be accepted by the court as evidence of the truth of an allegation, in the information in respect of the offence, that—

- (a) the person was, at that time or during that period, the occupier of those premises; and
- (b) those premises were, at that time or during that period, premises in or upon which the activity was authorised to be carried on,

unless the contrary is proved or unless it is proved that the person was not, at that time or during that period, the holder of a licence in respect of those premises.

Registers.

52. (1) The Commission shall cause to be kept and maintained—

- (a) a register of substances that are for the time being declared chemical wastes;
- (b) a register of chemical control orders for the time being in force; and
- (c) a register of licences.

(2) A register kept under this section shall contain such other particulars, if any, as may be prescribed.

(3) The Commission shall—

- (a) make any such register, or a true copy thereof, available for inspection by the public at its office during office hours; and
- (b) furnish any person, upon payment of the prescribed fee, with such extracts from the register or other information concerning the contents of the register as the person may reasonably require.

Offences by corporations.

53. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act, a regulation or a chemical control order, or any condition of a licence, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision or the same condition, as the case may be, unless the person satisfies the court that—

- (a) the corporation contravened the provision or condition without the knowledge of the person;

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- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision or condition;
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation; or
- (d) the corporation would not have been found guilty of the offence by reason of its being able to establish a defence available to it under this Act or the regulations.

(2) A person who is a director of a corporation or who is concerned in the management of a corporation may, by virtue of subsection (1), be proceeded against and be convicted of an offence in respect of a contravention referred to in that subsection, whether or not the corporation has been proceeded against or been convicted in respect of the contravention.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or a regulation on any corporation by which an offence arising under the provision is actually committed.

Penalties.

54. Except as may be otherwise provided by this Act, any person guilty of an offence against this Act shall be liable—

- (a) where the offence was committed by a corporation—to a penalty not exceeding \$40,000; or
- (b) where the offence was committed by any other person—to a penalty not exceeding \$20,000.

Power to order contravention to be remedied.

55. Where any person has been convicted of an offence against this Act, the court by which the person is convicted—

- (a) in addition to imposing a penalty for the offence, may order that person to take such steps as may be specified in the order within a time so specified to prevent the continuance or recurrence of the offence; and
- (b) may enlarge the time so specified.

and if, upon the expiration of the time originally specified or as enlarged, the person so convicted neglects or fails, without reasonable excuse, to comply with the order, the person is guilty of an offence against this Act.

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Proceedings for offences.

56. (1) Proceedings for an offence against this Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone or before the Court in its summary jurisdiction.

(2) Notwithstanding any provision of the Justices Act, 1902, or any other Act, proceedings for an offence against this Act or the regulations may be commenced not later than 3 years after the date alleged to be the date on which the offence was committed.

(3) Subject to subsection (4), proceedings for any such offence shall not be instituted without the written consent of the Minister or of such member or officer of the Commission as may be authorised by the Minister for the purposes of this subsection.

(4) Subsection (3) does not apply to the institution of proceedings for any such offence if the proceedings are instituted by a member or officer of the Commission and with—

- (a) the consent of the Commission; or
- (b) the written consent of such member or officer of the Commission as may be authorised by the Commission for the purposes of this subsection.

(5) If proceedings for any such offence are brought in a Local Court, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, \$5,000 or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(6) If proceedings for any such offence are brought in the Court, the Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

Restraint, etc., of breaches of this Act.

57. (1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

(2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of the person and other persons (with their consent),

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or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

(3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

(4) Where the Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.

Regulations.

58. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), a regulation may—

- (a) require the payment of fees in connection with applications, licences and renewals of licences and any service provided by the Commission under this Act or the regulations;
- (b) require persons of any specified class or description who are notified in the prescribed manner to furnish, as prescribed, information of a kind specified in the notification, being information concerning a chemical or any chemical waste so specified or any particular activity carried on in relation thereto or any plant, vehicle or vessel used in connection with the carrying on of any such activity;
- (c) make provision for or with respect to the calling of, and the conduct of business at, meetings of the Committee;
- (d) exempt persons, or persons of a prescribed class, either absolutely or subject to conditions or in prescribed circumstances or for prescribed periods of time, from any provision of this Act or the regulations or of any order made under this Act; and

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- (e) impose a penalty not exceeding \$20,000 for any contravention of a regulation.
- (3) A regulation may—
- (a) apply differently according to such factors as are specified in the regulations;
 - (b) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body; or
 - (c) adopt wholly, partly or by reference, rules, codes, standard tests or specifications specified in the regulation which have been recommended or adopted by any person or body so specified, and which relate to the matter with which the regulation deals, together with any additions or amendments thereto that are so specified.

Liability of certain persons.

59. No matter or thing done by—
- (a) the Commission;
 - (b) any person acting under the direction of the Commission; or
 - (c) any member of the Committee or any sub-committee appointed under this Act,

shall, if the matter or thing was done bona fide for the purpose of executing this Act, subject any member of the Commission or any person so acting or any such committee or sub-committee member personally to any action, liability, claim or demand whatever.

SCHEDULE 1.

(Sec. 6 (2).)

PROVISIONS RELATING TO THE COMMITTEE.

Interpretation.

1. In this Schedule—
 - “Commission’s nominee” means a member nominated by the Commission;
 - “member” means a member of the Committee.

*Environmentally Hazardous Chemicals 1985*SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE COMMITTEE —*continued.***Membership of the Committee.**

2. Of the members—

- (a) 2 shall be persons each of whom is a member of the Commission for the time being nominated by the Commission or an officer of the Commission for the time being so nominated;
- (b) one shall be an officer of the Department of Environment and Planning for the time being nominated by the Minister for Planning and Environment;
- (c) one shall be an officer of the Department of Health for the time being nominated by the Minister for Health;
- (d) one shall be an officer of the Department of Industrial Relations for the time being nominated by the Minister for Industrial Relations;
- (e) one shall be an officer of the Department of Agriculture for the time being nominated by the Minister for Agriculture and Fisheries;
- (f) one shall be a member of the Metropolitan Waste Disposal Authority for the time being nominated by that Authority or an officer of that Authority for the time being so nominated;
- (g) one shall be an officer of the Board of Fire Commissioners for the time being nominated by the Minister for Police and Emergency Services;
- (h) one shall be an officer of the Department of Consumer Affairs for the time being nominated by the Minister for Consumer Affairs;
- (i) one shall be a member of the Chamber of Manufactures of New South Wales for the time being nominated by that body;
- (j) one shall be a member of the Labor Council of New South Wales for the time being nominated by that body;
- (k) one shall be a person selected by the Minister to represent major users of chemicals in New South Wales;
- (l) one shall be a person selected by the Minister from persons for the time being nominated by the Local Government Association of New South Wales or the Shires Association of New South Wales, or by both of those Associations;
- (m) one shall be a person nominated by the Minister to represent groups of persons concerned in environmental protection; and
- (n) two shall be persons nominated by the Minister from among persons having such professional or technical qualifications as the Minister may for the time being consider appropriate.

Nominations for membership.

3. A nomination for the purposes of this Schedule—

- (a) shall be made in writing addressed, except in the case of a nomination by the Commission or the Minister, to the Minister;
- (b) may in like manner be withdrawn—

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SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE COMMITTEE—*continued.*

- (i) except as provided by subparagraph (ii), by the person or body who or which made the nomination; or
- (ii) in prescribed circumstances, by a person authorised by the regulations; and

(c) shall continue in force until withdrawn in accordance with paragraph (b).

Alternate members.

4. (1) The regulations may provide for the nomination, appointment and voting rights of alternate members of the Committee to act during the illness or absence of members.

(2) The provisions of this Act shall apply (with such modifications, if any, as may be provided by the regulations) to and in respect of alternate members of the Committee in the same way as those provisions apply to and in respect of members.

Presiding member.

5. (1) The Commission shall in writing appoint one of the Commission's nominees to be the chairperson of the Committee.

(2) The chairperson of the committee may be referred to as the chairman or chairwoman, as the case may require.

(3) The chairperson shall preside at all meetings of the Committee attended by the chairperson and, in the absence of the chairperson from any meeting the members present shall appoint one of their number to preside at the meeting.

Procedure.

6. The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Schedule and the regulations, be as determined by the Committee.

Filling of vacancy in office of member.

7. In the event of the office of any member becoming vacant a person shall be nominated to fill the vacancy in accordance with this Schedule.

Vacancies.

8. A member shall be deemed to have vacated office—

- (a) if the member dies;
- (b) if the member's nomination for the purposes of this Schedule is withdrawn;
- (c) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) if the member becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

*Environmentally Hazardous Chemicals 1985*SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE COMMITTEE—*continued.*

- (e) if the member is convicted of an offence against this Act or the regulations, or is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) if the member resigns the office by instrument in writing addressed to the Minister; or
- (g) if the member is removed from office under clause 9 (5).

Disclosure of pecuniary interests.

9. (1) A member who has a direct or indirect pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Committee; or
- (b) in a thing being done or about to be done by the Committee,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

(2) A disclosure by a member at a meeting of the Committee that the member has some specified interest relating to a specified company or other body or a specified person shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Committee shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Commission from time to time.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Committee, or take part in any decision of the Committee, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,

as the case may require.

(5) A member who acts in contravention of this clause may be removed from office by the Minister.

(6) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Committee or the exercise by the Committee of any function under this Act.

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SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE COMMITTEE—*continued.***Sub-committees.**

10. (1) The Committee may establish sub-committees for the purpose of advising the Committee upon such matters within the scope of the Committee's functions as may be referred to the sub-committees by the Committee.

(2) A person may be appointed to a sub-committee whether or not the person is a member of the Committee.

(3) A sub-committee shall investigate, and shall report upon and make recommendations to the Committee concerning, such matters relating to the exercise of the Committee's functions as may be referred to it by the Committee.

Remuneration of members.

11. Every person who is a member of the Committee or of any sub-committee thereof shall be entitled to receive such travelling expenses, and every such person (other than the members referred to in clause 2 (a)–(h)) shall be entitled to receive such fees for attending meetings and transacting business of the Committee or sub-committee and such fees for making inspections, if any, for the purposes of this Act, as the Minister may from time to time determine in respect of that person.

Effect of certain other Acts.

12. Where by or under any other Act provision is made requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of the office, or prohibiting the person from engaging in employment outside the duties of the office, that provision shall not operate to disqualify the person from holding that office and also the office of a member of the Committee or any sub-committee thereof.
