



## ANALYSIS

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1982, No. 31

## An Act to amend the Clean Air Act 1972

[21 October 1982]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Clean Air Amendment Act 1982, and shall be read together with and deemed part of the Clean Air Act 1972 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of January 1983.

**2. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by inserting in the definition of the term “dense smoke”, after paragraph (b), the following paragraph:

“(bb) Causes, when measured by photo-electric means, more than 40 percent obscuration in the chimney or in the duct leading to the chimney; or”.

(2) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term "fuel burning equipment", and substituting the following definition:

" 'Fuel burning equipment' means—

"(a) Any fireplace, grate, stove, incinerator, boiler, furnace, gas turbine, or internal or external combustion engine; and

"(b) Any chimney, apparatus, device, or mechanism used or to be used in connection with the burning of any combustible material:".

(3) Section 2 (1) of the principal Act is hereby further amended by inserting in the definition of the term "light smoke", after paragraph (b), the following paragraph:

"(bb) Causes, when measured by photo-electric means, more than 20 percent obscuration but not more than 40 percent obscuration in the chimney or in the duct leading to the chimney; or".

(4) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term "motor vehicle", the following definition:

" 'Occupier' means, in relation to any premises, the person occupying the premises; and includes any agent, manager, foreman, or other person acting or apparently acting in the general management or control of any business, school, industry, or other undertaking carried on on the premises:".

(5) Section 2 (1) of the principal Act is hereby further amended by omitting the definition of the term "smoke", and substituting the following definition:

" 'Smoke' means—

"(a) Any product of combustion, complete or incomplete, other than water vapour; and

"(b) Any fumes or other emission produced by chemical reaction,—  
which is or could be visible in daylight or artificial light."

### **3. General obligation of occupiers of premises—**

(1) Section 7 (1) (a) of the principal Act is hereby amended by omitting the words "and control equipment or otherwise", and substituting the words "equipment, process control equipment, methods of control or otherwise".

(2) Section 7 (2) of the principal Act is hereby amended by omitting the words "industrial or trade premises who

knowingly”, and substituting the words “any premises (other than a dwelling or premises where open burning is carried out on not more than one occasion in any period of 12 months) who”.

**4. Strict liability**—The principal Act is hereby further amended by inserting, after section 7, the following section:

“7A. (1) In any prosecution for an offence against this Act or against any regulation made under this Act it shall not be necessary for the prosecution to prove that the defendant intended to commit an offence.

“(2) Subject to subsection (3) of this section, it shall be a good defence to any such prosecution if the defendant proves—

“(a) That the contravention complained of was solely due to a mechanical failure; and

“(b) That either—

“(i) The failure could not reasonably have been foreseen; or

“(ii) In any other case, the failure could not reasonably have been provided against; and

“(c) That the contravention could not reasonably have been prevented by action taken after the failure occurred.

“(3) Except as provided in subsection (4) of this section, subsection (2) of this section shall not apply unless, within 7 days after the service of the summons or within such further time as the Court may allow, the defendant has delivered to the prosecutor a written notice—

“(a) Stating that he intends to rely on subsection (2) of this section; and

“(b) Specifying the facts that support his reliance on subsection (2) of this section.

“(4) In any prosecution as aforesaid evidence of facts not specified in the written notice required by subsection (3) of this section shall not, except with the leave of the Court, be admissible for the purpose of supporting a defence under subsection (2) of this section.”

**5. Prohibition on emission of dense smoke**—(1) Section 10 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Subject to the provisions of this Act, if on any day dense smoke is emitted from—

“(a) Any fuel burning equipment in or on premises comprising buildings other than a dwelling; or

“(b) Any premises on which open burning without fuel burning equipment is carried out on more than 1 occasion in any period of 12 months,—

the occupier of the premises commits an offence.”

(2) Section 10 (4) of the principal Act is hereby amended—

(a) By inserting, after the words “application of that subsection”, the words “in respect of any process or any part of any process”:

(b) By inserting, after the words “to that occupier”, the words “in respect of that process or that part of a process”.

**6. Application of Smoke Restriction Regulations 1964**—The principal Act is hereby amended by repealing section 11.

**7. Fees and allowances**—(1) Section 12 (2) of the principal Act is hereby amended by omitting the expression “19”, and substituting the expression “17”.

(2) Section 12 of the principal Act is hereby amended by adding the following subsection:

“(5) The person appointed by the Minister under subsection (4) of this section for the purpose of hearing an objection is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951, and there may be paid to that person remuneration by way of fees, salary, or allowances, and travelling allowances and expenses in accordance with that Act, and the provisions of that Act shall apply accordingly.”

**8. Orders in Council**—(1) Section 13 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Any Order in Council made under section 12 of this Act may—

“(a) Make different provision for different parts of, or different classes of premises in, the clean air zone:

“(b) Authorise or prohibit the use in the clean air zone of any specified class of fuel or prohibit or restrict the use of any fuel the use of which is not so authorised:

“(c) Authorise or prohibit the use in the clean air zone of any specified class of fuel burning equipment, or prohibit or restrict the use in the clean air zone of any fuel burning equipment the use of which is not so authorised:

“(d) Prescribe the manner of installation, maintenance, or operation of any specified class of fuel burning equipment in the clean air zone:

“(e) Limit the application of any of the provisions of sections 15 and 16 of this Act, either generally or for a specified period or until a specified date, to specified classes of premises, buildings, operations, fuel burning equipment, or industrial plant, in the clean air zone:

“(f) Exempt, either generally or for a specified period, or until a specified date, specified premises, buildings, operations, fuel burning equipment, or industrial plant, or specified classes of premises, buildings, operations, fuel burning equipment, or industrial plant, in the clean air zone from the application of any of the provisions of sections 15 and 16 of this Act, upon such conditions, if any, as may be prescribed in the order.”

(2) Section 13 of the principal Act is hereby further amended by inserting, after subsection (3), the following subsection:

“(3A) Any Order in Council made under section 12 of this Act, and containing any provision to which subsection (3) of this section applies, may—

“(a) Attach conditions to that provision:

“(b) Delegate to the Minister (to be exercised by him by notice in the *Gazette* after consultation with the local authority) all or any of the powers conferred by paragraphs (b) and (c) of subsection (3) of this section (including the powers conferred by paragraph (a) of this subsection) and either provide that the powers so delegated shall be exercised in the manner prescribed in the order or provide that they shall be exercised in such manner as the Minister thinks fit.”

**9. Power of Minister to relax restrictions**—Section 18 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Within 14 days after the publication in the *Gazette* of a notice under subsection (1) of this section, the local authority for the district containing the clean air zone—

“(a) Shall, by newspaper, by radio or television broadcasting, or otherwise, give notice within the clean air zone of the effect of the notice in the *Gazette*, and

“(b) Take such other steps as appear to it to be suitable for bringing the effect of the notice to the attention of persons affected.”

**10. Subsidies to local authorities where clean air zones are established**—The principal Act is hereby amended by inserting, after section 18, the following section:

“18A. (1) Where a clean air zone has been created in respect of the whole or any part of the district of a local authority, the Minister may, out of money appropriated by Parliament for the purpose, make financial grants or loans or pay subsidies, to the local authority, in accordance with any scheme established by the local authority and approved by the Minister for the purpose of limiting the emission of air pollutants from premises in that zone.

“(2) Grants, loans, or subsidies may be made or paid under subsection (1) of this section only where the scheme is—

“(a) For the purpose of assisting any person to meet the costs of complying with the provisions of the Order in Council by which the clean air zone was created or with any requirement of the Minister exercised pursuant to a delegation under section 13 (3A) (b) of this Act; or

“(b) For the purpose of assisting any person to install or purchase for use in or on premises in the clean air zone any heating appliance to which the scheme relates (being a heating appliance which is a type of fuel-burning equipment authorised under section 13 (3) (b) of this Act for use in the clean air zone or which uses electricity or solar radiation or both).”

**11. Locomotive engines, aircraft, hovercraft, and motor vehicles**—Section 19 (2) of the principal Act is hereby amended by inserting, after the word “Sections”, the expression “7,”.

**12. Ships**—Section 20 (1) of the principal Act is hereby amended by inserting, after the expression “11”, the expression “21,”.

**13. Scheduled processes to be licensed**—Section 23 of the principal Act is hereby amended by repealing subsections (4) and (5), and substituting the following subsection:

“(4) Every application for a licence shall be accompanied by the scheduled process fee that will be payable under

section 25A (1) of this Act if the application is granted, which fee, notwithstanding anything in section 25A of this Act, shall be refunded to the applicant if the application is refused or withdrawn.”

**14. Licences**—(1) Section 25 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Every licence shall specify the period for which it is issued and, unless it is cancelled or surrendered in accordance with this Act, shall continue in force until the end of that period.”

(2) Section 25 of the principal Act is hereby further amended by adding the following subsection:

“(7) Any licensee may at any time surrender his licence by notice in writing addressed to the licensing authority.”

**15. Licence fees**—The principal Act is hereby amended by inserting, after section 25, the following section:

“25A. (1) On the grant of a licence a fee to be known as a scheduled process fee, of such amount as shall be prescribed, shall be payable by the licensee:

“Provided that if the licence is granted after the 30th day of April in any year the prescribed licence fee shall be reduced by one-twelfth for every complete month between the date of the grant of the licence and the 31st day of March last preceding that date.

“(2) A licensee shall, in the month of March in each year, pay to the local authority within whose district the scheduled process is carried on a fee in respect of the continuance of the licence, which fee shall be known as a scheduled process fee and shall be of such amount as shall be prescribed.

“(3) Where a licence expires at any time before the 1st day of March in any year, there shall, notwithstanding anything in subsection (4) of this section, be refundable to the person who held the licence the amount of the scheduled process fee paid in the preceding March in respect of that licence under subsection (2) of this section reduced by one-twelfth for every month between the preceding 31st day of March and the end of the month in which the licence expired.

“(4) Where a scheduled process fee is paid to a local authority, that local authority—

“(a) If the fee is paid in respect of a process specified or described in Part A of the Second Schedule to this

Act, may retain such part of the fee as is prescribed by regulations made under this Act (which part shall not exceed one-fifth of the prescribed fee) or \$100, whichever is the lesser, and shall pay the remainder of the fee into the Consolidated Account; and

“(b) In every other case, shall retain the whole of the fee.

“(5) If a scheduled process fee that is payable under subsection (2) of this section is not paid, the local authority to which that fee is payable shall send notice to the licensee that if the fee is not paid by a date specified in the notice, being a date not earlier than 21 days after the date on which the notice is sent, the licence will be suspended. If the fee is not paid on or before the date specified in the notice the licence shall be automatically suspended as from the close of that day, and the licence shall be suspended until the fee is paid. So long as any licence is suspended under this subsection the licensee shall be deemed not to be licensed to carry on the process in or on the premises to which the licence relates.

“(6) Regulations under section 55 of this Act may—

“(a) Prescribe or provide for scheduled process fees or a scale of scheduled process fees or both:

“(b) Provide for the manner in which scheduled process fees are to be assessed:

“(c) Provide for reductions in scheduled process fees and for exemptions from payments of scheduled process fees.”

**16. Conditions of licences**—Section 26 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Without prejudice to the generality of subsection (1) of this section, a licensing authority may impose conditions—

“(a) Specifying a maximum concentration, or rate, or rate at a specified height, in respect of the emission of air pollutants or any class of air pollutants from the premises where the scheduled process is to be carried on:

“(b) Requiring the licensee to—

“(i) Install, repair, alter, or replace any fuel burning equipment or industrial plant in or on the premises where the scheduled process is to be carried on:

“(ii) Install and operate control equipment in or on those premises:

“(iii) Repair, alter, or replace any control equipment installed in or on those premises:

“(iv) Erect or alter the height of any chimney through which air pollutants may be discharged from those premises:

“(v) Carry out any of the requirements imposed on the licensee under this paragraph within such time as may be specified in the licence:

“(vi) Limit the quality or quantity of any fuel burned or limit any other operation:

“(vii) Carry out tests and keep records of any such tests and of any method of operation or supervision:

“(viii) Report to the licensing authority in writing at specified intervals on such matters relating to the emission of air pollutants from those premises as may be specified in the licence:

“(ix) Observe as a condition of his licence any of the obligations otherwise imposed by this Act:

“(c) Prohibiting the licensee from altering or replacing any fuel burning equipment or any control equipment installed in or on the premises where the scheduled process is to be carried on except with the prior approval in writing of the licensing authority.”

**17. Renewal and transfer of licences**—(1) Section 28 (1) of the principal Act is hereby amended by omitting the words “and on payment of any fee that may be prescribed”.

(2) Section 28 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

“(5) Every renewal of a licence under this section shall have effect for such period as is specified by the licensing authority in granting that renewal.”

**18. Refusal of licences**—(1) The principal Act is hereby amended by repealing section 29 (as amended by section 178 (1) of the Town and Country Planning Act 1977), and substituting the following section:

“29. (1) A licensing authority may refuse to issue or renew a licence in respect of a scheduled process if—

“(a) In the case of a process being carried on at the time of the application, he or it is satisfied that the process is detrimental to the health of persons living or working in the vicinity of the premises; or

“(b) In any other case, he or it is not satisfied that the carrying on of that process in or on the scheduled premises would not be detrimental to the health of persons living or working in the vicinity of those premises.

“(2) A licensing authority may refuse to issue or transfer a licence to, or renew a licence held by, a person—

“(a) Who or which was a licensee under a licence at the time when the licence was cancelled under section 53 of this Act; or

“(b) Who was, at the time of the cancellation of the licence, a shareholder in, or a director, manager, or other principal officer of, a corporate body to which paragraph (a) of this subsection applies; or

“(c) Which is a corporate body in which a person to whom paragraph (a) of this subsection applies is a shareholder, director, manager, or other principal officer.

“(3) Subject to subsection (5) of this section, a licence shall not be issued, renewed, or transferred if the carrying on of the scheduled process specified in the material application in or on the scheduled premises would contravene any provision of the Town and Country Planning Act 1977, or any bylaw of the local authority within whose district the premises are situated, or any other enactment, or if such local authority, acting pursuant to any such enactment, has not approved or consented to the carrying on of the scheduled process in or on those premises.

“(4) A licensing authority shall, in any case where he or it refuses to issue or renew or transfer a licence, give the reasons for his or its refusal.

“(5) If a licensing authority issues a licence in respect of a scheduled process which cannot lawfully be carried on in or on the premises specified in the application without approval under the Town and Country Planning Act 1977, the licence shall have no effect unless or until such approval has been obtained:

“Provided that the licensing authority may, at his or its discretion, postpone the issue of a licence until such approval has been obtained.

“(6) The Director-General shall neither issue a new licence in respect of a process specified or described in Part A of the Second Schedule to this Act, nor vary the conditions imposed in any such licence, until he has notified the local authority within whose district the scheduled premises are situated, and, if the scheduled process is likely to affect the district of another local authority, that other local authority, of the conditions which he proposes to impose in the licence; and either—

“(a) The period of 1 month has elapsed from the date of receipt of such notification, or, if more than 1 local authority is so notified, the date when the last of those notifications was given; or

“(b) That local authority, or, if more than 1 local authority is so notified, all those local authorities has or have informed the licensing authority in writing that it or they does or do not object to those conditions, subject to such additions, changes, or modifications, if any, as may have been proposed or conceded by the licensing authority during the said period of 1 month.

“(7) A local authority shall neither, if the scheduled process is likely to affect the district of another local authority, issue a new licence in respect of a process specified or described in Part B of the Second Schedule to this Act, nor vary the conditions imposed in any such licence, until it has notified that other local authority of the conditions which it proposes to impose on the licence; and either—

“(a) The period of 1 month has elapsed from the date of receipt of such notification, or, if more than 1 local authority is so notified, the date when the last of those notifications was given; or

“(b) That local authority, or, if more than 1 local authority is so notified, all those local authorities, has or have informed the licensing authority in writing that it or they does or do not object to those conditions, subject to such additions, changes, or modifications, if any, as may have been proposed or conceded by the licensing authority during the said period of 1 month.

“(8) If, during the period of 3 months following the expiration of the period of 1 month referred to in subsection (6) or subsection (7) of this section, the licensing authority has reason to believe that an appeal will be instituted by a local authority under this Act in respect of the

conditions imposed, or omitted to be imposed, or proposed to be imposed or omitted, the licensing authority may postpone the issue of a licence until the expiration of the said period of 3 months, and, if an appeal is instituted within that period before the licence is issued, the licensing authority shall postpone the issue of the licence until the appeal is determined.

“(9) In any case in which, pursuant to subsection (6) or subsection (7) of this section, a local authority, other than the local authority within whose district the scheduled premises are situated, is notified of the conditions proposed to be imposed on the licence, the licensing authority shall, forthwith upon the issue of the licence, transmit a copy thereof to that local authority.”

(2) The Town and Country Planning Act 1977 is hereby consequentially amended by repealing so much of the Fourth Schedule as relates to the Clean Air Act 1972.

**19. Shutting down of process**—The principal Act is hereby amended by inserting, after section 29 (as substituted by section 18 (1) of this Act), the following section:

“29A. (1) Where the Director-General or any officer authorised by him in that behalf believes on reasonable grounds that a scheduled process on any premises is likely to cause imminent danger to health, and that immediate action is required to prevent that danger, the Director-General or any such officer may require the licensee to immediately cease the operation of that process.

“(2) In any case where a requirement made under subsection (1) of this section is not obeyed forthwith, an officer authorised by the Director-General in that behalf, with such assistants as may be necessary, and without notice, may enter on the premises and shut down the process.”

**20. Repeal of spent section**—The principal Act is hereby amended by repealing section 30.

**21. Restrictions on work on scheduled premises**—Section 31 of the principal Act is hereby amended by inserting, after the words “licensing authority” wherever they occur, the words “on the advice of an officer”.

**22. Right of appeal to High Court**—(1) Section 33 (1) of the principal Act is hereby amended by adding the following paragraph:

- “(j) Being the occupier of premises, he is aggrieved by—  
 “(i) A requirement of the Director-General or an officer under section 29A (1) of this Act; or  
 “(ii) The fact that an officer has shut down a process on those premises under section 29A (2) of this Act.”

(2) Section 33 (1) (i) of the principal Act is hereby consequentially amended by adding the expression “; or”.

**23. Powers of officers**—Section 43 (1) (b) of the principal Act is hereby amended by inserting, after the word “records,”, the words “, take such photographs,”.

**24. Legal proceedings**—Section 50 (4) of the principal Act is hereby amended by inserting, after the words “section 10 or section 16 of this Act”, the words “or under section 26 of this Act where compliance with the provisions of section 10 or section 16 of this Act is a condition of the licence,”.

**25. Defences**—The principal Act is hereby amended by repealing section 51.

**26. Penalties**—Section 52 of the principal Act is hereby amended—

- (a) By omitting from subsection (1) the expression “\$500”, and substituting the expression “\$3,000”;
- (b) By omitting from subsection (2) (a) the expressions “\$5,000” and “\$500”, and substituting the expressions “\$10,000” and “\$1,000” respectively;
- (c) By omitting from subsection (2) (b) the expressions “\$1,000” and “\$100”, and substituting the expressions “\$3,000” and “\$500” respectively;
- (d) By omitting from subsection (3) the expression “\$1,000”, and substituting the expression “\$2,000”;
- (e) By omitting from subsection (4) the expression “\$200”, and substituting the expression “\$500”.

**27. Amendment to Health Act 1956**—Section 29 (m) of the Health Act 1956 is hereby amended—

- (a) By omitting the words “but not including”, and substituting the word “and”;
- (b) By inserting, after the word “regulation”, the words “or Act of Parliament”.