

SOUTH AUSTRALIA

**WASTE MANAGEMENT ACT, 1987**

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SCHEDULE

**WASTE MANAGEMENT ACT, 1987**

being

Waste Management Act, 1987, No. 96 of 1987  
[Assented to 17 December 1987]<sup>1</sup>

<sup>1</sup> Came into operation 1 July 1988: *Gaz.* 30 June 1988, p. 2051.

**An Act to provide for the management of waste and for the continuation of the South Australian Waste Management Commission; to repeal the South Australian Waste Management Commission Act, 1979; and for other purposes.**

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Waste Management Act, 1987*.

**Commencement**

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

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

**Repeal**

3. The *South Australian Waste Management Commission Act, 1979*, is repealed.

**Interpretation**

4. In this Act, unless the contrary intention appears—

"the Commission" means the South Australian Waste Management Commission:

"council" means a municipal or district council:

"waste" means any matter (whether of value or not) discarded or left over in the course of industrial, commercial, domestic or other activities and includes any matter declared by regulation to be waste, but does not include (unless so declared)—

- (a) matter lawfully disposed of in a sewerage system;
- (b) mining and associated milling wastes and slags;
- (c) radio-active wastes;
- (d) smoke or gaseous discharges;
- (e) any matter excluded by regulation from the ambit of this definition:

"waste depot" means a place for the reception, storage, treatment or disposal of waste and includes a place declared by regulation to be a waste depot, but does not include (unless so declared)—

- (a) a place at which waste produced at that place is temporarily stored while awaiting transport to another place;

3.

(b) residential premises;

(c) any place excluded by regulation from the ambit of this definition.

**Act to bind Crown**

5. (1) Subject to subsection (2), this Act binds the Crown.

(2) No criminal liability attaches to the Crown itself (as distinct from its agencies and instrumentalities) under this Act.

PART II

SOUTH AUSTRALIAN WASTE MANAGEMENT COMMISSION

**The Commission**

6. (1) The South Australian Waste Management Commission continues in existence.
- (2) The Commission is a body corporate.
- (3) The Commission has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.
- (4) The Commission holds its property on behalf of the Crown.
- (5) A document is duly executed by the Commission if it is sealed with the common seal of the Commission and signed by two members of the Commission.
- (6) A document apparently executed in accordance with subsection (5) will be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed.

**Objectives of the Commission**

7. (1) The Commission is responsible, subject to the control and direction of the Minister, for the administration and enforcement of this Act.
- (2) The Commission's objectives include the following:
- (a) to promote effective, efficient, safe and appropriate waste management policies and practices;
  - (b) to promote the reduction of waste generation;
  - (c) to promote the conservation of resources by recycling and reuse of waste and resource recovery;
  - (d) to prevent or minimize impairment to the environment through inappropriate methods of waste management;
  - (e) to encourage the participation of local authorities and private enterprise in overcoming problems of waste management;
  - (f) to provide an equitable basis for defraying the costs of waste management;
- and
- (g) to conduct or assist research relevant to any of the above objectives.

**The Commission's membership**

8. (1) The Commission consists of the following members—

(a) three members appointed by the Governor on the nomination of the Minister—

- (i) one being a person selected from a panel of three submitted by the United Trades and Labor Council of South Australia;
- (ii) one being a person selected from a panel of three submitted by the Local Government Association of South Australia;

and

- (iii) one being a person actively engaged in some aspect of the waste management industry selected from a panel of three submitted by the Chamber of Commerce and Industry S.A. Incorporated;

(b) one member appointed by the Governor on the nomination of the Minister of Local Government;

and

(c) one member appointed by the Governor on the nomination of the Minister for Environment and Planning.

(2) A member of the Commission will be appointed by the Governor to be the presiding member of the Commission.

(3) If a body fails to submit a panel for the purposes of subsection (1) within 30 days after receiving a written request by the Minister to do so, the Governor may proceed to make an appointment on the Minister's nomination and the appointee will be presumed to have been selected from a panel submitted by the body in default.

(4) A member will be appointed for such term not exceeding three years as the Governor determines and will, on the expiration of a term of appointment, be eligible for reappointment.

(5) A member may have a deputy to act in his or her absence and the provisions applicable to nomination, selection and appointment of members extend to deputies.

(6) A member (or deputy member) is entitled to such allowances and expenses (if any) as the Governor may determine.

(7) The office of a member becomes vacant if the member—

- (a) dies;
- (b) completes a term of appointment and is not reappointed;
- (c) resigns by written notice to the Minister;

6.

(d) ceases to satisfy any of the requirements by virtue of which the member was eligible for appointment;

(e) is absent without leave of the Commission from three consecutive meetings of the Commission;

or

(f) is removed from office by the Governor on the ground of—

(i) a breach of, or non-compliance with, conditions of appointment;

(ii) mental or physical incapacity to carry out official duties satisfactorily;

(iii) neglect of duty;

or

(iv) misconduct.

(8) On the office of a member becoming vacant a person will be appointed in accordance with this Act to the vacant office.

### **Meetings and procedure**

**9.** (1) A meeting will be chaired by the presiding member or, in his or her absence, by a member chosen by those present.

(2) Subject to subsection (3), the Commission may act notwithstanding vacancies in its membership.

(3) Three members of the Commission constitute a quorum of the Commission.

(4) A decision in which the majority of the members present at a meeting concur is a decision of the Commission.

(5) The Commission must keep minutes of its proceedings.

(6) Subject to this Act, the Commission may determine its own procedures.

### **Disclosure of interest**

**10.** (1) A member of the Commission who has a direct or indirect pecuniary or other personal interest in a matter under consideration by the Commission—

(a) must disclose the nature of the interest to the Commission;

(b) must not take part in any deliberation or decision of the Commission with respect to the matter;

and

- (c) when any such matter is under consideration at a meeting of the Commission—must not remain at the meeting or in close proximity to the place of the meeting.

Penalty: \$5 000.

- (2) A disclosure under this section must be recorded in the minutes of the Commission.

### **Employees of the Commission**

**11.** (1) The Commission may appoint such employees as it needs for the administration of the Act.

(2) The Commission's employees are not Public Service employees and will be appointed on such terms and conditions as the Commission determines.

(3) The Commission may, with the approval of the appropriate Minister, make use of the services of Public Service employees or of the Government's facilities or equipment.

(4) The Commission is a public authority for the purposes of the *Superannuation Act, 1974*, and the employees of the Commission are, subject to that Act and any arrangement between the Commission and the South Australian Superannuation Board, entitled to become contributors to the South Australian Superannuation Fund.

### **Delegation by Commission**

**12.** (1) The Commission may, with the prior approval of the Minister, delegate any of its powers or functions under this Act—

- (a) to any person;

or

- (b) to a committee (which may—but need not—consist of or include members of the Commission).

(2) Where a delegation is made to a committee under this section—

- (a) the instrument of delegation may regulate the procedures to be followed by the committee when acting in pursuance of the delegation;

and

- (b) the committee may, if the instrument of delegation so provides, act by a majority of the members present at a meeting.

(3) A delegation under this section—

- (a) may be absolute or conditional;

- (b) does not derogate from the power of the delegator to act personally in any matter;

and

(c) is revocable at will by the delegator.

(4) A person to whom a power or function is delegated under this section is disqualified from acting in pursuance of the delegation in relation to any matter in which that person has a direct or indirect pecuniary interest or other personal interest.

### **Finance**

**13.** (1) All money received by the Commission will be paid into a banking account established by the Commission.

(2) Such a banking account will be operated by cheque signed and countersigned by persons appointed by the Commission for the purpose.

(3) The Commission may invest money that is not immediately required for the purposes of this Act in a manner approved by the Treasurer.

(4) The Commission must cause proper accounts to be kept of its financial affairs.

(5) The Auditor-General may at any time and must at least once in each financial year audit the accounts of the Commission.

(6) The Treasurer may, out of money provided by Parliament, make such contribution to the funds of the Commission as the Treasurer considers appropriate.

### **Annual Report**

**14.** (1) The Commission must, on or before 30 September in each year, present a report to the Minister on the administration of this Act during the previous financial year.

(2) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before both Houses of Parliament.

PART III

WASTE MANAGEMENT

DIVISION I—WASTE MANAGEMENT PLANS

**Waste management plans**

**15.** (1) The Commission may prepare a waste management plan for a specified area of the State setting out the measures that the Commission considers necessary or desirable for proper waste management in the area.

(2) In preparing a plan, the Commission must—

(a) consult with any council within the area that the plan covers;

and

(b) take reasonable steps to consult with any person who has, in the opinion of the Commission, a particular interest in the matter.

(3) On completion of a plan—

(a) a copy—

(i) must be sent to each council within the area that the plan covers;

and

(ii) must be publicly displayed;

and

(b) a notice must be published in a newspaper circulating generally throughout the State—

(i) stating that the plan may be inspected at a specified place;

and

(ii) inviting representations from interested persons by a specified date (not less than two months after the date of the notice).

(4) The Commission must have due regard to any representations received and may alter the plan as it considers appropriate.

(5) The Commission must give a copy of the final plan and a summary of any representations received relating to the plan to the Minister.

(6) The Minister may approve the plan and if he or she does so must cause a copy of the plan—

- (a) to be published in the *Gazette*;
  - (b) to be sent to each council within the area covered by the plan;
- and
- (c) to be available at reasonable times for public inspection.

(7) An approved waste management plan may be varied or revoked by a subsequent waste management plan prepared and approved in accordance with this section.

## DIVISION II—WASTE DEPOTS

### **Waste depots**

**16.** A person must not operate a waste depot unless licensed to operate the depot under this Division.

Penalty: \$20 000.

### **Licence to operate waste depot**

**17.** (1) Subject to this Act, the Commission may grant a licence to operate a specified waste depot to an applicant if satisfied—

- (a) that—
    - (i) where the applicant is a natural person—
      - (A) the applicant is of or over the age of 18 years;
    - and
    - (B) the applicant is a fit and proper person to hold a licence;
  - or
  - (ii) where the applicant is a body corporate (other than a council)—every person who is, in the opinion of the Commission, in a position to control or influence substantially the affairs of the body corporate is a fit and proper person to exercise such control or influence in respect of a body corporate that is the holder of a licence;
- (b) that the applicant has made suitable arrangements to fulfil the obligations that may arise under this Act;
  - (c) that the applicant has sufficient financial resources to operate the proposed waste depot in a proper manner;
  - (d) that the proposed waste depot is suitable for its purpose;

- (e) that, having regard to the number and adequacy of existing facilities in the vicinity of the proposed waste depot, the granting of the licence would not prejudice the orderly development of waste management facilities in the area;
- (f) that the granting of the licence would not contravene the principles of any approved waste management plan for the area;

and

- (g) that any consents or approvals required for use of the proposed waste depot have been obtained.

(2) A licence may be granted under this Division on such conditions as the Commission considers appropriate including conditions—

- (a) requiring the licensee to accept wastes of a specified kind at the depot;
- (b) prohibiting the licensee from accepting wastes of a specified kind at the depot;
- (c) regulating the types and quantities of waste that may be accepted at the depot;
- (d) regulating the manner in which wastes or wastes of a specified kind are to be dealt with at the depot;
- (e) requiring the licensee to carry out proper procedures relating to waste management and to take proper precautions to prevent or minimize nuisance or offensive conditions, risk to health or safety, or environmental damage.

(3) A licence may be granted for a limited period.

(4) A licensee must, within 14 days after ceasing to operate the waste depot, notify the Commission in writing of that fact.

Penalty: \$2 000.

(5) Where the Commission—

- (a) is notified by a licensee that he or she has ceased to operate the waste depot;

or

- (b) is otherwise satisfied that a licensee has ceased to operate the waste depot,

the Commission may cancel the licence.

**Notice to be displayed**

**18.** A person licensed to operate a waste depot must maintain in a conspicuous position at each entrance to the waste depot a notice (in a form approved by the Commission) clearly giving the name of the licensee and stating that the licensee is licensed to operate the depot under this Act.

Penalty: \$1 000.

### **Contributions by licensees**

**19.** (1) A person licensed to operate a waste depot must pay the prescribed fee to the Commission in respect of waste received at the depot (other than waste received for the purpose of being transported to another depot for disposal).

(2) Differential fees may be prescribed for the purposes of subsection (1).

(3) The fees must be paid at such intervals and in such manner as the Commission by notice in writing to the licensee directs.

(4) Fees payable under this section are recoverable by the Commission as a debt due to the Commission from the licensee.

### **Operation of waste depots**

**20.** (1) The Commission may, with the approval of the Minister, establish or operate a waste depot if satisfied—

(a) that existing facilities in the relevant locality are inadequate for the purpose of proper waste management;

or

(b) that the depot is otherwise required in the public interest.

(2) Where the Commission proposes to establish a waste depot, the Commission—

(a) must, by notice in the *Gazette* and in two newspapers circulating generally throughout the State, give notice of the proposal and invite representations by a specified date (not less than one month after the date of the notice);

(b) must give not less than one month's notice of the proposal to and invite representations from—

(i) the owner and any occupier of land abutting the proposed depot;

and

(ii) any other person who, in the opinion of the Commission, has a particular interest in the matter.

(3) The Commission must have due regard to any representations received.

(4) The Commission may, subject to and in accordance with the *Land Acquisition Act, 1969*, acquire land for the purposes of this section.

## DIVISION III—COLLECTION AND TRANSPORTATION OF WASTE

**Collection and transportation of waste**

**21.** (1) A person must not collect or transport waste for fee or reward unless licensed under this Division.

Penalty: \$20 000.

(2) For the purposes of this section, a person who collects or transports prescribed waste produced in the course of carrying on an industrial or commercial process or a teaching or research activity in respect of which a licence is required under this Act, will be taken to do so for fee or reward.

(3) Subject to this Act, the Commission may grant a licence to collect or transport waste for fee or reward if satisfied—

(a) that—

(i) where the applicant is a natural person—

(A) the applicant is of or over the age of 18 years;

and

(B) the applicant is a fit and proper person to hold a licence;

or

(ii) where the applicant is a body corporate—every person who is, in the opinion of the Commission, in a position to control or influence substantially the affairs of the body corporate is a fit and proper person to exercise such control or influence in respect of a body corporate that is the holder of a licence;

and

(b) that the applicant has made suitable arrangements to fulfil the obligations that may arise under this Act or other laws of the State.

(4) A licence may be granted under this Division on such conditions as the Commission considers appropriate including conditions—

(a) regulating the kinds of waste that are to be, or are not to be, collected and transported by the holder of the licence;

(b) regulating the kinds of receptacles and vehicles to be used by the licensee in the course of business and the standards with which they must comply.

#### DIVISION IV—PRODUCTION OF PRESCRIBED WASTE

##### **Production of prescribed waste**

**22.** (1) A person must not carry on an industrial or commercial process or a teaching or research activity in the course of which prescribed waste is produced unless licensed under this Division.

Penalty: \$20 000.

(2) A licence may be granted under this Division on such conditions as the Commission considers appropriate including conditions requiring the licensee to store, treat or dispose of wastes produced in a specified manner.

#### DIVISION V—GENERAL LICENSING PROVISIONS

##### **Commission to be satisfied of certain matters**

**23.** Before granting any licence under this Act, the Commission must have regard to—

(a) whether the grant of the licence would prejudice proper waste management in the State;

and

(b) whether the exercise of rights conferred by the licence would be likely to result in—

(i) a nuisance or offensive condition;

(ii) a risk to health or safety;

or

(iii) damage to the environment.

##### **Variation, etc., of licence conditions**

**24.** The Commission may, from time to time, by notice in writing to the holder of a licence, add to, vary or revoke conditions of the licence.

##### **Duration of licences**

**25.** (1) A licence will, subject to this Act and the terms of the licence itself, remain in force until—

(a) the licence is surrendered;

or

(b) the licensee dies or, in the case of a body corporate, is dissolved.

(2) A licensee must, not later than the prescribed date in each year—

(a) pay to the Commission the prescribed annual licence fee;

and

(b) lodge with the Commission an annual return in a form determined by the Commission.

(3) Where a licensee fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Commission may, by notice in writing, require the licensee to make good the default and, in addition, to pay to the Commission the amount prescribed as a penalty for default.

(4) Where a licensee fails to comply with a notice under subsection (3) within 14 days after service of the notice, the licence is, by force of this subsection, suspended until the notice is complied with.

(5) The Commission must cause notice of a suspension under subsection (4) to be published in a newspaper circulating throughout the State.

(6) Where a licence has been suspended by virtue of subsection (4) for a continuous period of six months, the licence is, by force of this subsection, cancelled.

**Business may be carried on by unlicensed person where licensee dies**

**26.** (1) Where a person carrying on business in pursuance of a licence dies, an unlicensed person may, with the consent of the Commission and subject to any conditions imposed by the Commission, continue to carry on the business until the business is sold or the expiration of six months, whichever first occurs.

(2) While an unlicensed person is carrying on business in accordance with the conditions imposed by the Commission, he or she will for the purposes of this Act be regarded as the holder of a licence.

**Offence to contravene conditions**

**27.** It is an offence to contravene or fail to comply with any condition of a licence.

Penalty: \$20 000.

**Licence, etc., to be produced on demand**

**28.** The holder of a licence must, on demand, produce the licence for inspection—

(a) to a member of the Commission, an authorized officer or a member of the police force;

or

(b) to any other person with whom the person has dealings in respect of waste management.

Penalty: \$1 000.

**Suspension or cancellation of licence**

**29.** (1) If the Commission is satisfied—

- (a) that a licence was obtained improperly;
- (b) that a licensee has contravened or failed to comply with this Act or any other Act regulating waste;
- (c) that a licensee is guilty of negligence or improper conduct;

or

- (d) in the case of a licence to operate a waste depot—that any consent or approval required for use of the waste depot has lapsed or expired,

the Commission may suspend or cancel the licence.

(2) A suspension cannot be for more than three years.

(3) Before acting under this section, the Commission will allow the licensee a reasonable opportunity to make representations orally or in writing.

**Return of licences suspended or cancelled**

**30.** Where a licence is suspended or cancelled under this Act, the former licensee must, at the direction of the Commission, return the licence to the Commission.

Penalty: \$1 000.

**DIVISION VI—DEPOSITING WASTE**

**Offence**

**31.** A person must not, without lawful authority, deposit waste so that it results or is likely to result in—

- (a) a nuisance or offensive condition;
  - (b) a risk to health or safety;
- or
- (c) damage to the environment.

Penalty: \$20 000.

PART IV

ENFORCEMENT

**Authorized officers**

**32.** (1) The Commission may, by instrument in writing, appoint authorized officers for the purposes of this Act.

(2) An authorized officer will be furnished with a certificate of appointment.

(3) An authorized officer must, at the request of a person affected by the exercise of the officer's powers, produce the officer's certificate of appointment for inspection.

**Powers of authorized officers**

**33.** (1) An authorized officer may—

(a) enter and inspect any land, premises, vehicle or place for the purpose of determining whether a provision of this Act is being or has been complied with;

(b) where reasonably necessary for that purpose, break into or open any part of, or anything in or on, the land, premises, vehicle or place;

(c) give directions with respect to the stopping or moving of a vehicle;

(d) direct the driver of a vehicle to dispose of waste in or on the vehicle at a specified place or to store or treat the waste in a specified manner;

(e) take samples of waste or any other material from any land, premises, vehicle or place for analysis;

(f) require any person to produce any plans, specifications, books, papers or documents;

(g) examine, copy and take extracts from any plans, specifications, books, papers or documents;

(h) take photographs, films or video recordings;

(i) seize and retain anything that may constitute evidence of the commission of an offence against this Act;

(j) require any person to answer questions put by the authorized officer for the purposes of this Act.

(2) An authorized officer may only exercise the power conferred by subsection (1)(b) on the authority of a warrant issued by a justice.

(3) A justice may issue a warrant under subsection (2) if satisfied, by information given on oath—

(a) that there are reasonable grounds for suspecting that an offence against this Act has been, is being, or is about to be, committed;

or

(b) that the warrant is reasonably required in the circumstances.

(4) In the exercise of powers under this Act the authorized officer may be assisted by such persons as may be necessary or desirable in the circumstances.

(5) Subject to subsection (6), a person must not—

(a) hinder or obstruct an authorized officer, or a person assisting an authorized officer, in the exercise of a power conferred by this Act;

(b) refuse or fail to comply with a requirement or direction of an authorized officer under this Act;

or

(c) falsely represent, by words or conduct, that he or she is an authorized officer.

Penalty: \$5 000.

(6) A person is not obliged to answer a question put by an authorized officer if the answer would tend to incriminate him or her of an offence.

**Directions to comply with Act or to make good non-compliance**

**34.** (1) If the Commission is satisfied that a person has contravened or failed to comply with a provision of this Act, the Commission may—

(a) direct the person to refrain, either temporarily or permanently, from the act or course of action that constitutes the contravention or failure to comply;

(b) direct the person to take specified action to ameliorate conditions resulting from the contravention or default within a specified period;

(c) if it considers that urgent action is required to ameliorate conditions resulting from the contravention or default, take that action.

(2) A direction under this section must be in writing unless the Commission considers that the direction is urgently required, in which case it may be given orally by an authorized officer.

(3) If a person fails to comply with a direction under subsection (1)(b), the Commission may take the necessary action.

(4) The costs or expenses incurred by the Commission in taking action under this section may be recovered as a debt from any person whose contravention of or failure to comply with this Act resulted in the action being taken.

(5) A person who contravenes or fails to comply with a direction under this section is guilty of an offence.

Penalty: \$10 000.

(6) A person convicted of an offence against subsection (5) is, if the offence continues after conviction, guilty of a further offence.

Penalty: \$2 000 for each day during which the offence continues.

(7) Where an offence against subsection (5) is committed by reason of a failure to comply with a direction under subsection (1)(b) to take specified action within a specified period, that offence will be regarded as continuing—

(a) until the action is taken (notwithstanding that the period has elapsed);

or

(b) until the Commission takes the necessary action under subsection (3),

whichever is the earlier.

(8) A person must not hinder or obstruct a person exercising any power or complying with any direction under this section.

Penalty: \$5 000.

PART V

MISCELLANEOUS

**Exemptions**

**35.** (1) The Commission may, by instrument in writing, exempt—

- (a) a particular person or persons of a particular class;
- (b) a particular activity or activities of a particular class,

from this Act or specified provisions of this Act.

(2) An exemption may be absolute or subject to conditions specified in the instrument of exemption.

(3) The instrument of exemption must be given to the person in whose favour the exemption is given or published in the *Gazette*.

(4) An application for an exemption must be accompanied by the prescribed fee.

**False or misleading information**

**36.** A person must not, in furnishing information under this Act, make a statement that is false or misleading in a material particular.

Penalty: \$2 000.

**Appeal**

**37.** (1) An appeal lies to the District Court in the following cases:

- (a) an applicant for a licence may appeal against a refusal to grant the licence or the conditions of the licence;
- (b) a licensee may appeal against any decision or direction of the Commission that directly affects him or her;
- (c) a person to whom an exemption has been granted under section 34, may appeal against the conditions of the exemption;
- (d) a person to whom the Commission has given a direction under section 33, may appeal against that direction.

(2) Subject to any extension of time allowed by the Court, the appeal must be commenced within one month after the appellant receives notice of the decision or direction appealed against.

(3) Where, in the proceedings leading to the making of the decision or direction subject to the appeal, the Commission allowed the appellant a reasonable opportunity to adduce evidence or to make representations, the appeal will, unless the parties agree or the Court decides to the contrary, be limited to issues raised before the Commission.

(4) On appeal the Court may—

- (a) affirm, vary or quash the Commission's decision or direction;
- (b) substitute any decision or direction that should, in the Court's opinion, have been made in the first instance;
- (c) remit the subject matter of the appeal to the Commission for further hearing or consideration or for re-hearing;
- (d) make any consequential or ancillary orders (including orders for costs).

(5) The Commission must, if so required by a person who may appeal against a decision or direction made by it, state in writing the reasons for its decision or direction.

(6) If the reasons of the Commission are not given in writing at the time of making a decision or direction and, within seven days after receiving notice of the decision or direction, a person who may appeal against the decision or direction requires the Commission to state its reasons in writing the time for commencing the appeal will run from the time when the person receives the written statement of those reasons.

#### **Operation of decision or direction may be suspended**

**38.** (1) When a decision or direction has been made by the Commission, and the Commission or the District Court is satisfied that an appeal against the decision or direction has been commenced, or is intended, it may suspend the operation of the decision or direction until the determination of the appeal.

(2) Where the Commission has suspended the operation of a decision or direction under subsection (1), the Commission may terminate the suspension and, where the District Court has done so, the District Court may terminate the suspension.

#### **Immunity from liability**

**39.** (1) A person engaged in the administration or enforcement of this Act incurs no liability for an honest act or omission in the exercise or discharge or purported exercise or discharge of a power, duty or function under this Act.

(2) A liability that would, but for subsection (1), lie against the person lies instead against the Crown.

#### **Non-disclosure of information**

**40.** A person who is or has been engaged in the administration or enforcement of this Act must not disclose any confidential information to which he or she has had access in the course of official duties unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration of this Act;

or

(c) for the purposes of any legal proceedings arising out of the administration of this Act.

Penalty: \$5 000.

### **Service**

**41.** (1) A notice or document to be given or served under this Act—

(a) may be served personally;

(b) may be served by post addressed to the person to be served at his or her address for service;

or

(c) may be left for the person to be served at his or her address for service with a person apparently over the age of 16 years.

(2) Any of the following addresses is an address for service for the purposes of subsection (1)—

(a) if the person to be served is a licensee—the last written address for service notified to the Commission by the licensee;

(b) if the person to be served is a company—the address of a registered office of the company;

(c) the address of a place from which the person to be served carries on business;

(d) if the person to be served is a natural person—the address of the person's place of residence.

### **Summary offences**

**42.** (1) The offences constituted by this Act are summary offences.

(2) Proceedings for an offence against this Act may be commenced within one year after the date on which the offence is alleged to have been committed or such further period as the Minister may, in a particular case, allow.

### **Expiation of prescribed offences**

**43.** (1) A prosecution for a prescribed offence must not be commenced except by—

(a) a member of the police force;

or

(b) a person authorized in writing by the Commission to commence the prosecution.

(2) Subject to this section, if a person is alleged to have committed a prescribed offence, then before a prosecution is commenced, an expiation notice (in a form approved by the Commission) must be given to the alleged offender stating that the offence may be expiated by payment to the Commissioner of Police of the prescribed expiation fee before the expiration of 60 days from the date of the notice.

(3) This section does not apply to a person under the age of 18 years at the date of the alleged commission of the offence.

(4) Where the offence is expiated in accordance with the notice, the alleged offender will not be prosecuted for that offence.

(5) The payment of an expiation fee will not be regarded as an admission of guilt.

(6) Differential expiation fees may be prescribed.

(7) Non-compliance with subsection (2) does not invalidate a prosecution.

#### **Vicarious liability**

**44.** (1) For the purposes of this Act, an act or omission of an employee or agent will be regarded as the act or omission of the employer or principal unless it is proved that the employee or agent was not acting in the course of his or her employment or agency.

(2) Where a body corporate is guilty of an offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the member could not by the exercise of reasonable diligence have prevented the commission of that offence.

#### **Evidence**

**45.** (1) In any legal proceedings, a document apparently executed by or on behalf of the Commission certifying as to a matter relating to—

- (a) a licence under this Act;
- (b) the appointment of an authorized officer;
- (c) a delegation under this Act;
- (d) an exemption under this Act;
- (e) a decision or direction of the Commission,

will, in the absence of proof to the contrary, be accepted as proof of the matter.

(2) In any legal proceedings, a document apparently signed by the Minister certifying that an approval or authorization has been given under this Act will, in the absence of proof to the contrary, be accepted as proof of the approval or authorization.

(3) An allegation in a complaint that a specified person is or was the owner or occupier of specified premises will, in the absence of proof to the contrary, be accepted as proof of that fact.

**Act not to derogate from Water Resources Act, 1976**

**46.** This Act does not derogate from the *Water Resources Act, 1976*, and a licence under this Act does not constitute an authority to cause, suffer or permit waste to come into contact with waters for the purposes of that Act.

**Register**

**47.** (1) The Commission must keep a register of licences and exemptions granted under this Act.

(2) A person may, on payment of the prescribed fee, inspect the register during the office hours of the Commission.

**Regulations**

**48.** (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) In particular, the regulations may—

- (a) provide for the forms to be used and the information to be provided by applicants under this Act;
- (b) prescribe fees (which may be differential) to be paid in respect of any matter under this Act and provide for the waiving of any such fees;
- (c) regulate the operation of waste depots;
- (d) regulate the collection or transportation of waste;
- (e) regulate the construction or maintenance of containers, vehicles and vessels used for the transportation of waste;
- (f) provide for the measurement, determination, estimation or assessment of the volume or mass of waste;
- (g) prescribe penalties not exceeding \$2 000 for contravention of, or failure to comply with, a regulation.

(3) A regulation under this Act—

- (a) may be of general or limited application;

and

- (b) may confer powers and discretions or impose duties in connection with the regulations on the Minister, the Commission or an authorized officer.

25.

## SCHEDULE

### TRANSITIONAL PROVISIONS

1. Where immediately before the commencement of this Act premises were licensed as a depot under section 23 of the *South Australian Waste Management Commission Act, 1979*, the person who operates the depot will be regarded as the holder of a licence to operate the depot under section 15.

2. A licence in force under section 24 or 25 of the *South Australian Waste Management Commission Act, 1979*, immediately before the commencement of this Act becomes a licence under section 20 or 21 (as the case may require).