



ANNO VICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1976

No. 19 of 1976

An Act to provide for the assessment, conservation and development of the water resources of the State and for the control and management of their utilization and quality, and for other purposes.

[Assented to 4th March, 1976]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

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|---|---------------------|
| 1. This Act may be cited as the "Water Resources Act, 1976". | Short title. |
| 2. This Act shall come into operation on a day to be fixed by proclamation. | Commencement. |
| 3. This Act is arranged as follows:— | Arrangement of Act. |
| PART I—PRELIMINARY | |
| PART II—ADMINISTRATION | |
| DIVISION I—THE COUNCIL | |
| DIVISION II—THE ADVISORY COMMITTEES | |
| DIVISION III—THE TRIBUNAL | |
| PART III—SURFACE WATERS | |
| PART IV—UNDERGROUND WATERS | |
| DIVISION I—PROCLAIMED REGIONS | |
| DIVISION II—WELLS | |
| PART V—WATER QUALITY | |
| PART VI—APPEALS | |
| PART VII—MISCELLANEOUS | |
| SCHEDULE. | |

PART I**Repeals.**

4. The Acts and portion of an Act specified in the schedule to this Act are repealed.

Interpretation.

5. (1) In this Act, unless the contrary intention appears—

“Advisory Committee” means a Water Resources Advisory Committee established pursuant to section 16 of this Act:

“authorized officer” means an authorized officer appointed under section 72 of this Act:

“the Council” means the South Australian Water Resources Council established under section 9 of this Act:

“domestic purposes”, in relation to use of water, means ordinary household purposes and includes the irrigation of a garden used in conjunction with a dwelling and not exceeding 0.5 hectare, or such other area as may be prescribed:

“occupier”, in relation to land or premises, means the person in occupation or entitled to be in occupation of that land or those premises:

“owner” means—

(a) in relation to land alienated from the Crown by grant—the owner of an estate of fee simple in the land;

(b) in relation to land held under a lease granted by the Crown—the lessee;

(c) in relation to land of the Crown subject to an agreement for sale or right of purchase—the person entitled to the benefit of that agreement or right of purchase;

or

(d) in relation to unalienated Crown land—the Minister of the Crown who has the care, control and management of that land:

“premises” includes any building or structure whether of a temporary or permanent nature, and any vehicle, caravan or vessel:

“Proclaimed Region” means any area of the State for the time being declared under section 41 of this Act to be a Proclaimed Region:

“Proclaimed Watercourse” means any watercourse for the time being declared under section 25 of this Act to be a Proclaimed Watercourse:

“Registrar”, in relation to the Tribunal, means the Registrar of the Tribunal appointed under section 24 of this Act:

“spring” means a flow of water rising or issuing naturally out of the earth:

“standing member”, in relation to the Tribunal, means a member of the Tribunal appointed under paragraphs (a) or (b) of subsection (3) of section 17 of this Act:

“surface water” means water contained in any watercourse and such estuarine waters and waste waters or other waters as are for the time being declared by proclamation to be surface waters for the purposes of this Act:

“the Tribunal” means the Water Resources Appeal Tribunal established under section 17 of this Act:

“underground waters” means all waters below the surface of the ground other than waters contained in works, not being a well, for the distribution, reticulation, transport, storage or treatment of waters or wastes and includes waters contained in a well and waters beneath the surface of the ground that are exposed in natural openings or depressions not being waters comprising a spring contributing to the flow of a watercourse:

“vessel” includes every description of craft constructed or designed for use on the sea or any waters or watercourse:

“waste” includes any matter or thing whether in the solid, liquid or gaseous state which if added to any waters may cause any interference with the physical, chemical or biological properties of water which may render it less fit for any purpose for which it may be used by man, animal, fish, plant or other organism and includes any sewage, sewage and septic tank effluents, effluent from irrigated lands, rubbish, refuse, garbage and materials used or produced in or by any manufacturing processes, mining or quarrying, agriculture, commerce or any other trade or industrial undertaking or activity:

“watercourse” includes any river, stream, creek or channel in which water is contained or flows whether permanently, intermittently or occasionally and includes any natural channel which has been artificially improved or an artificial channel which has changed the natural course of a river, stream or creek and includes any lake, lagoon, swamp, marsh or spring whether it contains water permanently, intermittently or occasionally and includes the bed and banks of any such watercourse and includes any reservoir and the bed and banks thereof:

“waters” includes all surface and underground waters and such estuarine waters and waste waters as may for the time being be declared by proclamation to be waters for the purposes of this Act:

“well” means any bore, hole, excavation or other opening in the ground which is used or may be used for the purpose of procuring a supply of underground water or for the purpose of the disposal of any waters or wastes below the surface of the ground, or which extends to a water bearing stratum or region, together with all works constructed or erected in connection therewith.

(2) In subsection (1) of this section the expressions “bed” and “banks” when used in relation to a watercourse together include the land over which flows the water thereof or which is covered by that water whether permanently or regularly together with such soil, rock or other material whatsoever immediately adjacent thereto which is necessary to the support or to the proper maintenance thereof but does not include land beyond the abovementioned land, soil, rock or other material unless that land is declared by proclamation to form part of that watercourse.

PART I

(3) In this Act a reference to a watercourse includes a reference to part or portion of that watercourse.

(4) The Governor may by proclamation declare any estuarine waters, waste waters or other waters to be waters for the purposes of this Act and may by proclamation amend, vary or revoke any such declaration.

Crown right
in water.

6. The right to the use and flow and to the control of all waters in the State shall, subject to this Act, be vested in the Crown and shall be exercised by the Minister in the name of and on behalf of the Crown.

Crown bound.

7. This Act binds the Crown.

River Murray
Waters
Agreement
not affected.

8. Nothing in this Act contained shall be held or construed as affecting or preventing the carrying out or giving effect to the principal agreement as defined in the River Murray Waters Act, 1935, as that agreement is from time to time amended.

PART II

PART II

ADMINISTRATION

DIVISION I

DIVISION I—THE COUNCIL

Constitution
of Council.

9. (1) There shall be a council entitled the "South Australian Water Resources Council".

(2) The Council shall consist of twelve members appointed by the Governor being:—

- (a) two persons nominated by the Local Government Association of South Australia Incorporated;
- (b) one person nominated by the Chamber of Commerce and Industry, South Australia Incorporated;
- (c) one person nominated by the governing body of the prescribed conservation body;
- (d) two persons nominated by the Minister as being persons experienced respectively in irrigated horticulture or viticulture and other primary production;

and

- (e) six other persons nominated by the Minister respectively having professional experience in engineering, a geo-science, agriculture, environment or conservation, public health and Crown lands administration.

(3) When the Minister has given to a nominating body notice in writing requiring that body, within a time specified in that notice (being not less than six weeks), to nominate a person for the purpose of the appointment of a member of the Council pursuant to subsection (2) of this section and that body fails to nominate a person within the time so specified, the Governor may appoint a suitable person as a member on the recommendation of the Minister and the person so appointed shall be deemed for all purposes to have been appointed on the nomination of that body.

(4) The Minister shall appoint a member of the Council to be the Chairman of the Council.

(5) The Minister may, from time to time, by notice in the *Gazette* declare any body whether corporate or unincorporate formed for the purposes of promoting conservation to be the prescribed conservation body for the purposes of this section and the Minister may by a subsequent notice amend, vary or revoke that notice.

(6) In this section—

“nominating body” means a body referred to in paragraph (a), (b) or (c) of subsection (2) of this section:

“prescribed conservation body” means a body for the time being declared by the Minister to be the prescribed conservation body for the purposes of this section.

10. (1) Subject to this section, a member of the Council shall be appointed for such term of office, not exceeding four years, as the Governor may determine and specifies in his instrument of appointment, and, upon the expiration of his term of office, shall be eligible for re-appointment.

Terms and conditions of office of members of Council.

(2) The Governor may remove a member of the Council from office for—

(a) mental or physical incapacity;

(b) neglect of duty;

(c) dishonourable conduct;

or

(d) any other cause considered sufficient by the Governor.

(3) The office of a member of the Council shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (2) of this section.

PART II
DIVISION I

(4) Upon the office of a member of the Council becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

Quorum, etc.

11. (1) Seven members of the Council, of whom at least two shall be members appointed on the nomination of a nominating body as defined for the purposes of section 9 of this Act, shall constitute a quorum of the Council, and no business shall be transacted at the meeting of the Council unless a quorum is present.

(2) Meetings of the Council may be convened by the Minister or by the Chairman of the Council or by resolution of the Council.

(3) A decision carried by the majority of the votes cast by the members present at a meeting of the Council shall be a decision of the Council.

(4) The Chairman of the Council shall preside at a meeting of the Council and, in addition to a deliberative vote, in the event of an equality of votes, shall have a second or casting vote.

(5) In the absence of the Chairman of the Council from a meeting of the Council, the members present shall elect one of their number to be chairman for that meeting and a member so elected may exercise and perform the powers and functions of the Chairman of the Council at that meeting.

(6) Subject to this Act, the business of the Council shall be conducted in such a manner as the Council determines.

Secretary.

12. (1) The Governor may under and subject to the Public Service Act, 1967-1975, appoint a person to be secretary to the Council.

(2) The office of secretary to the Council may be held in conjunction with any other office in the public service of the State.

Allowances and expenses.

13. (1) A member of the Council other than a member who is an officer of the public service of the State shall be entitled to receive such allowances and expenses as the Governor shall from time to time determine.

(2) A member of the Council who is an officer of the public service of the State shall be entitled to receive such travelling allowances and allowances for out of pocket expenses as the Governor shall from time to time determine.

Powers and functions of the Council.

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

(a) to advise the Minister in relation to—

(i) the assessment, development and conservation, management and protection of the water resources of the State;

and

(ii) the establishment of policies to be followed in relation to the exercise by the Minister of his powers and functions under this Act;

(b) to consider any matter arising out of or concerned with the administration of this Act referred to it by the Minister and to advise the Minister thereon;

and

(c) of its own motion, to make representations and to tender advice to the Minister on any matter or thing arising out of or connected with the objects of this Act.

(2) The Council, in advising the Minister, shall have regard to any factors affecting or likely to affect—

(a) the quality of any waters;

(b) the equitable distribution of any waters;

(c) the loss or wastage of any waters;

(d) the preservation and conservation of any waters;

(e) the health and welfare of the people;

(f) the conservation and propagation of flora and fauna;

(g) the preservation and improvement of structures, relics or sites of historic or anthropological interest;

and

(h) the preservation of the amenity, nature, features and general character of a locality.

(3) The Council shall have and may exercise such powers as are necessary or incidental to the performance of its functions.

15. (1) An act or proceeding by the Council shall not be invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the appointment of a member, any such act or proceeding shall be as valid and effectual as if that member had been duly nominated or appointed.

Validity of
acts of
council and
immunity of
its members.

(2) No liability shall attach to a member of the Council for any act or omission by him, or by the Council, in good faith and in the exercise, or purported exercise, of his or its powers or functions, or in the discharge, or purported discharge, of his or its duties under this Act.

DIVISION II—THE ADVISORY COMMITTEES

DIVISION II

16. (1) The Minister shall by notice in the *Gazette* in relation to—

Advisory
Committees.

(a) every Proclaimed Region;

and

(b) every Proclaimed Watercourse,

and may by notice published in a like manner in relation to any other area of the State establish a Water Resources Advisory Committee.

(2) The title of each such Advisory Committee shall be preceded by such identifying name as the Minister determines.

PART II
DIVISION II

- (3) The Minister may by notice in the *Gazette*—
- (a) vary the composition of any Advisory Committee;
 - or
 - (b) dissolve any Advisory Committee.

(4) The powers and functions of an Advisory Committee shall be as prescribed.

DIVISION III

DIVISION III—THE TRIBUNAL

The Tribunal.

17. (1) There shall be a tribunal entitled the “Water Resources Appeal Tribunal”.

(2) The chairman of the Tribunal shall be appointed by the Governor and shall be a legal practitioner of at least seven years’ standing.

(3) The Tribunal shall consist of the chairman and not less than three members as follows:—

- (a) one standing member, appointed by the Governor, who shall be qualified in engineering;
- (b) one standing member, appointed by the Governor, who shall be qualified in science;

and

- (c) not less than one additional member selected by the chairman for the purposes of a particular hearing from a panel of persons established by the Governor under subsection (1) of section 18 of this Act.

(4) A person who is—

- (a) a member of either House of Parliament;
- (b) a member of the Council;
- (c) a member of an Advisory Committee;

or

- (d) a member of the Well Drillers’ Examination Committee,

shall not be qualified to be or remain a member of the Tribunal.

Additional members of the tribunal.

18. (1) Subject to subsection (2) of this section the Governor may establish a panel of persons for the purposes of section 17 of this Act and may from time to time by subsequent notice add to or remove persons from that panel.

(2) The Governor shall so exercise his powers under subsection (1) of this section that the following interests are represented on the panel—

- (a) primary production;
- (b) well drilling;
- (c) industry;

and

- (d) public health.

19. (1) Subject to this Act, the chairman and each standing member of the Tribunal shall be appointed for a term of office of three years and upon the expiration of his term of office shall be eligible for re-appointment.

(2) The Governor may appoint a suitably qualified person to be a deputy of the chairman or of a standing member of the Tribunal and where the chairman or a standing member is unable or fails, for any reason, to sit at the hearing of an appeal or is disqualified under section 20 of this Act from sitting at such a hearing, the deputy of the chairman or such standing member may act and while so acting shall be deemed to be the chairman of the Tribunal or a standing member, as the case requires, and shall have all the powers, authorities, duties and obligations of the chairman or standing member in relation to whom he has been appointed a deputy.

(3) The Governor may remove the chairman or a standing member of the Tribunal from office for—

- (a) mental or physical incapacity;
- (b) neglect of duty;
- (c) dishonourable conduct;
- or
- (d) any other cause considered sufficient by the Governor.

(4) The office of the chairman or a standing member of the Tribunal shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by written notice addressed to the Minister;
- or
- (d) he is removed from office by the Governor pursuant to subsection (3) of this section.

(5) Upon the office of the chairman or a standing member of the Tribunal becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of the chairman or a standing member of the Tribunal becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

20. The chairman or a member of the Tribunal shall be disqualified from sitting at the hearing of any appeal if he has any proprietary, financial or personal interest in the decision or direction subject to appeal and any person so disqualified shall not sit at that hearing nor participate in the deliberation or decision of the Tribunal upon that appeal.

Disqualifica-
 tion of
 members of
 Tribunal.

21. (1) Subject to this Act, the chairman shall preside at the hearing of any proceedings by the Tribunal.

Decision of
 Tribunal.

(2) Subject to subsection (3) of this section, a decision in which a majority of the members present at any hearing concur, or if the members are equally divided in opinion, a decision in which the chairman concurs, shall be a decision of the Tribunal.

(3) The chairman shall determine any question relating to the admissibility of evidence, and any other question of law or procedure.

PART II

DIVISION III

No liability to attach to members of Tribunal.

22. No liability shall attach to the chairman or any member of the Tribunal for any act or omission by him, or by the Tribunal, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge, or purported discharge, of his or its duties under this Act.

Allowances and expenses.

23. The chairman and members of the Tribunal shall be entitled to receive such allowances and expenses as may from time to time be determined by the Governor.

The Registrar.

24. (1) There shall be a Registrar of the Tribunal who shall be appointed and shall hold office subject to and in accordance with the Public Service Act, 1967-1975.

(2) The office of the Registrar of the Tribunal may be held in conjunction with any other office in the public service of the State.

PART III

PART III

SURFACE WATERS

Proclaimed Watercourse.

25. The Governor may, by proclamation, declare any watercourse, or watercourse of a class, kind or description, to be a Proclaimed Watercourse for the purposes of this Act and may by subsequent proclamation amend, vary or revoke that declaration.

Prohibition on the unlawful diversion etc., of water.

26. (1) A person shall not, unless he is authorized by or under this Act or any other Act, divert or take any water from a Proclaimed Watercourse.

(2) A person who commits an offence that is a contravention of subsection (1) of this section shall be liable—

(a) for the first offence, to a penalty of not less than one hundred dollars nor more than one thousand five hundred dollars;

and

(b) for a subsequent offence, to a penalty of not less than five hundred dollars nor more than three thousand dollars.

(3) In proceedings for an offence that is a contravention of subsection (1) of this section, proof of the existence on any land of any channel or other prescribed means whereby water is capable of being diverted or taken from any Proclaimed Watercourse shall be *prima facie* evidence that the water was diverted or taken in contravention of that subsection at the time that channel or other means was proved to have existed.

No right to take water except in pursuance of this or any other Act.

27. Notwithstanding any Act, law or rule of law to the contrary no right to divert or take any water from a Proclaimed Watercourse shall exist or be capable of being acquired otherwise than by virtue of this Act or any other Act.

Riparian may take water for domestic and stock purposes.

28. An owner of any land upon or adjacent to which passes any Proclaimed Watercourse shall by virtue of the ownership of that land have, subject to this Act, the right to divert or take, without charge, water from that Watercourse for the use of himself, his family and employees for domestic purposes and for the purpose of providing drinking water for grazing stock on that land.

29. (1) Subject to this Act, the Minister may, on application in the prescribed manner and form, grant to a person a licence in the prescribed form to divert or take water from a Proclaimed Watercourse.

Grant of
licences.

(2) A licence shall be subject to such terms and conditions as are specified therein.

(3) A licence under subsection (1) of this section shall be for a period not exceeding twelve months.

30. Every licence granted under section 16 of the Control of Waters Act, 1919-1975, and in force immediately before the commencement of this Act shall on and from that commencement and during the currency of that licence have effect in all respects as if it were a licence granted under section 29 of this Act and this Act shall *mutatis mutandis* apply and have effect accordingly.

Existing
licences.

31. The holder of a licence shall not contravene or fail to comply with or suffer or permit any person to contravene or fail to comply with any term or condition of the licence.

Breach of
term or
condition of
licence.

Penalty: One thousand dollars.

32. Where the Minister is satisfied that the holder of a licence has contravened or failed to comply with or has suffered or permitted any person to contravene or fail to comply with any term or condition of that licence the Minister may by Order served personally or by post on that holder—

Suspension,
etc., of
licences.

(a) revoke that licence;

(b) suspend that licence for such period as is specified in the Order;

or

(c) amend or modify the terms and conditions of that licence in such manner as is specified in the Order,

and that Order shall have effect according to its tenor.

33. (1) Where the Minister is satisfied that an actual or expected shortage in the availability of water has occurred or may occur the Minister may, by notice in the *Gazette*, direct that—

Restriction or
limitation of
right to take
water.

(a) for the period specified in the notice no water shall be diverted or taken pursuant to a licence for any purpose other than a purpose specified in the notice;

(b) the quantity of water that may be diverted or taken pursuant to any licence shall, for the period specified in the notice, be such proportion of the quantity otherwise authorized to be diverted or taken pursuant to the licence as is specified in the notice;

or

(c) the terms and conditions of any licence shall be varied or modified in such manner and for such period as is specified in the notice.

(2) A notice under this section may apply to a particular licence, every licence of a class, kind or description or to all licences.

PART III

(3) The holder of a licence shall not divert or take water in contravention of a notice under subsection (1) of this section applicable to that licence.

Penalty: Five thousand dollars.

Default Penalty: One thousand dollars.

Further incident of breach of section of this Act.

34. The holder of a licence who has been convicted of an offence against subsection (3) of section 33 of this Act shall, for the purposes of section 32 of this Act, be deemed to have contravened a term or condition of the licence in relation to which the offence was committed.

Modification of other Acts.

35. (1) Where the Governor is satisfied that an actual or expected shortage in the availability of water has occurred or may occur, he may by proclamation dispense with, suspend or vary, so far as is necessary for the purposes of ensuring an equitable distribution of the available water, any provision of any Act, by-law, rule or regulation or other provision having the force of law (under whatever authority made) which in the opinion of the Governor relates directly or indirectly to the availability of water.

(2) The Governor may by proclamation amend, vary or revoke a proclamation made under subsection (1) of this section.

(3) A proclamation under subsection (1) of this section, unless sooner revoked, shall cease to have effect on the expiration of six months from the day on which it was made.

Prohibition on obstruction or interference with Proclaimed Watercourse.

36. (1) A person shall not, unless he is authorized by or under this Act or any other Act, obstruct or interfere with any Proclaimed Watercourse.

(2) Every person who commits an offence that is a contravention of subsection (1) of this section shall be liable—

(a) for the first offence, to a penalty of not less than five hundred dollars nor more than three thousand dollars;

and

(b) for a subsequent offence, to a penalty of not less than one thousand dollars nor more than five thousand dollars.

Liability on owner to deal with obstruction or interference.

37. (1) Where any obstruction or interference exists in relation to a portion of a Proclaimed Watercourse, any authorized officer may by notice in writing served personally or by post on the owner of any land, upon or adjacent to which passes that portion of the Proclaimed Watercourse, require that owner to take such reasonable action to remove or abate that obstruction or interference, as is specified in the notice and within the period specified in the notice.

(2) An owner served with a notice under subsection (1) of this section shall not refuse or fail to comply with that notice.

(3) An owner who commits an offence that is a contravention of subsection (2) of this section shall be liable on conviction to a penalty not exceeding one hundred dollars for each day or part thereof during which that failure or refusal continues after the expiration of the period specified in the notice.

PART III

38. A person shall not, unless he is authorized by or under this Act or any other Act—

Prohibition on unauthorized works.

(a) carry out any works for the purposes of reclaiming any overflow or swamp land;

(b) carry out any works relating to the construction of a dam or other water storage;

or

(c) carry out any prescribed works,

on any land upon or adjacent to which passes any Proclaimed Watercourse.

Penalty: Two thousand dollars.

39. (1) Subject to this Act, the Minister may, on application by any person in the prescribed manner and form, grant to that person a permit in the prescribed form to carry out any works referred to in section 38 of this Act.

Grant of permits for works.

(2) A permit shall be subject to such terms and conditions as are specified therein.

(3) The Minister may by notice in writing served personally or by post on the holder of a permit under subsection (1) of this section amend or vary any term or condition of that permit and upon service of that notice that permit shall, for all purposes, have effect as so amended or varied.

40. (1) The holder of a permit under section 39 of this Act shall not contravene or fail to comply with or suffer or permit any person to contravene or fail to comply with any term or condition of that permit.

Breach of a term or condition of permit.

Penalty: One thousand dollars.

(2) Where a person is convicted of an offence that is a contravention of subsection (1) of this section, the Minister may by notice in writing served personally or by post on that person revoke that permit and upon that service that permit shall have no further force or effect.



PART IV

PART IV

UNDERGROUND WATERS

DIVISION I—PROCLAIMED REGIONS

DIVISION I

41. The Governor may, by proclamation, declare any area in the State to be a Proclaimed Region for the purposes of this Act and may by subsequent proclamation amend, vary or revoke that declaration.

Proclaimed Regions.

PART IV
DIVISION I

Prohibition
on the
unlawful
withdrawal or
taking of water
from wells.

42. (1) A person shall not, unless he is authorized by licence under this Act or any other Act, withdraw or take any water from a well in a Proclaimed Region.

(2) A person who commits an offence that is a contravention of subsection (1) of this section shall be liable—

(a) for the first offence, to a penalty of not less than one hundred dollars nor more than one thousand five hundred dollars;

and

(b) for a subsequent offence, to a penalty of not less than five hundred dollars nor more than three thousand dollars.

(3) In proceedings for an offence that is a contravention of subsection (1) of this section, proof of the existence on any land of any prescribed means whereby water is capable of being withdrawn or taken from any well shall be *prima facie* evidence that the water was withdrawn or taken in contravention of that subsection at the time that means was proved to have existed.

Grant of
licences
to withdraw
or use
water from
wells.

43. (1) Subject to this Act, the Minister may, on application by any person in the prescribed manner and form, grant that person a licence in the prescribed form to withdraw or take water from any well.

(2) A licence shall be subject to such terms and conditions as are specified therein.

(3) A licence shall be for a period not exceeding twelve months.

Breach of
term or
condition
of licence.

44. The holder of a licence under section 43 of this Act shall not contravene or fail to comply with or suffer or permit any person to contravene or fail to comply with any term or condition of the licence.

Penalty: One thousand dollars.

Suspension,
etc., of
licences.

45. Where the Minister is satisfied that the holder of a licence under section 43 of this Act has contravened or failed to comply with or has suffered or permitted any person to contravene or fail to comply with any term or condition of that licence the Minister may by Order served personally or by post on the licence holder—

(a) revoke that licence;

(b) suspend that licence for such period as is specified in the Order;

or

(c) amend or modify the terms and conditions of that licence in such manner as is specified in the Order,

and that Order shall have effect according to its tenor.

DIVISION II

DIVISION II—WELLS

Partially
exempt wells.

46. (1) The Governor may by proclamation declare that any provision of this Act specified in the proclamation shall not apply to or in relation to any well of a class, kind or description specified in the proclamation and this Act shall have effect accordingly.

(2) The Governor may by subsequent proclamation amend, vary or revoke any declaration referred to in subsection (1) of this section.

PART IV
DIVISION II

Notification of
particulars
relating to
wells.

47. (1) The Minister may by notice published in the *Gazette* require every owner of land within an area specified in the notice to provide the Minister, within such time as is specified in the notice, such information as is specified in the notice in relation to any well situated on the land of that owner.

(2) A person to whom a notice referred to in subsection (1) of this section applies shall not refuse or fail to comply with that notice.

Penalty: Five hundred dollars.

48. (1) A person shall not, unless he is authorized by or under this Act or any other Act, cause, suffer or permit—

Prohibition on
unlawful well
drilling, etc.

- (a) a well to be drilled, constructed, plugged, backfilled or sealed off;
 - (b) the casing, lining or screen of a well to be removed, replaced, altered, slotted or repaired;
 - (c) any well (whether in the course of construction or not) to be deepened;
- or
- (d) any work to be carried out in relation to a well in relation to which the Governor has by proclamation under section 46 of this Act declared that any of the provisions of this Act do not apply, if that work will result in any such provision of this Act then applying to that well.

(2) A person who commits an offence that is a contravention of subsection (1) of this section shall be liable—

- (a) for the first offence, to a penalty of not less than one hundred dollars nor more than one thousand five hundred dollars;
- and
- (b) for a subsequent offence, to a penalty of not less than five hundred dollars nor more than three thousand dollars.

(3) It shall be a defence to proceedings for an offence that is a contravention of subsection (1) of this section for the defendant to prove that—

- (a) the work in relation to which it is alleged that the offence was committed was urgently required to prevent pollution or deterioration of the waters in a well;
 - (b) that having regard to the foregoing it was not reasonably practicable to apply for a permit under section 49 of this Act;
 - (c) that forthwith after the work was carried out, the Minister was informed of the nature of the work;
- and
- (d) that the regulations, if any, relating to work carried out in these circumstances were complied with.

49. (1) Subject to this Act, the Minister may, on application by a person in the prescribed manner and form, grant to that person a permit in the prescribed form to carry out any of the operations referred to in section 48 of this Act.

Grant of
Well
Construction
Permits.

(2) A permit shall be subject to such terms and conditions as are specified therein.

PART IV
DIVISION II

(3) The Minister may by notice in writing served personally or by post on the holder of a permit under subsection (1) of this section amend or vary any term or condition of that permit and upon service of that notice that permit shall, for all purposes, have effect as so amended or varied.

Transitional.

50. A permit granted under Part II of the Underground Waters Preservation Act, 1969-1975, and in force immediately before the commencement of this Act shall on and from that commencement and during the currency of that permit have effect in all respects as if it were a permit granted under section 49 of this Act and this Act shall *mutatis mutandis* apply and have effect accordingly.

Breach of term or condition of permit.

51. (1) The holder of a permit shall not contravene or fail to comply with or suffer or permit any person to contravene or fail to comply with any term or condition of the permit.

Penalty: One thousand dollars.

(2) Where a person is convicted of an offence that is a contravention of subsection (1) of this section the Minister may by notice in writing served personally or by post on that person revoke that permit and upon that service that permit shall have no further force or effect.

Change in use of well.

52. (1) A person shall not, without the consent in writing of the Minister, cause, suffer or permit—

(a) a well that is not being used for or in connection with the disposal of waters or waste to be used for or in connection with the disposal of waters or waste;

(b) a well that is being used for or in connection with the disposal of waters or waste to be used for the withdrawal of water;

or

(c) any change in the use to occur in relation to a well, in relation to which the Governor has by proclamation under section 46 of this Act declared that any of the provisions of this Act do not apply, if that change of use will result in any such provision of this Act then applying to that well.

(2) A consent under this section may be granted subject to such terms and conditions as are specified therein.

(3) A person shall not contravene or fail to comply with or suffer or permit any person to contravene or fail to comply with any term or condition of a consent.

(4) A person who commits an offence that is a contravention of subsection (1) or subsection (3) of this section shall be liable to a penalty of not less than five hundred dollars nor more than three thousand dollars.

53. Notwithstanding any other provision of this Act, where the Minister is satisfied that any act or omission by any person in relation to a well may result, directly or indirectly, in the pollution or deterioration, inequitable distribution, loss, wastage or undue depletion of any waters, the Minister may by Order served personally or by post on the owner or occupier of the land upon which that well is situated direct that owner or occupier to do any one or more of the following:—

- (a) to close and shut off the supply of underground water from a well in the manner specified in the Order;
 - (b) to restrict or limit the amount of water taken from a well, to the extent specified in the Order;
 - (c) to install and maintain a suitable meter to record the amount of water taken from a well;
 - (d) to discontinue the use of the well;
 - (e) to disconnect all pipes or drainage works discharging into, or in the vicinity of, the well and to take all such action as is specified in the Order to prevent any waste from gaining access to the well;
 - (f) to close, or partly or entirely to block or backfill, a well in the manner specified in the Order;
 - (g) to treat any waste in a manner specified in the Order before it is allowed access to the well;
 - (h) to restrict the amount of any waste entering the well in the manner specified in the Order;
 - (i) to use the water withdrawn from the well for such purposes as may be specified in the Order;
 - (j) to carry out such repairs or modifications to the well as are specified in the Order;
- or
- (k) to carry out such action, or refrain from such action as is specified in the Order.

54. A person shall not contravene or fail to comply with or suffer or permit any person to contravene or fail to comply with any provision of an Order under section 53 of this Act.

Contravention
of Well Order.

Penalty: Two thousand dollars.

Default penalty: Two hundred dollars.

55. Where an Order under section 53 has not been complied with in whole or in part within the period (if any) specified in the Order or within a reasonable period, the Minister may enter upon any land and cause such works as are necessary to be done to ensure complete compliance with the Order and the Minister may recover as a debt due to him against the person in relation to whom the Order was made the reasonable costs of those works.

Powers of
Minister.

PART IV
DIVISION II
Duty to
maintain well.

56. The owner of land upon which a well is situated shall not fail to maintain that well in good repair and condition.

Penalty: Two hundred dollars.

Default Penalty: One hundred dollars.

Well
drillers.

57. (1) A person shall not, unless he is the holder of an appropriate Well Driller's Licence, or is acting under the personal supervision of such a holder—

- (a) drill or construct any well;
- (b) deepen or enlarge any well;
- (c) deepen or enlarge a well to which any provision of this Act does not apply in such a way as would render that provision applicable to that well;
- (d) remove, replace, alter or repair the casing, lining or screen of any well;
- or
- (e) plug, backfill or seal off any well.

Penalty: Two thousand dollars.

(2) Subsection (1) of this section applies to and in relation to a person employed by or in the service of the Crown.

Grant of
Well
Driller's
Licence.

58. (1) Subject to this Act, the Minister may—

- (a) on application being made by any person in the prescribed manner and form;
- and

(b) on being satisfied that that person has the prescribed qualifications, grant that person a Well Driller's Licence of a prescribed type.

(2) A Well Driller's Licence may be granted subject to such terms and conditions as are specified therein.

Existing Well
Driller's
Licences.

59. Every Well Driller's Licence granted under Part IV of the Underground Waters Preservation Act, 1969-1975, and in force immediately before the commencement of this Act shall on and from that commencement and during the currency of that Licence have effect in all respects as if it were a Licence granted under section 58 of this Act and this Act shall *mutatis mutandis* apply and have effect accordingly.

Establishment
of Examination
Committee.

60. (1) There shall be a committee entitled the "Well Drillers' Examination Committee".

(2) The Well Drillers' Examination Committee shall—

- (a) be constituted of a chairman and such number of members;
- and
- (b) have such powers, duties and functions,

as are prescribed.

(3) The chairman and members of the Well Drillers' Examination Committee shall be appointed by the Minister.

PART V

PART V

WATER QUALITY

61. On and from a day to be fixed by proclamation, a person shall not, unless he is authorized by or under this Act or any other Act, cause, suffer or permit any waste to come into contact directly or indirectly with waters.

Prohibition of discharge of waste.

Penalty: Ten thousand dollars.

Default Penalty: One thousand dollars.

62. (1) The Minister may by Order served personally or by post on a person authorize that person to dispose of, disperse or discharge any wastes specified in that Order in a manner and subject to such conditions as are specified in that Order.

Water Quality Orders.

(2) An Order under subsection (1) of this section shall remain in force for such period, not exceeding five years, as is specified in the Order and upon the expiration of that period shall have no further force or effect.

63. (1) Notwithstanding any other provision of this Act or any other Act or law, the Minister may, in circumstances that he considers constitute an emergency, by notice in writing served personally or by post on any person and in relation to the period specified in that notice—

Emergency powers.

(a) authorize that person, subject to such conditions as may be specified in the notice, to discharge into any waters or to place in or on any land such wastes as are specified in the notice;

or

(b) prohibit that person from discharging into any waters or from placing on any land such wastes as are specified in the notice either absolutely or otherwise than in accordance with such conditions as are specified in the notice.

(2) A person who discharges waste into any waters or places waste on any land in accordance with a notice under subsection (1) of this section shall not be guilty of an offence against this Act only by reason of such discharge or placing.

(3) A person who discharges waste into any waters or places waste on any land in contravention of a notice under subsection (1) of this section is guilty of an offence against this Act and liable upon conviction to a penalty not exceeding ten thousand dollars.

(4) The Minister may in circumstances that he considers constitute an emergency take such action as he considers necessary for the prevention, abatement or mitigation of water pollution and may recover the reasonable costs of so doing as a debt due to the Minister from the person responsible for that water pollution.

PART VI

PART VI

APPEALS

Appeals.

64. (1) An appeal to the Tribunal shall lie—

- (a) against the refusal to grant a licence or permit under this Act;
- (b) against the imposition of any term or condition in respect of any licence or permit under this Act;
- (c) against the refusal of a consent under section 52 of this Act;
- (d) against the imposition of any term or condition in relation to a consent under that section;
- (e) against any Order given under this Act or against the imposition of any term or condition of that Order.

(2) Except in the cases referred to in subsection (1) of this section, no appeal shall lie to the Tribunal.

(3) An appeal must be instituted in the prescribed manner and form.

(4) Subject to this Act, the Tribunal may, at the hearing of the appeal, uphold or quash the decision appealed against.

Proceedings
before the
Tribunal.

65. (1) The Tribunal shall give to any person who is a party to proceedings instituted before the Tribunal reasonable notice of the time and place at which it intends to hear those proceedings, and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

(2) If a person to whom notice has been given pursuant to subsection (1) of this section does not attend at the time and place fixed by the notice, the Tribunal may hear the proceedings in his absence.

(3) Any party to proceedings before the Tribunal shall be entitled to appear personally or by counsel or other representative, but no person other than a legal practitioner shall be entitled to any fee or reward for such representation.

(4) Subsection (3) of this section shall not apply to an interpreter assisting a party in the presentation of his case provided that his fee does not exceed an amount fixed by the Tribunal either generally or in a particular case.

(5) In any proceedings the Tribunal shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms and shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

Powers of
Tribunal.

66. (1) In the exercise of its functions under this Act, the Tribunal may—

- (a) by notice signed by the chairman, or the Registrar acting on the direction of the chairman, require the attendance before the Tribunal of any person;
- (b) by notice signed by the chairman, or the Registrar acting on the direction of the chairman, require the production of any books, papers or documents;

- (c) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit, and make copies of them, or of any of their contents;
 - (d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Tribunal relating to any matter being inquired into by the Tribunal or Registrar;
 - (e) require any person appearing before the Tribunal to answer any relevant questions put to him by the Tribunal or by any other person appearing before the Tribunal;
- or
- (f) enter upon and inspect, or authorize a person to enter upon and inspect, any land or premises for the purposes of any hearing before the Tribunal.

(2) Subject to subsection (3) of this section, if any person—

- (a) who has been served with a notice to attend before the Tribunal fails without reasonable excuse to attend in obedience to the notice;
 - (b) who has been served with a notice to produce any books, papers or documents, fails without reasonable excuse to comply with the notice;
 - (c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal;
 - (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal;
- or
- (e) refuses to permit the Tribunal, or a person authorized by the Tribunal, to enter upon any land or premises,

he shall be guilty of an offence and liable to a penalty of five hundred dollars.

(3) A person shall not be obliged to answer a question put to him under this section if the answer would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

67. Subject to this Act, the institution of an appeal shall not suspend or otherwise affect the operation of any decision or direction subject to appeal.

Appeal not to suspend operation of direction, etc.

68. The Tribunal shall give reasons in writing for any decision made by the Tribunal in any proceedings under this Act.

Reasons for decision of Tribunal to be given.

PART VII

PART VII

MISCELLANEOUS

Power of acquisition.

69. The Minister may, subject to and in accordance with the Land Acquisition Act, 1969-1972, acquire land for the purposes of this Act.

Power to construct works.

70. The Minister may construct, operate and maintain such works as he considers necessary or desirable for—

- (a) the observation, measurement or assessment of any water resources;
 - (b) the control or utilization of any water resources;
 - (c) the conserving of any water resources or the enhancement of their quality;
 - (d) the observation, measurement or assessment of any waste;
 - (e) the control or discharge of any waste;
 - (f) the treatment, storage or discharge of any waste waters for irrigation or other purposes;
 - (g) the drainage of any land on which any waters are used for irrigation purposes;
- or
- (h) any other purposes in connection with the administration of this Act.

Delegation.

71. (1) The Minister may delegate to any person any of his powers under this Act (except this power of delegation) and may revoke that delegation at any time.

(2) A delegation under subsection (1) of this section shall not prevent the exercise of any power by the delegator.

Authorized officer.

72. The Minister may by notice in the *Gazette* appoint a person or the holder for the time being of an office to be an authorized officer for the purposes of this Act.

Powers of authorized officers.

73. (1) An authorized officer may—

- (a) enter and remain on any land or premises for the purposes of this Act;
- and
- (b) take and retain any samples of any waters or waste found therein or thereon.

(2) An authorized officer may require any person to answer any question that in his opinion may disclose information as to whether or not the provisions of this Act are being complied with, or may facilitate the exercise and performance of his powers and functions under this Act, whether that question is put to that person directly or through an interpreter.

(3) An authorized officer may carry out such operations on a well to determine the condition of the well or of the soil, rock, or other water bearing material in which the well is situated or of waters as the Minister may authorize and specify in a notice served upon the owner of the land on which the well is situated.

(4) In the exercise of his powers under this section an authorized officer may be accompanied by such other persons as he considers necessary or desirable in the circumstances.

(5) A person shall not—

(a) hinder or obstruct an authorized officer or a person accompanying an authorized officer in the exercise by the authorized officer of the powers conferred on him by this section;

or

(b) refuse or fail to answer any question put to him by an authorized officer under subsection (2) of this section.

Penalty: Five hundred dollars.

(6) A person is not excused from answering any question put to him by an authorized officer under subsection (2) of this section on the grounds that the information disclosed thereby might tend to incriminate him, but such information shall not be admissible against him in any proceedings, civil or criminal, other than proceedings for an offence against this Act.

74. No liability shall attach to an authorized officer for an act or omission by him in good faith and in the exercise, or purported exercise, of his powers or functions or in the discharge, or purported discharge, of his duties under this Act.

Protection
of authorized
officers.

75. A person shall not in furnishing any information pursuant to this Act make, or cause to be made, any statement or representation that is to his knowledge false or misleading in a material particular.

False or
misleading
information.

Penalty: Five hundred dollars.

76. (1) In any proceedings for an offence against this Act an allegation in a complaint that—

Evidentiary.

(a) a person is an authorized officer;

(b) a person is the owner or occupier of any land or premises specified therein;

(c) a person is, or is not, the holder of a licence or permit under this Act;

(d) a specific watercourse is a Proclaimed Watercourse under this Act;

or

(e) a specific region is a Proclaimed Region under this Act,

shall be deemed to have been proved in the absence of proof to the contrary.

(2) An apparently genuine document purporting to be, or to set out the contents of, a permit, licence, notice or Order under this Act and purporting to be signed by the Minister or an authorized officer shall, in the absence of proof to the contrary, be deemed to be, or to set out the contents of, the permit, licence, notice or Order.

Default penalties.

77. (1) Where in, or at the foot of, any section or part of a section of this Act there appears the expression "Default Penalty", it signifies that any person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part as the amount of the default penalty.

(2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1) of this section shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the period has elapsed.

Summary Procedure, etc.

78. (1) Proceedings for an offence against this Act—

- (a) shall not be commenced without the consent in writing of the Minister;
- (b) may be commenced within twelve months of the date of discovery of the offence;
- and
- (c) shall be disposed of summarily.

(2) An apparently genuine document purporting to record the consent of the Minister to proceedings for an offence against this Act and to be signed by him shall be admissible in evidence and shall, in the absence of proof to the contrary, be taken as proof of his consent to the proceedings.

Regulations.

79. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1) of this section those regulations may—

- (a) prescribe any form for the purposes of this Act;
- (b) provide for and prescribe fees for the grant of any licence or permit under this Act, or for the doing of any other act or thing under this Act, and provide for the recovery of those fees;
- (c) prescribe and provide for the classification of any waters by reference to their possible use;
- (ca) provide for the prevention of the propagation of, or the eradication or control of, any plant likely to obstruct any watercourse or otherwise injuriously affect any waters;

- (d) regulate or prohibit any matter or thing in connection with the disposal, dispersment or discharge of wastes;
 - (e) prescribe the powers and functions of a Water Resources Advisory Committee, either generally or in a particular area;
 - (f) prescribe the constitution and the powers and functions of the Well Drillers' Examination Committee;
 - (g) prescribe the types of Well Drillers' Licences;
- and
- (h) prescribe penalties not exceeding five hundred dollars for contravention of, or failure to comply with, any regulation.

THE SCHEDULE

Section 4.

Control of Waters Act, 1919
Control of Waters Act Amendment Act, 1925
Control of Waters Act Amendment Act, 1975
Underground Waters Preservation Act, 1969
Underground Waters Preservation Act Amendment Act, 1970
Underground Waters Preservation Act Amendment Act, 1973
Underground Waters Preservation Act Amendment Act, 1975
So much of the Statute Law Revision Act, 1974, as relates to the Underground Waters Preservation Act, 1969-1973.

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

M. L. OLIPHANT, Governor