

CONTROL OF WATERS ORDINANCE 1961.

No. 6 of 1962.

An Ordinance to amend the *Control of Waters Ordinance 1938-1959*.

[Assented to 25th January, 1962.]

BE it ordained by the Legislative Council for the Northern Territory of Australia, in pursuance of the powers conferred by the *Northern Territory (Administration) Act 1910-1961*, as follows:—

Short title
and citation.

1.—(1.) This Ordinance may be cited as the *Control of Waters Ordinance 1961*.

(2.) The *Control of Waters Ordinance 1938-1959* is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance as amended by this Ordinance may be cited as the *Control of Waters Ordinance 1938-1961*.

Commence-
ment.

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.*

Definitions.

3. Section two of the Principal Ordinance is amended—

(a) by inserting after the definition of “Bed” and “Banks” the following definition:—

“ ‘Dam’ means an earth tank or excavation in the ground used for storing water;”;

(b) by inserting after the definition of “Domestic purposes” the following definition:—

“ ‘Embankment’ means a wall which interferes with the flow of water;”;

(c) by omitting the definition of “Licence” and inserting in its stead the following definition:—

“ ‘Licence’ means a licence granted under this Ordinance;”;

* The date fixed was 30th May, 1962 (see *Government Gazette* No. 25 of 30th May, 1962, p. 96).

(d) by inserting after the definition of "Real Property Acts" the following definitions:—

“ ‘The Director of Water Resources’ means the person for the time being holding, or performing the duties of, the office of Director of Water Resources, Water Resources Branch, Northern Territory Administration Division, Department of Territories, under the *Public Service Act* 1922-1960;

“ ‘Trading place’ means a trading place where letters and articles are ordinarily lodged for transmission by post;” and

(e) by adding at the end of the definition of "Work" the words " and includes a machine, pump, conduit or other appliance or apparatus used or installed for the conservation, supply or utilization of water from a watercourse or lake, the drainage of lands, or the prevention of floods."

4 Section three of the Principal Ordinance is amended by inserting in sub-section (2.), after the word "dam", the word " , embankment ".

Natural waters to vest in the Crown.

5 Sections thirteen and fourteen of the Principal Ordinance are repealed and the following sections inserted in their stead:—

" 13.—(1.) Any owner or occupier of land on which any work is constructed, used or installed or is proposed to be constructed, used or installed for the purpose of—

Certain owners and occupiers may apply for licences to divert and use water and construct w rks.

(a) water conservation, irrigation, water supply or drainage;

(b) the prevention of flooding of land by water; or

(c) changing the course of a watercourse,

may make application in writing to the Administrator for a licence to construct, install and use the work or, if the work is constructed or installed, to use the work, and to take, use and dispose of (either for his own use or for the use of occupiers of lands in the neighbourhood of the site or proposed site of the work) the water contained, conserved or obtained by the work.

" (2.) The application shall be signed by the applicant or his solicitor or other agent, shall specify the land in respect of which the application is made and shall contain such particulars as are prescribed.

" (3.) The application shall, in such cases as are prescribed, be accompanied by a statutory declaration verifying the statements made in the application.

“ (4.) The Administrator may require the applicant to supplement the application with plans and sections of the proposed work.

Administrator
may grant
application or
require notice
to be published.

“ 14.—(1.) Where, on an application being made pursuant to the last preceding section, the Administrator—

- (a) is satisfied that it is not detrimental to the interest of the public to grant the application; and
- (b) is satisfied that the granting of the application would not adversely affect the interests of any other owner or occupier of land; and
- (c) is satisfied that the need for a licence in respect of all or part of the work or proposed work is so urgent as to justify the granting of the licence without requiring the publishing of a notice of the application in the manner specified in paragraph (b) of sub-section (3.) of this section,

the Administrator may grant the application either wholly or in part.

“ (2.) Where, on an application being made pursuant to the last preceding section, the Administrator is satisfied that it is detrimental to the interest of the public to grant the application, the Administrator shall not grant the application and shall notify the applicant in writing—

- (a) that he is so satisfied; and
- (b) that the application is not granted.

“ (3.) Where, on an application being made pursuant to the last preceding section, the Administrator is satisfied that it is not detrimental to the interest of the public that the application should be granted but is not satisfied as to a matter specified in paragraph (b) or (c) of sub-section (1.) of this section, the Administrator shall, in writing—

- (a) notify the applicant that he is not so satisfied;
- (b) require the applicant to publish notice of the application in the *Gazette* and in at least one issue of a newspaper circulating generally in the neighbourhood of the land or in the Territory stating the time appointed by the Administrator within which objections to the application may be lodged; and
- (c) appoint a time, being a time not less than thirty days from the date on which notice of the application is first published, within which objections may be received.

“ 14A. Within the time advertised for lodging objections an owner or occupier of land may, in writing signed by him addressed to the Administrator, object to the application being granted, and submit to the Administrator the grounds of his objections. Objections.

“ 14B. The Administrator, after due inquiry into and consideration of any objection to the application, may refuse the application or grant it wholly or in part. Inquiry.

“ 14C. If the Administrator grants the application under section fourteen or section fourteen B of this Ordinance he shall cause a licence to be issued to the applicant in respect of— Issue of licence.

- (a) the work, the land and the use of the water specified in the application; or
- (b) the work and of so much of the land and the use of so much water as he thinks fit.

“ 14D. A licence issued under the last preceding section shall be in the prescribed form and is subject to— Licence issued subject to conditions.

- (a) section sixteen of this Ordinance;
- (b) such conditions as are prescribed; and
- (c) such further conditions (if any) as the Administrator determines and specifies in the licence.

“ 14E. Where two or more owners or occupiers desire to construct any work to which this Ordinance applies, they may apply for a licence in the manner prescribed for a single owner or occupier, and the application shall be dealt with in the same manner as if it were the application of a single occupier. Application by two or more occupiers.

“ 14F. Subject to this Ordinance a licence shall remain in force for such period not exceeding ten years as is specified in the licence and may be renewed from time to time. Period of licence.

“ 14G. Subject to this Ordinance and to the conditions contained in the licence, the holder of a licence in respect of any work— Rights and duties of holder of licence.

- (a) shall have during his lawful occupation of the work but so far only as the work is constructed or maintained on the land occupied by him, the quiet enjoyment and the sole and exclusive use of the work as against all other persons; and
- (b) shall be entitled to take, use and dispose of the water contained in or obtained by the work.

Licence holder may apply for permission to make alterations.

“ 14H.—(1.) The holder of a licence shall not, during the currency of his licence, make alterations in connexion with the work other than repairs or alterations necessary to maintain the work in good order or on account of any sudden or unforeseen emergency unless—

- (a) he has made application to the Administrator for an amended licence allowing the alterations specified in the application; and
- (b) the Administrator has granted the application and caused an amended licence to be issued to the licence holder.

“ (2.) Where an application is made pursuant to the last preceding sub-section, the Administrator shall deal with that application as if it were an application under section thirteen of this Ordinance.”

Certain things not to be done in water control districts without permission.

6. Section sixteen B of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

“ (6.) Sub-section (1.) of this section does not apply to a person who does anything forbidden by that sub-section if the thing he does is done in the exercise of rights conferred on him by a licence issued to him under section fourteen c of this Ordinance.”

Administrator may require certain matters to be rectified.

7. Section sixteen c of the Principal Ordinance is amended by inserting in sub-section (1.), after the word “has”, the words “, in contravention of the last preceding section”.

Administrator may authorize entry on land.

8. Section sixteen F of the Principal Ordinance is amended by omitting the words “, whether by himself or his employees, agents, licensees, servants or contractors with or without horses, carriages, machinery and assistants, from time to time.”

9. After section sixteen F of the Principal Ordinance the following sections are inserted:—

Entry on land to ascertain water resources.

“ 16FA. The Administrator may authorize in writing any person to enter upon land in a water control district or an officer or employee of the Crown to enter upon land not in a water control district for the purpose of ascertaining the water resources of the Territory and for that purpose to do any or all of the following things:—

- (a) make surveys, take levels, carry out pumping tests, take samples of soil, take samples of water and obtain any other information that the Administrator considers necessary or desirable to be obtained;

- (b) construct, install, inspect, operate and maintain gauges, instruments and appliances; and
- (c) construct access tracks, landing grounds for helicopter operations, fuel depots and temporary camps that the Administrator considers necessary or desirable to be constructed.

“ 16FB. An authorization under either of the last two preceding sections permits entry for the purpose of the section under which it is made by the person or officer or employee of the Crown authorized and by workmen, agents, servants or contractors engaged by that person or officer or employee of the Crown with or without equipment or assistants.

Authorizations for limited purposes.

“ 16FC.—(1.) Where damage is caused to the owner or occupier of land by an officer, employee or agent of the Crown in the exercise of a power conferred by section eleven, sixteen F or sixteen FA of this Ordinance the Commonwealth shall pay to the owner or occupier of the land, as the case requires, such amount (if any) as is determined by the Administrator to be the amount of the damage.

Compensation.

“ (2.) Where the owner or occupier of the land is dissatisfied with the determination of the Administrator, he may appeal from the determination to a court of competent jurisdiction.

“ (3.) The court shall decide the matter of the appeal and may either dismiss the appeal or vary the determination appealed from and may make such order as to the costs of the appeal as the court thinks proper.

“ 16FD.—(1.) Where damage is caused to the owner or occupier of land by a person not being an officer, employee or agent of the Crown, in the exercise of a power conferred by section eleven or sixteen F of this Ordinance the Commonwealth is not liable to pay compensation in respect of the damage.

Owners may recover from authorized persons.

“ (2.) Where damage referred to in the last preceding subsection is caused, the owner or occupier of the land may bring proceedings against the person who caused the damage for recovery of compensation in respect of the damage.

“ 16FE. Notwithstanding anything contained in section sixteen FC of this Ordinance the Commonwealth is not liable to pay compensation to the owner or occupier of land in respect of damage caused by the exercise of a power for a purpose set out in paragraph (d) of sub-section (1.) of section eleven of this Ordinance.”

Commonwealth not liable for compensation in certain cases.

10. Section sixteen G of the Principal Ordinance is repealed and the following section inserted in its stead:—

Obstructing,
&c., authorized
person or
officer.

“16G. A person shall not obstruct or hinder a person authorized under section sixteen F or sixteen FA of this Ordinance or a workman, agent, servant or contractor engaged by that person in the course of carrying out or preparing to carry out any of the things he is so authorized to do.”.

11. Section sixteen H of the Principal Ordinance is repealed and the following section inserted in its stead:—

Registration of
drillers.

“16H.—(1.) A person may make application to the Administrator to be registered as a driller.

“ (2.) An application for registration as a driller shall be—

(a) in writing; and

(b) in the prescribed form.

“ (3.) If the Administrator is satisfied that a person who has made application to be registered as a driller is a person to whom notice of the suspension of his certificate of registration as a driller has been given under this section and that the suspension is still in force, the Administrator may refuse to grant the application.

“ (4.) Subject to the last preceding sub-section, the Administrator shall issue a certificate of registration as a driller to a person who has made application to be registered as a driller in accordance with this section.

“ (5.) A certificate of registration as a driller issued under this section may be renewed from time to time for five years by application to the Administrator in writing before expiry, but unless so renewed expires five years after the date of issue or last renewal.

“ (6.) The Administrator may suspend a certificate of registration as a driller if the holder of the certificate has been convicted of an offence against this Ordinance.

“ (7.) Where the Administrator suspends a certificate of registration as a driller he shall give the holder of the certificate notice in writing of the suspension and the period of the suspension.

“ (8.) A person to whom a notice has been given in accordance with the last preceding sub-section shall, within thirty days after the date of the notice, deliver to the Administrator his certificate of registration as a driller.

“ (9.) A person shall not do work as a driller on or in connexion with an artesian or sub-artesian well unless—

(a) he is the holder; or

(b) he is working under the direction and to the instructions of a person who is the holder,

of a certificate of registration as a driller issued under this section which is not suspended and has not expired.

“ (10.) A person working as a driller on or in connexion with an artesian or sub-artesian well shall if required to do so by an officer authorized in writing by the Administrator—

(a) on demand produce his certificate of registration as a driller; or

(b) produce satisfactory evidence that he is working under the directions and to the instructions of a person who is the holder of a certificate of registration as a driller.

“ (11.) The holder of a certificate of registration as a driller shall, in respect of each artesian and sub-artesian well drilled or partly drilled by him or under his direction, supply to the Director of Water Resources, Darwin, such information as is prescribed to be supplied.

“ (12.) Where the information referred to in the last preceding sub-section is required to be in the form of a written statement it shall be supplied so as to reach the Director of Water Resources not later than the date on which the Director would in the ordinary course of the post receive the first mail posted to him after the expiry of the thirty days next succeeding—

(a) where work on a bore is abandoned or is suspended for not less than thirty days, the date of the abandonment or suspension; or

(b) where work on a bore is completed, the date on which the bore is completed.

“ (13.) Where the information referred to in sub-section (11.) of this section is required to be in the form of samples of rock formation, the information shall be supplied so as to reach the Director of Water Resources not later than the date on which the Director would receive the samples if they were taken by the driller to the trading place nearest the bore when the driller first visits that trading place after the expiry of the thirty days next succeeding—

- (a) where work on a bore is abandoned or is suspended for not less than thirty days, the date of the abandonment or suspension; or
- (b) where work on a bore is completed, the date on which the bore is completed.”.

12. After section sixteen H of the Principal Ordinance the following section is inserted:—

Persons not to remove substances from lakes or watercourses without a permit.

“ 16J.—(1.) A person shall not, except in accordance with a permit granted to him and in force under this section, remove a substance from the bed or banks of a watercourse or lake that is the property of the Crown unless authorized by this Ordinance or some other Ordinance or law in force in the Territory.

“ (2.) Subject to this section the Administrator or a person authorized by the Administrator to do so may grant a permit to a person authorizing that person to remove a substance from the bed or banks of a watercourse or lake that is the property of the Crown.

“ (3.) A permit granted under this section is subject to such conditions as are prescribed and to such further conditions, if any, as the Administrator specifies in the permit.

“ (4.) The regulations may prescribe fees payable in respect of permits or royalties in respect of substances permitted to be removed under permits or both but the Administrator may in his discretion waive payment of a fee so prescribed.

“ (5.) A permit granted under this section is not assignable, but where the person to whom the permit is granted is an employer the permit authorizes an employee of that person to remove a substance from the bed or banks of a watercourse or lake that is Crown property in accordance with the permit and the directions of the person to whom the permit is issued.”.

13. Notwithstanding the repeal effected by section five of this Ordinance, a licence granted and in force under the provision so repealed continues in force for the period specified in the licence, as a licence to divert and use water but is not a licence to construct a work.

Continuation
of existing
licences.

