



# WATER RESOURCES ACT, 1990

No. 37 of 1990

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A.D. 1990

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No. 37 of 1990

**An Act to provide for the management of the water resources of the State; to preserve water quality and to provide for the sharing of available water on a fair basis; to repeal the Water Resources Act, 1976; and for other purposes.**

[Assented to 3 May 1990]

The Parliament of South Australia enacts as follows:

## PART I

### PRELIMINARY

#### Short title

1. This Act may be cited as the *Water Resources Act, 1990*.

#### Commencement

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

#### Repeal

3. The *Water Resources Act, 1976*, is repealed.

#### Interpretation

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

“authorized officer” means an authorized officer appointed under this Act:

“committee” means a water resources committee established under this Act:

“the Council” means the South Australian Water Resources Council established by this Act:

“to drill” in relation to a well means to drill the well or to excavate the well in any other manner and includes to deepen or widen an existing well:

“lake” means a natural lake and includes a natural lagoon, swamp, marsh and spring:

“land” includes any building or structure on land:

“licensed well driller” means a person who holds a licence to drill wells under this Act:

“occupier” of land means a person who has, or is entitled to, possession or control of the land:

“owner” of land means—

- (a) in relation to land alienated from the Crown by grant in fee simple—the holder of the fee simple;
- (b) in relation to land held under Crown lease or licence—the lessee or licensee;
- (c) in relation to land held under an agreement to purchase from the Crown—the person entitled to the benefit of the agreement;
- (d) in relation to any other land—the Minister who is responsible for the care, control and management of the land or, if no Minister is responsible for the land, the Minister of Lands,

and includes an occupier of the land:

“proclaimed lake” means a lake declared to be a proclaimed lake under this Act:

“proclaimed watercourse” means a watercourse declared to be a proclaimed watercourse under this Act:

“proclaimed well” means a well declared to be a proclaimed well under this Act:

“record” means—

- (a) a documentary record;
- (b) a record made by an electronic, electro-magnetic, photographic or optical process;
- (c) any other kind of record:

“the repealed Act” means the *Water Resources Act, 1976*, repealed by this Act:

“surface water” means water in a watercourse or lake:

“to take” in relation to water includes—

- (a) to stop or impede the flow of water in a watercourse for the purpose of collecting the water;
- (b) to divert the flow of water in a watercourse from the watercourse;
- (c) to release water from a lake;
- (d) to permit water to flow under natural pressure from a well;
- (e) to permit stock to drink from a watercourse or lake:

“the Tribunal” means the Water Resources Appeal Tribunal continued in existence by this Act:

“underground water” means—

- (a) water occurring naturally below ground level;
- (b) water pumped, diverted or released into a well for storage underground:

“water allocation” in respect of a licence means the quantity of water that the licensee is entitled to take pursuant to the licence:

“watercourse” means—

- (a) a river, creek or other natural watercourse (whether modified or not);
- (b) an artificial channel (but not a channel declared by regulation to be excluded from the ambit of this definition):

“water recovery licence” means a licence granted under this Act or the repealed Act entitling the holder to take water from a watercourse, lake or well:

“well” means—

- (a) an opening in the ground excavated for the purpose of obtaining access to underground water;
- (b) an opening in the ground excavated for some other purpose but that gives access to underground water;
- (c) a natural opening in the ground that gives access to underground water:

“well driller’s licence” means a licence granted under this Act entitling the holder to drill wells.

(2) A reference in this Act to the use or enjoyment of water includes a reference to the use or enjoyment of water for recreational purposes and to the aesthetic enjoyment of water.

*Note: For definition of divisional penalties see Appendix.*

#### **Act binds Crown**

5. This Act binds the Crown.

#### **Application of Act**

6. This Act is subject to the agreements and Acts set out in schedule 1.

## **PART II**

### **OBJECTS OF THIS ACT**

#### **Objects**

7. The objects of this Act are as follows—

- (a) to promote recognition of the fact that water is one of the most important natural resources of the State and that it is a limited resource;
- (b) to establish a system ensuring—
  - (i) the efficient use of the State’s water resources at a sustainable level;
  - (ii) the maintenance of water quality;and
  - (iii) the sharing of available water on a fair basis;
- (c) in establishing and managing that system—
  - (i) to recognize the importance of surface and underground water in the environment;
  - (ii) to preserve, as far as possible, wetlands and other ecosystems and areas of scenic beauty;and
  - (iii) to interfere as little as possible with sites of scientific, historical, cultural or archaeological importance.

#### **Administration of Act**

8. The Minister, the Council, the Tribunal, a committee and any other body or person involved in the administration of this Act must act consistently with, and seek to further, the objects of this Act.

## PART III

## ADMINISTRATION

## DIVISION I—THE MINISTER

**The Minister's functions**

9. (1) The Minister has the following functions—

- (a) to assess and keep under review the extent of the water resources of the State and the quality and availability of those resources;
- (b) to develop policies for the administration of this Act in accordance with its objects including the formulation of plans of management of water resources;
- (c) to promote public awareness of the importance of the State's water resources and to encourage the conservation of those resources;
- (d) to encourage public commitment to achieving the objects of this Act;
- (e) to integrate Government policies relating to water resource management, land management and the environment and for that purpose to consult, if necessary, with any other Minister who has responsibility in relation to land management or the planning laws of the State;
- (f) such other functions as are assigned to the Minister by this Act.

(2) The Minister must encourage, as far as practicable, the participation of members of the public in the formulation of plans of management of water resources.

**Powers of the Minister**

10. (1) For the purposes of this Act the Minister may install, maintain and operate any machinery and erect or construct and maintain any building, structure or works for the purpose of—

- (a) controlling the flow (including the prevention or mitigation of flooding) of water in a watercourse;
- (b) using any surface or underground water;
- (c) protecting or improving the quality of any surface or underground water;
- (d) assessing or controlling any material that may degrade the quality of surface or underground water;
- (e) draining, treating, storing or discharging water used for irrigation;
- (f) storing water in groundwater basins;

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

**Power of Minister to delegate**

11. (1) The Minister may delegate any of the Minister's powers or functions under this Act (except this power of delegation)—

- (a) to a water resources committee;
  - (b) to any other body or person;
- or
- (c) to the person for the time being occupying a particular office or position.

- (2) A delegation under this section—
- (a) must be by instrument in writing;
  - (b) may be absolute or conditional;
  - (c) does not derogate from the power of the Minister to act in any matter;
- and
- (d) is revocable at will by the Minister.

DIVISION II—THE SOUTH AUSTRALIAN WATER RESOURCES COUNCIL

**Establishment of Council**

12. (1) The *South Australian Water Resources Council* is established.

(2) The Council consists of—

(a) the Chief Executive Officers for the time being of the following departments:

- (i) the Engineering and Water Supply Department;
  - (ii) the Department of Lands;
  - (iii) the Department of Agriculture;
  - (iv) the Department of Environment and Planning;
- and
- (v) the Department of Mines and Energy;

(b) the following members appointed by the Governor:

- (i) a member selected by the Minister from a panel of three persons nominated, at the invitation of the Minister, by one or more organizations that represent the interests of municipal or district councils;
- (ii) a member selected by the Minister from a panel of three persons nominated, at the invitation of the Minister, by one or more organizations that represent commercial or industrial interests;
- (iii) a member selected by the Minister from a panel of three persons who have experience in irrigated farming nominated, at the invitation of the Minister, by one or more organizations that represent farmers;
- (iv) a member selected by the Minister from a panel of three persons nominated, at the invitation of the Minister, by one or more organizations that represent employees;
- (v) a member selected by the Minister from a panel of three persons who have knowledge and experience of the relationship between the management of water resources and conservation of the natural environment nominated, at the invitation of the Minister, by one or more organizations concerned with environmental conservation;
- (vi) a member nominated by the Minister to represent the public interest in relation to the domestic use of water;

and

(c) not more than four members appointed by the Governor pursuant to subsection (3).

(3) The Governor may, on the recommendation of the Minister, appoint members who have knowledge or experience that will, in the Minister's opinion, be of value to the Council in carrying out its functions.



(4) In appointing members to the Council the Governor must ensure that Public Service employees (including the Chief Executive Officers referred to in subsection (2) (a)) comprise less than one-half of the number of members of the Council.

(5) At least one member of the Council must be a woman and one must be a man.

(6) The Governor may appoint suitable persons to be deputies to the members of the Council and a deputy to a member appointed under subsection (2) (b) must be appointed in the same manner as the member was appointed and must have the qualifications (if any) for membership of the Council required by subsection (2) (b).

(7) A deputy may, in the absence of a member, act as a member of the Council.

#### **Appointment of presiding member**

13. The Minister must appoint a member (the presiding member) to preside at meetings of the Council and another member (the deputy presiding member) to preside at meetings of the Council in the absence of the presiding member.

#### **Conditions of office**

14. (1) A member of the Council appointed by the Governor will be appointed for a term not exceeding three years and will, on the expiration of a term of office, be eligible for reappointment.

(2) A member appointed by the Governor may be removed from office by the Governor—

(a) for misconduct;

(b) for neglect of duty;

(c) for incompetence;

or

(d) for mental or physical incapacity to carry out the duties of office satisfactorily.

(3) The office of a member appointed by the Governor becomes vacant if the member—

(a) dies;

(b) completes a term of office and is not reappointed;

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

or

(d) is removed from office by the Governor under subsection (2).

(4) Upon the office of a member appointed by the Governor becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

#### **Allowances and expenses**

15. A member of the Council is entitled to such allowances and expenses as the Minister may determine.

#### **Procedures at meetings of the Council**

16. (1) The presiding member will preside at meetings of the Council or, in his or her absence, the deputy presiding member will preside or, in the absence of both of them, a member chosen by those present will preside.

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

- (3) The number of members that constitute a quorum is determined as follows—
- (a) if the number of members is even—half that number plus one;
  - (b) if the number of members is odd—the first integer that is greater than half that number.
- (4) A decision in which a majority of the members present at a meeting concur is a decision of the Council but if the members are equally divided the decision of the person presiding at the meeting is the decision of the Council.
- (5) Subject to this Act, the Council may determine its own procedures.

#### **The Council's function**

17. (1) The Council's function is to advise the Minister in relation to—
- (a) policies for the administration of this Act or any other Act dealing with the water resources of the State;
  - (b) the most effective and efficient use of available resources in reference to the administration of this Act and other Acts dealing with the water resources of the State.
- (2) The Council may, if it thinks fit, give the Minister advice under subsection (1) on its own initiative without first receiving a request from the Minister.

#### **Personal interest of member**

18. A member who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the Council is disqualified from participating in the Council's consideration of the matter.

### **DIVISION III—WATER RESOURCES COMMITTEES**

#### **Establishment of water resources committees**

19. (1) The Minister must, by notice published in the *Gazette*, establish a water resources committee in relation to each proclaimed watercourse and lake and each part of the State in which proclaimed wells are situated.
- (2) The notice must set out—
- (a) the watercourse, lake or part of the State in relation to which the committee is established;
- and
- (b) the name of the committee.
- (3) The members of a committee must have knowledge or experience that will be of value to the committee in carrying out its functions.
- (4) A committee will have the following functions:
- (a) to advise the Council in relation to policy, and the application of resources, affecting the watercourse, lake or part of the State for which the committee is responsible;
  - (b) to advise the Minister on any other matter relating to the administration of this Act as it affects the watercourse, lake or part of the State for which the committee is responsible;
  - (c) such other functions as the Minister delegates to it,
- and a committee must, in performing those functions, take into account as far as practicable the views of the local community.

(5) A committee may, if it thinks fit, give the Minister advice under subsection (4) on its own initiative without first receiving a request from the Minister.

(6) The Minister may, by notice published in the *Gazette*, establish a water resources committee for any other purpose related to the administration of this Act or any other Act dealing with the water resources of the State.

(7) The notice must set out—

(a) the functions of the committee;

and

(b) the name of the committee.

(8) A committee established under subsection (1) or (6) will have such powers as the Minister delegates to it or as are given to it by regulation.

(9) The Minister may, by subsequent notice published in the *Gazette*, vary a notice under subsection (1) or (6) or may, by revoking the notice, dissolve the committee established by the notice.

(10) The Minister must establish under this section a water resources committee (to be named the “Water Well Drilling Committee”) to examine intending applicants for licences to drill wells and the committee will have such other functions as are prescribed by regulation.

#### **Allowances and expenses**

20. A member of a committee is entitled to such allowances and expenses as the Minister may determine.

### **DIVISION IV—THE WATER RESOURCES APPEAL TRIBUNAL**

#### **Continuation in existence of Tribunal**

21. (1) The Water Resources Appeal Tribunal continues in existence.

(2) The Tribunal consists of—

(a) a District Court Judge or magistrate (who will be the presiding officer of the Tribunal) nominated by the Senior Judge;

(b) a person, appointed by the Governor, who has relevant expertise and experience in engineering;

(c) a person, appointed by the Governor, who has knowledge and training in a relevant field of science;

and

(d) one or more persons selected by the presiding officer from the panel established under subsection (4) to hear a particular appeal.

(3) The Senior Judge may at any time nominate a Judge or magistrate pursuant to subsection (2) (a) in place of a Judge or magistrate previously nominated.

(4) The Governor must appoint a panel that collectively has expertise in—

(a) irrigated farming;

(b) some other form of primary production;

(c) water resource management;

and

(d) any other fields that the Governor considers to be important.

**Permanent members**

22. (1) This section applies to, and in relation to, members of the Tribunal (permanent members) appointed pursuant to section 21 (2) (b) and (c).

(2) A permanent member must be appointed for a term of three years and will, on the expiration of a term of office, be eligible for reappointment.

(3) On the office of a permanent member becoming vacant, a person must be appointed in accordance with this Act to the vacant office, but where the office of a permanent member becomes vacant before the expiration of a term of appointment, the successor will be appointed only for the balance of the term.

(4) The Governor may appoint suitable persons to be deputies to the permanent members of the Tribunal.

(5) A person cannot be appointed as the deputy of a member unless he or she has qualifications that would enable his or her appointment to the position on the Tribunal held by that member.

(6) A deputy may, in the absence of the member, act as a member of the Tribunal.

(7) The Governor may remove a permanent member from office—

(a) for misconduct;

(b) for neglect of duty;

(c) for incompetence;

or

(d) for mental or physical incapacity to carry out the duties of office satisfactorily.

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

(a) dies;

(b) completes a term of office and is not reappointed;

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

or

(d) is removed from office by the Governor under subsection (7).

**Allowances and expenses**

23. A member of the Tribunal is entitled to such allowances and expenses as the Governor may determine.

**Determination of questions**

24. (1) A question of law or procedure arising before the Tribunal will be determined by the presiding officer and any other question will be determined in accordance with the opinion of the majority of the members or, if they are equally divided, in accordance with the opinion of the presiding officer.

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

**Registrar**

25. There must be a Registrar of the Tribunal.

**Personal interest of member**

26. (1) A member of the Tribunal who has a personal interest or a direct or indirect pecuniary interest in an appeal before the Tribunal is disqualified from participating in the hearing of the appeal.

(2) Where a permanent member of the Tribunal is disqualified by subsection (1), the member's deputy, if not also disqualified, may act as a member of the Tribunal in the permanent member's place.

**Powers and procedures of the Tribunal**

27. (1) The Tribunal may, for the purposes of proceedings before the Tribunal—

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the attendance of a person before the Tribunal;
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the production to the Tribunal of any relevant records and, in the case of a record that is not a documentary record in English, require the production of a written statement in English of the contents of the record;
- (c) inspect any records or statements produced to it and retain them for such reasonable period as it thinks fit and make copies of any of them or any of their contents;
- (d) require any person to make an oath or affirmation to answer truly all questions put by a member of the Tribunal, or a person appearing before the Tribunal, relating to a matter before the Tribunal;
- (e) require any person appearing before the Tribunal to answer any relevant questions put by a member of the Tribunal or by a person appearing before the Tribunal;

or

- (f) enter upon and inspect, or authorize a person to enter upon and inspect, any land for the purposes of any hearing before the Tribunal.

(2) A person who—

- (a) has been served with a summons to appear before the Tribunal and fails, without reasonable excuse, to attend in obedience to the summons;
- (b) has been served with a summons to produce records and fails, without reasonable excuse, to comply with the summons;
- (c) has been served with a summons to produce a written statement of the contents of a record in English and fails, without reasonable excuse, to comply with the summons or produces a statement that he or she knows, or ought to know, is false or misleading in a material particular;
- (d) misbehaves before the Tribunal, wilfully insults the Tribunal or any member of the Tribunal, or interrupts the proceedings of the Tribunal; -
- (e) refuses to be sworn or to affirm, or refuses or fails to answer any relevant question to the best of his or her knowledge, information or belief when required to do so by the Tribunal;

or

- (f) refuses to permit the Tribunal, or a person authorized by the Tribunal, to enter upon any land,

is guilty of an offence.

Penalty: Division 6 fine.

(3) A person who appears as a witness before the Tribunal has the same protection as a witness in proceedings before a District Court.

(4) The Registrar must give the parties to proceedings reasonable notice of the time and place of the proceedings.

(5) A party is entitled to appear personally or by counsel or other representative.

(6) The Tribunal may make a determination in any proceedings in the absence of a party to the proceedings if satisfied that the party was given a reasonable opportunity to appear.

(7) At the conclusion of proceedings the Tribunal must furnish the parties with a written statement of the reasons for its decision (the statement may take the form of a transcript of reasons delivered orally).

#### DIVISION V—AUTHORIZED OFFICERS

##### **Appointment of authorized officers**

28. (1) The Minister may appoint such persons to be authorized officers for the purposes of this Act as the Minister thinks fit.

(2) A person may be appointed by name or by reference to the office or position that he or she is holding or acting in for the time being.

(3) An appointment—

(a) will be for a period stated in the instrument of appointment;

and

(b) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of an authorized officer.

(4) A person appointed as an authorized officer must be issued with an identity card in a form approved by the Minister.

(5) The Minister may, by notice in writing served on an authorized officer—

(a) vary or revoke a condition of the appointment;

or

(b) revoke the appointment.

##### **Powers of authorized officers**

29. (1) An authorized officer may, at any reasonable time, exercise any of the following powers—

(a) enter any land;

(b) inspect any land (including any stratum lying below the surface of the land) and the surface and underground water on or under any land;

(c) measure the flow of surface or underground water on or under any land;

(d) where the authorized officer has reason to believe that an offence against this Act has been, is being, or is about to be, committed—enter or inspect any vehicle, vessel or aircraft and for that purpose give a direction to stop or move the vehicle, vessel or aircraft;

(e) take samples of surface and underground water on or under any land;

(f) take samples of any material of a kind that, in the officer's opinion, has entered or may enter surface or underground water;

(g) inspect any machinery or equipment on land or on a vehicle, vessel or aircraft;

(h) inspect any well on land and any pipes, fittings or equipment connected to or used in conjunction with any well;

- (i) take photographs, films or video recordings;
  - (j) put to any person on land or to the person in charge of a vehicle, vessel or aircraft any question relating to the administration of this Act;
  - (k) require any person on land or the person in charge of a vehicle, vessel or aircraft to produce for inspection records relating to any material that, in the officer's opinion, has entered or may enter surface or underground water and in the case of a record that is not a documentary record in English, require the person to produce a written statement in English of the contents of the record;
  - (l) require a person who the officer reasonably suspects has committed, or is about to commit, an offence against this Act to state the person's full name and usual place of residence;
  - (m) require a person holding or required to hold a licence or permit under this Act to produce the licence or permit for inspection.
- (2) An authorized officer in exercising powers under this section may be accompanied by such assistants as are reasonably necessary in the circumstances.
- (3) An authorized officer must at the request of the owner of land, the owner's agent or the person in charge of a vehicle, vessel or aircraft, produce the identity card issued to the officer.
- (4) An authorized officer may use force to enter land, a building or structure on land or a vehicle, vessel or aircraft—
- (a) on the authority of a warrant issued by a justice;
  - or
  - (b) if the officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.
- (5) A justice must not issue a warrant under subsection (4) unless satisfied, on information given on oath—
- (a) that there are reasonable grounds to suspect 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.
- (6) An authorized officer, or a person assisting an authorized officer, who—
- (a) addresses offensive language to any other person;
  - or
  - (b) without lawful authority or a reasonable belief as to lawful authority, hinders or obstructs, or uses or threatens to use force in relation to, any other person,
- is guilty of an offence.

Penalty: Division 6 fine.

**Hindering, etc., persons engaged in the administration of this Act**

**30. (1) A person who—**

- (a) without reasonable excuse hinders or obstructs an authorized officer or other person engaged in the administration of this Act;
- (b) fails to answer a question put by an authorized officer to the best of his or her knowledge, information or belief;

- (c) produces a written statement of the contents of a record that he or she knows, or ought to know, is false or misleading in a material particular;
- (d) fails without reasonable excuse to comply with a requirement or direction of an authorized officer under this Act;
- (e) uses abusive, threatening or insulting language to an authorized officer, or a person assisting an authorized officer;

or

(f) falsely represents, by words or conduct, that he or she is an authorized officer, is guilty of an offence.

(2) A person may not decline on grounds of self-incrimination to answer a question put by an authorized officer under this Act but the answer to any such question is not admissible except in proceedings for an offence against this section.

(3) Subject to subsection (4), a person who is guilty of an offence against subsection (1) is liable to a division 6 fine.

(4) Where an offence is committed against subsection (1) in the course of the exercise, or attempted exercise, of powers under section 53 (4), the offender is liable to a division 1 fine.

## PART IV

### TAKING OF WATER

#### DIVISION I—RIGHTS TO TAKE WATER

##### **Right of Minister to water**

31. (1) The Minister may take water from any watercourse, lake or well notwithstanding that the right of any other person to take water from that or any other watercourse, lake or well is prejudicially affected.

(2) The Minister must endeavour, as far as practicable, to avoid prejudicially affecting the right of a person to take water for domestic purposes or for the purposes of watering stock.

##### **Riparian rights**

32. Riparian rights in respect of surface and underground water continue in existence but—

- (a) are subject to the right of the Minister to take such quantities of water as he or she thinks fit and to the right of any other person to take water pursuant to a water recovery licence;

and

- (b) in the case of water taken from a proclaimed watercourse, lake or well, are limited to taking water for domestic purposes or to water stock kept on land adjacent to the watercourse, lake or well.

#### DIVISION II—TAKING WATER FROM PROCLAIMED WATERCOURSES, LAKES AND WELLS

##### **Proclamation of watercourses, lakes and wells**

33. (1) The Governor may, by proclamation, declare that a watercourse or lake is a proclaimed watercourse or lake.

(2) The Governor may, by proclamation, declare that wells situated in a specified part of the State when the proclamation is made are proclaimed wells and that wells drilled in that part of the State after the making of the proclamation will be proclaimed wells.



(3) A proclamation under this section may specify watercourses, lakes or wells individually or by class.

(4) The Governor may by subsequent proclamation vary or revoke a proclamation under this section.

#### **Taking of water from proclaimed watercourse, etc.**

34. (1) Notwithstanding any other Act or law to the contrary, a person must not take water from a proclaimed watercourse, lake or well unless authorized by or under this Act.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(2) Subsection (1) is subject to the *Roxby Downs (Indenture Ratification) Act, 1982*.

(3) Where a person takes water in contravention of subsection (1) the Minister may estimate the quantity of water taken and charge the person for that quantity at the excess rate prescribed by regulation.

(4) If, in proceedings for an offence against subsection (1), it is proved that at the time of the alleged offence the watercourse, lake or well was connected by pipes or channels to land occupied by the defendant, it must be presumed (in the absence of proof to the contrary) that the defendant took water from the watercourse, lake or well.

### **DIVISION III—LICENCES**

#### **Licences for taking water**

35. (1) The Minister may grant a licence to a person to take water from a proclaimed watercourse, lake or well.

(2) An application for a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.

(3) A licence—

(a) must specify the watercourse, lake or well from which water may be taken;

(b) must limit the amount of water that may be taken;

(c) may fix charges payable to the Minister for the right to take water pursuant to the licence by specifying the charges in the licence or by reference to charges fixed from time to time by the Minister by notice published in the *Gazette*;

(d) is subject to such conditions as are prescribed from time to time by regulation and to such further conditions as are specified in the licence by the Minister;

(e) remains in force for such term (not exceeding four years) as is stated in the licence.

#### **Renewal of licence**

36. (1) A licence may be renewed from time to time.

(2) An application for renewal of a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.

#### **Variation and surrender of licences**

37. (1) If in the Minister's opinion—

(a) there is insufficient water available to satisfy the demands of other persons who are entitled to take the water or to use or enjoy it in any other way or there exists the danger of such an insufficiency in the future;

or

(b) further reduction of the quantity of water would be detrimental to its quality or to the ecosystems that depend upon it,

the Minister may vary a licence—

(c) by reducing the water allocation of the licence;

(d) by attaching conditions to the licence;

or

(e) by reducing the water allocation and attaching conditions to the licence.

(2) The Minister may vary a licence with the consent of the licensee.

(3) A licence may be varied under this section by notice served on the licensee or, in the case of an increase in the water allocation, by notice published in the *Gazette*.

(4) A licensee may surrender the licence at any time.

#### **Contravention, etc., of licence**

38. (1) A person who contravenes or fails to comply with a condition of a licence is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(2) The Minister may, by notice served on a licensee, vary, suspend or cancel the licence if the Minister is satisfied that the licensee, or a person acting on behalf of the licensee—

(a) has taken water in excess of the water allocation of the licence, or of a previous water recovery licence held by that person, or has contravened or failed to comply with a condition of the licence, or of a previous water recovery licence held by that person;

or

(b) has committed an offence against any provision of this Act,

#### **DIVISION IV—GENERAL**

#### **Certain uses of water authorized**

39. (1) The Minister may, by notice published in the *Gazette*, authorize the taking of water from a proclaimed watercourse, lake or well for a particular purpose specified in the notice.

(2) A notice may apply generally throughout the State or in relation to a particular watercourse or lake or to the wells of a particular part of the State.

(3) An authorization will be subject to such conditions as the Minister thinks fit and specifies in the notice.

(4) The Minister may vary or revoke a notice under this section by a subsequent notice published in the *Gazette* and in a newspaper circulating generally throughout the State.

(5) A notice published under subsection (4) does not have effect, insofar as it revokes or restricts the right to take water or imposes further conditions on that right, until the expiration of seven days from its publication.

**Restrictions in case of inadequate supply or overuse of water****40. (1) Where, in the Minister's opinion—**

- (a) the rate at which water is taken from a watercourse, lake or well (whether proclaimed or not) is such that the quantity of water available can no longer meet the demand or there is a risk that the available water will not be sufficient to meet future demand;
  - (b) there is insufficient water available to satisfy the demands of persons who are entitled to use or enjoy the water or there exists the danger of such an insufficiency in the future;
- or
- (c) further reduction in the quantity of the water would be detrimental to its quality or to the ecosystems that depend upon it,

the Minister may, by notice published in the *Gazette* and in a newspaper circulating generally throughout the State, prohibit or restrict the taking of water from the watercourse, lake or well to allow time—

- (d) for its replenishment or for an assessment of the quantity or quality of the available water;
- or
- (e) for the assessment and remedying of any other problem relating to the water.

**(2) A notice has effect—**

- (a) in relation to a person on whom a copy of the notice has been served personally or by post—at the time of service;
- (b) in relation to all other persons—at the expiration of seven days from publication of the notice in the *Gazette* and in a newspaper circulating generally throughout the State.

(3) A notice remains in force for such term (not exceeding two years) as is stated in the notice.

(4) Where, in the opinion of the Minister, the rate at which, or the manner in which, water is taken from an unproclaimed watercourse, lake or well is unfairly detrimental to other persons who have, or should have, access to the water, the Minister may, by notice served on the person taking the water—

- (a) restrict the rate and the times at which he or she may take the water;
- and
- (b) direct him or her to take such action as is specified in the notice to rectify any problem relating to the manner in which the water is taken.

**(5) A notice under subsection (1) or (4)—**

- (a) may require the removal of the means by which water can be taken from the watercourse, lake or well;
- (b) may specify conditions subject to which water may be taken from the watercourse, lake or well.

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

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(7) The Minister may vary or revoke a notice under subsection (1) by notice published in the *Gazette* and in a newspaper circulating generally throughout the State.

(8) The Minister may vary or revoke a notice served on a person under subsection (4) by subsequent notice served on that person.

## PART V

### PROTECTION OF WATER RESOURCES

#### DIVISION I—PRELIMINARY

##### Interpretation

41. (1) In this Part, unless the contrary intention appears—

“material” means solid, liquid or gaseous material:

“owner” in relation to a vessel or aircraft includes a person who has, or is entitled to, possession or control of the vessel or aircraft:

“surface water” includes—

(a) water in a dam, reservoir or artificial lake that is situated in a water protection area;

and

(b) floodwaters that have overflowed the banks of a watercourse or lake:

“water protection area” means a part of the State declared by proclamation to be a water protection area.

(2) Material floating on the surface of water will be taken to have entered the water.

(3) A person will be taken to have disposed, or permitted the escape, of material onto land if he or she disposes, or permits the escape, of the material to a point below ground level.

(4) A reference in this Part to the disposal or escape of material from land includes a reference to the disposal or escape of material from a vehicle on the land.

(5) A person will be taken to have permitted the escape of material if the escape resulted from a negligent act committed by the person.

##### Degradation of water

42. (1) Material that enters surface or underground water in any part of the State will be taken to have degraded the water if—

(a) the use or enjoyment of the water by a person who is entitled to use or enjoy it is detrimentally affected by the presence of the material;

or

(b) the presence of the material in the water is likely to have a detrimental effect upon any animal, plant or other organism.

(2) Material that enters surface or underground water in a water protection area of the State will be taken to have degraded the water if the quality of the water is detrimentally affected as the material disperses through or over it notwithstanding that, as dispersion continues, the detrimental effect may be reduced to a negligible level.

(3) The Governor may, by proclamation, declare any part of the State to be a water protection area and may by subsequent proclamation, vary or revoke such a proclamation.

## DIVISION II—OFFENCES

**Disposing, etc., of material into water**

43. (1) A person who disposes of, or permits the escape of, any material directly into surface or underground water is guilty of an offence if the material degrades the water.

(2) The owner of land from which any material is disposed of, or permitted to escape, in contravention of subsection (1) is guilty of an offence.

(3) A person who is guilty of an offence against this section is liable to the following penalty:

where the offender is a natural person—Division 1 fine

where the offender is a body corporate—a fine not exceeding \$1 000 000.

**Disposing, etc., of material onto land**

44. (1) A person who disposes of, or permits the escape of, any material onto land or from land, a vessel or aircraft (but not directly into surface or underground water) is guilty of an offence if the material, or any part of it, subsequently enters and degrades any surface or underground water.

(2) The owner of land onto or from which any material is disposed of or permitted to escape in contravention of subsection (1) is guilty of an offence.

(3) A person who is guilty of an offence against this section is liable to the following penalty:

where the offender is a natural person—Division 1 fine

where the offender is a body corporate—a fine not exceeding \$1 000 000.

**Storage or disposal of material underground**

45. A person who stores or disposes of material, or permits the storage or disposal of material, at a depth below ground level that exceeds 2.5 metres or such other depth as may be prescribed is guilty of an offence.

Penalty: where the offender is a natural person—Division 3 fine

where the offender is a body corporate—Division 1 fine.

**Prohibition of certain acts, etc.**

46. (1) Where, in order to protect any surface or underground water, it is, in the opinion of the Governor, necessary or desirable to prohibit, restrict or regulate a particular act or activity throughout the State or in a particular part of the State, the Governor may by regulation prohibit, restrict or regulate that act or activity generally or in a part of the State specified in the regulation.

(2) A regulation may prohibit the granting of a licence under Division III in relation to an act or activity prohibited by the regulation.

(3) A person who undertakes an act or activity in contravention of a regulation under subsection (1) is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

**Evidentiary**

47. Where in a prosecution for an offence against section 43 or 44 it is proved that material escaped from or onto land (whether directly into water or not) or from a vessel or aircraft, it will be presumed, in the absence of proof to the contrary, that the material was permitted to escape by the owner of the land or the person in charge of the vessel or aircraft.

**Defences**

48. (1) It is a defence to prosecution for an offence against sections 43, 44 or 45 to prove that the disposal, escape or storage of the material was authorized by or under this Act or the *Marine Environment Protection Act, 1990*.

(2) It is a defence to prosecution for an offence against section 43 (2) or 44 (2) to prove that there was nothing that the defendant could reasonably be expected to have done that would have prevented the disposal or escape of the material or reduced the quantity of material that was disposed of or that escaped.

(3) It is a defence to prosecution for an offence against section 45 in relation to the storage of material to prove—

(a) that the material was stored in a container and that no part of the material escaped from the container;

or

(b) that the material was stored in a container in a building and that no part of the material escaped from the building.

(4) It is a defence to prosecution for an offence against section 46 to prove that the defendant was authorized by or under this Act or the *Marine Environment Protection Act, 1990*, to undertake the act or activity.

(5) Subject to this Act, an offence is committed against this Division notwithstanding that the disposal, escape or storage of the material or the act or activity alleged to constitute the offence was authorized by some other Act or law.

**DIVISION III—LICENCES****Licence to release material, etc.**

49. (1) The Minister may grant a licence authorizing the licensee to dispose of, permit the escape of or store material or to undertake an act or activity contrary to Division II.

(2) An application for a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.

(3) A licence—

(a) is subject to such conditions as are prescribed from time to time by regulation and to such further conditions as are specified in the licence by the Minister;

(b) remains in force for such term (not exceeding four years) as is stated in the licence.

(4) A licensee may be required by a condition of the licence to pay to the Minister periodically an amount—

(a) as compensation for damage to the environment resulting from the disposal, escape or storage of material or the act or activity authorized by the licence;

and

(b) in the case of a licence authorizing the disposal, escape or storage of material—as a penalty to encourage the licensee to adopt alternative methods of disposing of or storing the material.

(5) Before issuing a licence the Minister must take into account the need to protect the marine environment.

**Renewal of licence**

50. (1) A licence may be renewed from time to time.

(2) An application for renewal of a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.

**Objections to licences**

51. (1) The Minister must not grant or renew a licence until the expiration of one month after notice of the application for grant or renewal of the licence has been published by the Minister in a newspaper circulating generally throughout the State.

(2) A notice must set out prescribed particulars of the application and must invite interested persons to make written submissions to the Minister in relation to the application.

(3) Before granting or refusing an application the Minister must have regard to submissions made under subsection (2) in relation to the application.

(4) If in the Minister's opinion a licence should be granted or renewed urgently so as to give the Minister some control over further entry of material into surface or underground water or over remedial steps to be taken in relation to material that has already entered such water, the Minister may grant or renew the licence without following the procedures set out in this section but, in that case, the Minister must, within one month after the licence is granted or renewed, give prescribed particulars of the licence by notice published in a newspaper circulating generally throughout the State.

**Contravention of licence**

52. A person who contravenes or fails to comply with a condition of a licence is guilty of an offence.

Penalty: where the offender is a natural person—Division 1 fine

where the offender is a body corporate—a fine not exceeding \$1 000 000.

**Variation, etc., of licences**

53. (1) The Minister may, by notice served on a licensee, vary, suspend or cancel the licence—

(a) if in the Minister's opinion the disposal, escape or storage of material pursuant to the licence has caused, or is likely to cause, serious degradation of surface or underground water;

(b) if the Minister is satisfied that the licensee, or a person acting on behalf of the licensee, has contravened, or failed to comply with, a condition of the licence or has committed an offence against any provision of this Act;

or

(c) at the request of the licensee.

(2) Where a licence has been cancelled the Minister may, by notice served on the former licensee or the owner of the land, vessel or aircraft to which the licence related, direct that action specified in the notice be taken to ensure that no further material enters surface or underground water.

(3) A person who fails to comply with a notice referred to in subsection (2) is guilty of an offence.

Penalty: where the offender is a natural person—Division 1 fine

where the offender is a body corporate—a fine not exceeding \$1 000 000.

(4) Where a person fails to comply with a notice the Minister may enter the land, vessel or aircraft and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the person to the Minister.

**DIVISION IV—GENERAL****Disposal, etc., of material authorized by regulation**

54. (1) The Governor may, by regulation, authorize the disposal, escape or storage of material of a specified class in contravention of Division II.

(2) A regulation may—

(a) be restricted in its operation to a particular part of the State;

- (b) specify the circumstances under or in which the disposal, escape or storage is authorized;
- (c) specify conditions, restrictions or limitations, or empower the Minister to specify conditions, restrictions or limitations, subject to which the disposal, escape or storage is authorized.

#### **Action by Minister in case of unauthorized release of material**

55. (1) Where the Minister knows of, or has reason to suspect, the unauthorized entry of material into surface or underground water and is of the opinion that the material has degraded or is likely to degrade the water, the Minister may, by notice served on the owner of the land, vessel or aircraft from which the material emanated, direct the owner to take such action as the Minister specifies in the notice—

- (a) to prevent further disposal or escape of material;
- (b) to remove material that has entered the water from the water or from land on which the material has been deposited.

(2) A person on whom a notice is served is entitled to enter any land in order to comply with the notice.

(3) If the owner fails to comply with a notice the Minister may enter the land, vessel or aircraft and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the owner to the Minister.

(4) In an emergency the Minister is not obliged to serve notice under subsection (1) but may enter the land, vessel or aircraft and take such action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the owner to the Minister.

#### **Risk of escape of material from land etc.**

56. (1) Where the Minister is of the opinion that precautions should be taken to ensure that material on or under any land or on any vessel or aircraft does not enter any surface or underground water, the Minister may by notice served on the owner of the land, vessel or aircraft direct him or her to take such action (to be specified in the notice) as the Minister considers necessary.

(2) A person who fails to comply with a notice under subsection (1) is guilty of an offence.

Penalty: where the offender is a natural person—Division 3 fine

where the offender is a body corporate—Division 1 fine.

(3) Where the owner fails to comply with a notice the Minister may enter the land, vessel or aircraft and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the owner to the Minister.

## **PART VI**

### **OBSTRUCTION AND MAINTENANCE OF WATERCOURSES AND LAKES**

#### **Interpretation**

57. (1) In this Part, unless the contrary intention appears—

- “lake” includes a reservoir that is vested in or is under the management and control of a public authority;



“public authority” means—

- (a) the Crown;
- (b) a statutory authority declared by regulation to be a public authority:

“the relevant authority” means—

- (a) in the case of a watercourse or lake vested in or under the management and control of a public authority—the public authority;
- (b) in any other case—the Minister:

“unauthorized object” or “unauthorized obstruction” means an object or obstruction that has not been authorized under this Part, the *Planning Act, 1982*, or the *Harbors Act, 1936*.

(2) For the purposes of this Part floodwaters overflowing the banks of a watercourse or lake will not be taken to be part of the watercourse or lake.

### Application of Part

58. This Part applies to all proclaimed watercourses and lakes and to an unproclaimed watercourse or lake that is vested in or under the management and control of a public authority.

### Obstructions, etc., in watercourses and lakes

59. (1) A person must not—

- (a) erect, construct or place any building or structure in a watercourse or lake or on the bank of a watercourse or lake;
- (b) place objects on or near the bank of a watercourse or lake to control flooding from the watercourse or lake;
- (c) deposit any object or solid material in a watercourse or lake;
- (d) obstruct a watercourse or lake in any other manner;
- (e) alter the course of a natural watercourse;
- (f) destroy vegetation growing in the bed or on the banks of a watercourse or lake;
- (g) excavate the bed or bank of a natural watercourse or lake or excavate near to the bank of a natural watercourse or lake so as to create a risk that water may break through the bank;

or

(h) remove rock, sand or soil—

- (i) from the bed or bank of a natural watercourse or lake;

or

- (ii) from an area near to the bank of a natural watercourse or lake so as to create a risk that the water may break through the bank,

unless authorized to do so—

- (i) by permit issued by the relevant authority under this Part;

or

- (j) under the *Planning Act, 1982*, or the *Harbors Act, 1936*.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(2) It is not an offence under subsection (1) to destroy vegetation in pursuance of an obligation under the Animal and Plant Control (Agricultural Protection and Other Purposes) Act, 1986.

### Permits

**60.** (1) An application for a permit must be in a form approved by the relevant authority and must be accompanied by the prescribed fee.

(2) A permit is subject to such conditions as the relevant authority thinks fit and are specified in the permit.

(3) The relevant authority may vary a permit with the consent of the holder of the permit.

### Contravention, etc., of permit

**61.** (1) A person who contravenes or fails to comply with a condition of a permit is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(2) If the relevant authority is satisfied that the holder of a permit or a person acting on behalf of the holder of a permit issued by the authority has committed an offence against subsection (1), the authority may vary or revoke the permit.

### Obligation of owner to remove obstruction

**62.** (1) The relevant authority may, by notice served on the owner of land on which a watercourse or lake is situated or that adjoins a watercourse or lake, direct the owner—

(a) to remove unauthorized obstructions from the watercourse or lake or from its banks and to remove any unauthorized object placed on or near the banks to control flooding;

(b) to maintain the watercourse or lake in good condition;

or

(c) where a contravention of section 59 (1) (e), (f), (g) or (h) has occurred—

(i) to return a natural watercourse to its original course;

(ii) to replant vegetation in the bed or on the banks of the watercourse;

or

(iii) to replace rock, sand or soil excavated or removed from the bed or banks of a watercourse or lake or from an area near to such banks,

as the case requires.

(2) Where the relevant authority is of the opinion that some person other than the owner of the land should take responsibility for the removal of an obstruction or object or the maintenance of a watercourse or lake, the authority may serve a notice under subsection (1) on that person.

(3) A person who fails to comply with a notice is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(4) Where the owner or other person on whom a notice has been served fails to comply with the notice the relevant authority may enter the land and take the action specified in the notice and such other action as the authority considers appropriate in the circumstances and the authority's costs will be a debt due by the owner or other person to the authority.

## PART VII

### WELLS

#### Application of this Part

63. (1) This Part does not apply to, or in relation to, a well of a class specified in schedule 2.

(2) A provision of this Part does not apply to, or in relation to, a well of a class declared by proclamation to be excluded from the operation of that provision.

#### Drilling and maintenance of wells

64. (1) Subject to subsection (2), a person must not—

- (a) drill a well;
- (b) repair, replace or make any alterations to the casing, lining or screen of a well;
- or
- (c) plug, backfill or seal a well,

unless—

(d) he or she is a licensed well driller or is supervised in carrying out the work by a licensed well driller;

and

(e) the work is carried out pursuant to a permit issued by the Minister.

(2) Subsection (1) does not apply to a person in relation to a well if—

- (a) that person is the owner of the land on which the well is situated or is the employee or sharefarmer of the owner of that land;
- (b) the well gives access to underground water the surface of which is at atmospheric pressure and the salinity of which exceeds 1 800 milligrams per litre;

and

(c) the work is carried out solely for the purposes of maintenance and does not involve—

- (i) substantial alteration to the casing, lining or screen of the well or the replacement of the casing, lining or screen with a casing, lining or screen of substantially different design or specifications;
- (ii) a substantial repositioning of the casing, lining or screen;
- or
- (iii) deepening the well by more than 1.5 metres.

(3) The owner of land on which a well is situated must ensure that the well (including the casing, lining and screen of the well) is properly maintained.

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

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(5) It is a defence to prosecution for an offence involving a contravention of subsection (1) to prove that—

(a) the work comprising the alleged offence was carried out to prevent or reduce pollution of water in the well and that in the circumstances it was unreasonable to expect the defendant—

(i) to have obtained the services of a licensed well driller;

or

(ii) to have obtained a permit,

before the work was carried out;

(b) the work was carried out in accordance with the regulations (if any);

and

(c) the Minister was given written notice of the work as soon as practicable after it was completed.

(6) It is a defence to prosecution for an offence involving a contravention of subsection (1) to prove that—

(a) the work comprising the alleged offence was carried out pursuant to a permit issued by the Minister;

(b) the work comprising the alleged offence was carried out by or under the supervision of the owner of the land on which the well is situated;

(c) at the time of the alleged offence the well was not more than 15 metres in depth (or such other depth as may be prescribed);

and

(d) the work was carried out in accordance with the regulations (if any).

#### Well driller's licences

65. (1) The Minister may grant a well driller's licence to a natural person who—

(a) is of or over the age of 18 years;

(b) holds prescribed qualifications;

and

(c) is, in the Minister's opinion, a fit and proper person to hold such a licence.

(2) An application for a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.

(3) A licence is subject to such conditions as are prescribed from time to time by regulation and to such further conditions as are specified in the licence by the Minister.

(4) The Minister may cancel a well driller's licence by notice served on the holder of the licence if the Minister is satisfied that that person is no longer a fit and proper person to hold such a licence.

#### Renewal of licence

66. (1) A licence may be renewed from time to time.

(2) An application for renewal of a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.

**Permits**

67. (1) An application for a permit to drill a well or carry out other work in relation to a well must be in a form approved by the Minister and must, if a fee has been prescribed, be accompanied by the prescribed fee.

(2) A permit is subject to such conditions as the Minister thinks fit and are specified in the permit.

(3) The Minister may vary a permit with the consent of the holder of the permit.

**Contravention of conditions**

68. (1) A person who contravenes or fails to comply with a condition of a well driller's licence or a permit is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(2) If the Minister is satisfied that the holder of a well driller's licence or a permit, or a person acting on behalf of such a person, has contravened or failed to comply with a condition of the licence or permit or has committed an offence against any provision of this Act, the Minister may vary, suspend or cancel the licence or vary or revoke the permit.

**Requirement for remedial work**

69. (1) Where the Minister is satisfied that the water of a well is likely to be degraded or wasted because of a defect in the well or in the casing, lining or screen of the well or because the well or the casing, lining or screen is in need of maintenance, the Minister may, by notice served on the owner of the land on which the well is situated, direct that the work or other action specified in the notice be carried out or taken to remedy the problem.

(2) If, in the Minister's opinion, the defect resulted from work carried out by a licensed well driller, the Minister may serve notice under subsection (1) on the well driller (but notice must not be served under this subsection later than six months after the work was carried out.)

(3) A well driller on whom a notice is served is entitled to enter the land on which the well is situated in order to comply with the notice.

(4) A person who fails to comply with a notice is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(5) If a person on whom a notice has been served fails to comply with the notice the Minister may enter the land on which the well is situated and carry out the necessary work or take the necessary action and any other work or action that the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the person to the Minister.

**PART VIII****APPEALS****Right of appeal**

70. (1) The following rights of appeal lie to the Tribunal—

- (a) an applicant for the grant or renewal of a licence or the issue of a permit may appeal to the Tribunal against a refusal to grant or renew the licence or to issue the permit or the imposition of conditions in relation to the licence or permit;

- (b) the holder of a licence or permit may appeal to the Tribunal against the variation, suspension or cancellation of the licence or the variation or revocation of the permit;
- (c) a person—
- (i) who is likely to be detrimentally affected by the grant or renewal of a licence under Part V in relation to the use of water to which he or she has riparian rights or would, but for this Act, have such rights;
- and
- (ii) who, in a submission to the Minister under section 51 (2), has opposed the granting or renewal of the licence or has expressed the view that certain conditions should be attached to such a licence,
- may appeal to the Tribunal against the granting or renewal of the licence or the Minister's failure to attach those conditions to the licence;
- (d) a person who is subject to a prohibition or restriction under section 40 (1) in carrying on a business may appeal to the Tribunal against the prohibition or restriction;
- (e) a person who is subject to a direction of the Minister under section 40 (4), 55 (1), 56 (1) or 69 (1) or a direction of the Minister or a public authority under section 62 (1) may appeal to the Tribunal against the direction;
- (f) a person who is subject to a restriction under section 40 (4) may appeal to the Tribunal against the restriction.

(2) The Crown in right of the State of Victoria has a right of appeal to the Tribunal against a decision to grant or renew a licence or to issue a permit on the ground that the decision is contrary to the Border Groundwaters Agreement approved by the *Groundwater (Border Agreement) Act, 1985*.

(3) An appeal under subsection (1) must be instituted in the prescribed manner and form within six weeks of the decision, direction, prohibition or restriction appealed against or within such further time as the Tribunal considers to be reasonable in the circumstances.

(4) An appeal under subsection (2) must be instituted in the prescribed manner and form within two months after the Victorian Government receives notice of the decision.

(5) On an appeal the Tribunal may—

- (a) affirm or vary the decision, direction, prohibition or restriction appealed against, or substitute any decision, direction or restriction that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Minister or public authority for further consideration.

#### **Decision or direction may be suspended pending appeal**

71. (1) Where a decision, direction, prohibition or restriction has been made, given or imposed by the Minister or a public authority and the Minister, the public authority or the Tribunal is satisfied that an appeal against the decision, direction, prohibition or restriction has been instituted, or is intended, the Minister, the public authority or the Tribunal may suspend the operation of the decision, direction, prohibition or restriction until the determination of the appeal.

(2) A suspension granted under subsection (1) by the Minister, a public authority or the Tribunal may be terminated by the Minister, the public authority or the Tribunal (as the case requires) at any time.

## PART IX

## MISCELLANEOUS

**False or misleading information**

72. A person who furnishes information to the Minister or an authorized officer under this Act that is false or misleading in a material particular is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

**Protection of Crown property**

73. A person who interferes with any property of the Crown used in, or in connection with, the administration of this Act is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

**Vicarious liability**

74. For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

**Offences by bodies corporate**

75. Where a body corporate is guilty of an offence against this Act, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence where the offender is a natural person.

**Evidentiary**

76. (1) An allegation by the prosecution in proceedings for an offence against this Act that on a particular date or during a particular period—

(a) the defendant (or any other person) was, or was not, the holder of a licence or permit under this Act;

(b) a particular person was, or was not, the owner of any specified land, vessel or aircraft;

(c) a specified watercourse, lake or well was, or was not, a proclaimed watercourse, lake or well;

or

(d) a particular person was an authorized officer,

must, in the absence of proof to the contrary, be accepted as proved.

(2) A document that purports to have been certified by the Minister or an authorized officer to be an accurate copy of a licence or permit granted or issued under this Act must, in the absence of proof to the contrary, be accepted in proceedings for an offence against this Act as an accurate copy of that licence or permit.

**General defence**

77. (1) It is a defence to a charge of an offence against this Act if the defendant proves—

(a) that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence;

and

(b) in the case of an alleged offence involving the disposal or escape of material—that, as soon as practicable after the disposal or escape, the defendant notified the Minister in writing of the time and place at which the disposal or escape occurred and the nature and quantity of the material involved.

(2) A defence is not available under this section to an offence against section 43 (2) or 44 (2).

#### **Proceedings for offences**

78. (1) Subject to subsection (2), an offence against this Act is a summary offence.

(2) An offence against this Act for which the maximum penalty prescribed by this Act equals or exceeds a division 1 fine is a minor indictable offence.

(3) Proceedings for an offence against this Act—

(a) may be commenced by an authorized officer or any other person with the authorization in writing of the Minister;

and

(b) must be commenced within five years after the date on which the offence is alleged to have been committed.

(4) An apparently genuine document purporting to be under the hand of the Minister and to authorize the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorization.

#### **Money due to Minister, etc., first charge on land**

79. (1) Money that is due to the Minister under this Act in respect of—

(a) water taken for use on any land whether pursuant to a licence or not;

(b) material disposed of or permitted to escape onto or from land (whether directly into water or not) or material stored below ground level on land pursuant to a licence;

(c) an act or activity authorized by licence under Part V in relation to land;

or

(d) the Minister's costs in carrying out emergency measures on land,

is a first charge on the land.

(2) Money that is due to the Minister or a public authority in respect of the Minister's or the authority's costs in carrying out the requirements of a notice served on the owner of land is a first charge on the land.

#### **Protection from personal liability**

80. (1) A person engaged in the administration of this Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the person or by a body of which he or she is a member, of a power, function or duty under this Act.

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

#### **Exemption from Act**

81. (1) The Governor may, by regulation—

(a) exempt, or empower the Minister to exempt, a person, or a person of a class, from the operation of any provision of this Act;

(b) declare that this Act, or any provision of this Act, does not apply to, or in relation to, a watercourse, lake or well, or a watercourse, lake or well of a class, specified in the regulation.

(2) An exemption under subsection (1) (a) is subject to such limitations and conditions as are specified in the regulation.



**Service of notices**

**82.** A notice required or authorized by this Act to be served on a person may be served as follows—

- (a) by personal service on the person or an agent of the person;
- (b) by leaving it for the person at his or her place of residence or business with someone apparently over the age of 16 years;
- (c) by serving it by post on the person or an agent of the person at his or her last known address.

**Regulations**

**83. (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) make provisions for, or relating to, the composition, powers, functions and procedures of water resources committees;
- (b) divide licences into classes and attach different conditions to different classes of licence;
- (c) make provisions for, or relating to, the transfer of licences;
- (d) make provisions for, or relating to, the assessment of the quantity of water taken by a licensee;
- (e) make provisions for, or in relation to—
  - (i) the adjustment of future water allocation where the licensee has used excess water or has not fully used previous allocations;
  - (ii) the taking of water in excess of the water allocation (including charges at penalty rates for taking excess water);
  - (iii) the taking of water from a watercourse, lake or well that is surplus to the quantity that the Minister anticipated would be available from the watercourse, lake or well;
- (f) make provisions for, or in relation to, the keeping of records and the provision of information by licensees to the Minister;
- (g) provide for the payment and recovery of fees—
  - (i) for the installation, maintenance and testing of water meters or for any other service provided by the Minister;or
  - (ii) in relation to any other matter connected with the administration of this Act;
- (h) provide for the payment and recovery of rental for water meters;
- (i) make provisions for, or in relation to, flood management including the registration of flood maps in the General Registry Office;
- (j) make provisions for, or in relation to, the safety of reservoirs and dams;
- (k) prescribe fines—
  - (i) not exceeding a division 5 fine, for contravention of or failure to comply with a regulation under paragraph (j);
  - (ii) not exceeding a division 8 fine for contravention of or failure to comply with any other regulation.

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(3) A regulation under this Act may confer on the Minister such powers, authorities or discretions as the Governor thinks fit.

(4) A regulation may exclude a particular channel, or a channel of a particular class, from the definition of the term "watercourse" as used throughout this Act or as used in some, but not other, provisions of this Act.

## SCHEDULE 1

1. The agreement (as amended from time to time) approved by the *Murray-Darling Basin Act, 1983*.
2. The Border Groundwaters Agreement (as amended from time to time) approved by the *Groundwaters (Border Agreement) Act, 1985*.
3. *The Pulp and Paper Mill Agreement Act, 1958*.
4. *The Pulp and Paper Mill (Hundred of Gambier) Indenture Act, 1961*.
5. *The Pulp and Paper Mill (Hundreds of Mayurra and Hindmarsh) Act, 1964*.

## SCHEDULE 2

1. A well that is 2.5 metres or less in depth (or such other depth as may be prescribed).
2. A well—
  - (a) that is not used to provide a supply of water;and
  - (b) in relation to which requirements imposed by or under the *Mining Act, 1971*, or the *Petroleum Act, 1940*, are in force;
3. A well of one or more of the following classes if the well is not used to provide a supply of water—
  - (a) a trench for the laying of pipes, cables or other equipment in relation to the supply of water, gas or electricity or the provision of sewerage or drainage;
  - (b) a drain that is under the control of the Commonwealth or State Government or a municipal or district council;
  - (c) an excavation for or in relation to a building or for a swimming pool;
  - (d) a private mine within the meaning of the *Mining Act, 1971*;
  - (e) an excavation drilled for engineering or survey purposes if the excavation is not in a part of the State excluded from the operation of this paragraph by proclamation and the excavation is not more than 15 metres in depth;
  - (f) an excavation for the purposes of a temporary toilet;
  - (g) an excavation (not exceeding 15 metres in depth) for the installation of cathodic protection anodes or the measurement of pressure by means of a piezometer.
4. (1) A well drilled to a depth not exceeding the depth of the water table nearest to the surface for the purpose of obtaining samples of water for scientific research.  
(2) An excavation (not exceeding three metres in depth) for the purposes of conducting an underground test or extracting material for testing.
5. A well of a class declared by proclamation to be excluded from the operation of Part VII.

## SCHEDULE 3

*Transitional Provisions*

1. A proclamation under section 25 of the repealed Act (declaring a watercourse or lake to be a Proclaimed Watercourse) that was in force immediately before the commencement of this Act continues in force as if it had been made under section 33 (1) of this Act.
2. A proclamation under section 41 of the repealed Act (declaring an area in the State to be a Proclaimed Region) that was in force immediately before the commencement of this Act continues in force as if it had been made under section 33 (2) of this Act.
3. A licence granted under section 29 or 43 of the repealed Act and in force immediately before the commencement of this Act continues in force as if it had been granted under section 35 of this Act.
4. An order in force under section 62 of the repealed Act immediately before the commencement of this Act continues in force as if it were a licence granted under section 49 of this Act until the expiration of the period specified in the order or until the expiration of six months after the commencement of this Act whichever occurs later.
5. An authorization in force under section 40c (1) of the repealed Act immediately before the commencement of this Act continues in force as if it were a permit issued under section 60 of this Act.
6. A permit in force under section 49 (1) of the repealed Act immediately before the commencement of this Act continues in force as if it had been issued under section 67 of this Act.
7. A Well Driller's Licence in force under section 58 (1) of the repealed Act immediately before the commencement of this Act continues in force as if it had been granted under section 65 of this Act.
8. An order in force under section 53 of the repealed Act immediately before that Act was repealed remains in force until it expires or is revoked by the Minister and a person who contravenes or fails to comply with such an order is guilty of an offence.  
Penalty: where the offender is a natural person—Division 6 fine  
where the offender is a body corporate—Division 5 fine.
9. A Water Resources Advisory Committee in existence immediately before the commencement of this Act will continue in existence as if it had been established under this Act until its members vacate office or it is dissolved by the Minister by notice in the *Gazette*.
10. A notice served on the owner of land under section 62 (1) (a) cannot apply to an obstruction comprising a wall or embankment constructed before the commencement of this Act for the purpose of damming the flow of water in a watercourse.

## APPENDIX

## DIVISIONAL PENALTIES

At the date of assent to this Act divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years .....	\$60 000
2	10 years .....	\$40 000
3	7 years .....	\$30 000
4	4 years .....	\$15 000
5	2 years .....	\$8 000
6	1 year .....	\$4 000
7	6 months .....	\$2 000
8	3 months .....	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

*Note: This appendix is provided for convenience of reference only.*

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

D. B. DUNSTAN, Governor