



ANNO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1959

No. 49 of 1959

An Act to enact provisions for the purpose of preventing the contamination and deterioration of underground waters and for other purposes.

[Assented to 17th December, 1959.]

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

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as the "Underground Waters Preservation Act, 1959". Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement of Act.
3. The provisions of this Act are arranged as follows :— Parts.
 - PART I—Preliminary.
 - PART II—Wells.
 - PART III—Advisory Committee on Underground Water Contamination.
 - PART IV—Appeals.
 - PART V—General provisions.
4. (1) In this Act, unless the context otherwise requires, or some other meaning is clearly intended— Interpretation.

PART I.

“the advisory committee” means the advisory committee on underground water contamination constituted under Part III of this Act :

“the appeal board” means The Underground Waters Appeal Board constituted under Part IV of this Act :

“authorized person” means a person authorized, appointed, or employed by the Minister for the purpose of assisting in the administration or enforcement of the provisions of this Act, or a member of the advisory committee or of the appeal board :

“defined area” means an area defined by regulation pursuant to section 5 of this Act :

“deterioration” means deterioration in quality and “deteriorate” has a corresponding meaning.

“the director” means the person for the time being holding or acting in the office of Director of Mines :

“the Minister” means the person for the time being holding or acting in the office of Minister of Mines :

“occupier” in the case of unoccupied land means the person entitled to the occupation thereof :

“owner” where used in relation to land means—

(a) a person entitled to land for an estate of freehold possession ;

(b) a mortgagee in possession ;

(c) a lessee holding land under a lease granted by the Crown ; and

(d) a purchaser of land under an agreement for sale and purchase granted by the Crown.

“permit” means a permit for the time being in force under this Act :

“underground water” means water under the surface of the earth other than water in drains, structures, or other works constructed by man and includes water under the surface of the earth which is partly exposed in natural openings or depressions :

“well” means well, bore, hole, excavation or other opening made for the purpose of procuring a supply of underground water or for drainage, together with all works constructed or erected in connection therewith but does not include any well used exclusively for the drainage of roof or pavement run-off from a private dwelling or any soakage pit used for the disposal of effluent from any septic tank, or of waste water from a private dwelling.

(2) Where land of the Crown is under the control or management of a Minister, an instrumentality of the Crown or a public authority (other than the Minister of Mines) that Minister, instrumentality or public authority shall for the purposes of this Act be deemed to be the owner and the occupier thereof.

PART II.

WELLS.

5. The Governor may, by regulation—

- (a) prescribe any part of the State defined or indicated as a defined area for the purposes of this Act ;
- (b) alter any such defined area ;
- (c) abolish any such defined area ;
- (d) exempt from the provisions of this Act or any part thereof any well of less than a prescribed depth for the particular area in which the well is situated.

Proclaimed areas and prescribed depths.

6. (1) Every person, who at the time when an area becomes a defined area, is the occupier of land within that area on which there is at that time a well, shall within three months after the day on which the area becomes a defined area send a notice to the Minister in the prescribed form setting forth such information with respect to the well as is indicated in the form.

Notification of wells.

(2) This section shall apply to every well, whether the construction of that well is or is not complete.

7. (1) If within a defined area—

- (a) any well is sunk ; or
- (b) the casing of a well is removed, replaced, altered, slotted or repaired ; or
- (c) a well (whether complete or incomplete) is deepened ; or
- (d) a well which was not being used for drainage purposes at the time of the giving of a notice under section 6 is used for such purposes,

Permits for sinking wells etc.

without a permit having been obtained for such work or use, the owner and the occupier of the land on which the well is situated shall be guilty of an offence.

PART II.**Applications for permits.**

8. An application for a permit to do any such work as is mentioned in the preceding section or to use a well as mentioned in that section—

- (a) may be made by any owner or occupier of the land on which the well is situated ; and
- (b) shall be made to the Minister in the prescribed form ; and
- (c) shall contain all the information indicated in the form.

Power of Minister to refuse permit.

9. (1) The Minister may refuse an application for a permit or revoke a permit if he has reasonable cause to believe that the work or the use of the well for which the permit is sought would be likely to cause contamination or deterioration of any underground water.

(2) In deciding whether any underground water is likely to be contaminated or to become deteriorated the Minister, the advisory committee and the appeal board shall have regard to the nature of any fluid, gas, substance, effluent, waste or other matter or thing which may gain access to such water and the likelihood of any such fluid, gas, substance, effluent, waste, or other matter or thing adversely affecting the suitability of such water for any purpose for which it is likely to be used.

(3) An application shall not be refused except on the ground mentioned in subsection (1) of this section.

Duration of permit.

10. A permit shall remain in force until lawfully revoked.

Terms and conditions in permits.

11. (1) The Minister may include in a permit any terms and conditions (including terms and conditions as to the depth of a well and terms and conditions restricting the amount of underground water that may be taken from a well) which he deems necessary for preventing the contamination or deterioration of underground water.

(2) Any such terms and conditions shall be endorsed by the Minister on the permit or on a document annexed thereto.

(3) A person shall not contravene a term or condition of a permit.

Transfer and variation of permits.

12. (1) A permit shall not be transferred to any other person without the approval of the Minister being endorsed in writing on the permit, which shall be produced to him for that purpose.

(2) A permit for sinking a well shall specify the place where the well is to be sunk and shall not confer any right to sink a well in any other place unless the Minister by endorsement on the permit varies the terms of the permit for that purpose.

(3) Where the Minister approves the transfer of a permit or varies a permit under this section he may impose any additional terms and conditions which he deems necessary for preventing the contamination or deterioration of underground water. Any such conditions shall be endorsed on the permit or on a document annexed thereto.

13. (1) If the Minister refuses an application for a permit or revokes a permit or decides that he will grant a permit containing terms and conditions, he shall give notice thereof to the applicant for or holder of the permit, as the case may be. Appeals.

(2) An applicant for or holder of a permit aggrieved by any decision of the Minister under subsection (1) of this section may appeal to the appeal board against that decision.

14. (1) If an applicant has been refused a permit under this Part and has not appealed against such refusal, or if a permit has been refused, and such refusal has been upheld on appeal, another application for a permit to do the same or substantially the same work shall not be made by the same applicant until the expiration of twelve months after the date of the original application. Restriction on fresh application after refusal.

(2) Whether any work or purpose for which a permit is sought is the same or substantially the same as the work or purpose for which a permit has previously been sought shall be decided by the Minister and his decision shall be final.

15. (1) A permit shall not be required for repairs to the casing of a well which are urgently required to prevent contamination or deterioration of water, or to prevent waste of water or other loss. Emergency repairs.

(2) Where any such repairs are carried out to a well which is within a defined area, the occupier of the land on which the well is situated shall, forthwith after such repairs have been carried out, give notice to the Minister in the prescribed form giving such information as is indicated in the form.

16. The occupier of land within a defined area upon which a well exists shall maintain such well in good repair and condition. Maintenance of wells.

PART II.**Execution of work.**

17. Every holder of a permit shall ensure that any work for which a permit has been issued is executed in a proper and workmanlike manner in accordance with sound water well drilling practices.

Directions to owners or occupiers.

18. (1) If the Minister is satisfied that action by the owner or occupier of land within a defined area on which there is a well, is necessary or desirable for the purpose of preventing contamination or deterioration of underground water or preventing the use of contaminated or deteriorated underground water he may issue a notice to such owner or occupier.

(2) Any such notice may direct the person to whom it is addressed to do any one or more of the following things within the time specified, namely —

- (a) to close and shut off the supply of underground water from a well ;
- (b) to restrict the amount of underground water taken from a well in accordance with directions in the notice, or discontinue the use of a well ;
- (c) to disconnect all pipes or drainage works discharging into or around a well and take all necessary steps to prevent any fluid, gas, substance, effluent, waste or other matter or thing gaining access to the well ;
- (d) to close or to partly or entirely block or backfill a well ;
- (e) to treat any fluid, gas, substance, effluent, waste or other matter or thing in any way directed by the Minister before it is allowed access to a well.

(3) A person to whom any such notice is addressed may appeal to the appeal board against it.

(4) A person to whom any such notice is addressed shall, subject to section 34, comply with each direction therein.

Permit holders to submit returns.

19. (1) Any person to whom a permit to sink or deepen a well has been issued shall, within thirty days after the completion of the well, or, if the work is abandoned before completion of the well, within thirty days after work is so abandoned, or earlier upon request by the Minister, deliver a return in the prescribed form to the Minister, giving such particulars of the well as are indicated in the form, together with such samples of strata and waters as are prescribed.

(2) A person employed by an owner or occupier of land to sink or deepen a well for which a permit has been granted shall keep such records and samples as are prescribed, and

shall forthwith after the completion of the well, or earlier upon request, deliver such records and samples to the person to whom the permit in respect of that well has been issued.

20. Where a permit applied for under this Act relates to a well or proposed well on land held under a lease under the Pastoral Act, 1936-1953, the application shall not be granted unless the applicant satisfies the Minister that the Minister of Lands approves of the granting of the application.

Approval of
Minister of
Lands.

PART III.

ADVISORY COMMITTEE ON UNDERGROUND WATER
CONTAMINATION.

21. (1) The Minister shall appoint a committee to be called "The Advisory Committee on Underground Water Contamination".

The advisory
committee.

(2) The committee shall consist of—

- (a) an officer of the Department of Health ;
- (b) an officer of the Department of Engineering and Water Supply ;
- (c) an officer of the Department of Mines ;
- (d) a private well drilling contractor ;
- (e) a person to be nominated by the Council or Councils of the local governing area or areas affected by any question referred by the Minister under this Part ; provided that such person shall be a member of the committee only when the committee is investigating a question affecting the area or areas in respect of which that member is so appointed ; and
- (f) such other persons, one of whom shall be a landowner, as the Minister considers necessary.

(3) The members of the advisory committee shall hold office during the pleasure of the Minister.

(4) The members of the advisory committee shall elect one of their number as chairman.

(5) Three such members shall constitute a quorum.

PART III.

Minister may refer matters to advisory committee.

22. The Minister may refer to the advisory committee any questions relating to contamination or deterioration of underground waters, or arising in connection with the administration of this Act.

Duty of advisory committee.

23. When any matter is referred to the advisory committee the committee shall investigate it and submit a written report to the Minister containing its findings and recommendations.

PART IV.**PART IV.****APPEALS.**

The appeal board.

24. (1) For the purposes of this Act there shall be a board to be called "The Underground Waters Appeal Board", consisting of three members appointed by the Governor.

(2) If for any reason a member of the appeal board is unable to act as such during any period, or on any appeal or group of appeals the Governor may appoint a temporary member to act in his place.

Members of the appeal board.

25. The members of the appeal board shall be—

- (a) a person qualified as a barrister and solicitor, not being a person employed in the Public Service of the State, who shall be chairman ;
- (b) a qualified engineer, not being a person employed in the Public Service of the State ; and
- (c) a legally qualified medical practitioner experienced in bacteriology.

Provided that no person who is a member of the advisory committee shall be a member of the appeal board.

Term of office.

26. Subject to this Act every member of the appeal board shall be entitled to hold office as such until the thirtieth day of June, in the fourth year after the year in which he was appointed.

PART IV.

27. The Governor may dismiss any member of the appeal board from his office as such member, for mental or physical incapacity to perform his duties, neglect of duty, or conduct showing him to be unfit to remain a member of the board.

Removal from office.

28. (1) An act or proceeding of the appeal board shall not be invalid or be prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced, there was a vacancy in the office of any member.

Validity of acts of board.

(2) Every act and proceeding of the board shall, notwithstanding the subsequent discovery that any member thereof was not duly appointed or was disqualified or disentitled to act, be as valid as if such member had been duly appointed and was qualified and entitled to act and had acted as a member of the board.

29. A member of the board shall not sit on the hearing of any appeal respecting a well in which he has any proprietary or financial interest.

Disqualification by interest.

30. All members of the board shall sit on the hearing of every appeal, but a decision concurred in by any two members shall have effect as a decision of the whole board.

Majority decision.

31. (1) Members of the board shall be paid such fees as are from time to time fixed by the Governor.

Payment to members of board.

(2) The fees of the members of the board and other expenses of the board shall be paid out of moneys voted by Parliament for that purpose.

32. (1) Every appeal shall be instituted by a written notice of appeal addressed to the Minister.

Institution of appeal.

(2) A notice of appeal shall state the name of the appellant, the address at which notices may be served on him, and short particulars of the decision or direction appealed against and of the grounds of appeal.

(3) Every notice of appeal shall be served on the Minister not more than thirty days after the appellant is served with notice of the decision or direction appealed against.

(4) Forthwith after the receipt of a notice of appeal (whether complying with this Act or not), the Minister shall send a copy to the appeal board.

PART IV.**Effect of appeal.**

33. After a notice of appeal against a direction to do any act has been duly given, that direction shall be inoperative until the appeal board gives its decision on the appeal.

Procedure after notice of appeal.

34. (1) When an appeal has been duly instituted, the appeal board shall fix a time and place for the hearing thereof and shall give the appellant and the Minister at least seven days' notice of the time and place so fixed.

(2) At the hearing the appeal board shall give the appellant and the Minister an opportunity of submitting any relevant information, evidence, and arguments.

(3) Any party to the appeal may be represented by any other person.

Witnesses and evidence.

35. (1) The appeal board may, for the purpose of hearing and determining any appeal—

- (a) by notice signed by the chairman or a member or the secretary thereof require any person to attend before the board at a time and place stated in the notice ;
- (b) by a notice signed as aforesaid require any person to produce to the board any books, papers, or documents ;
- (c) inspect any books, papers or documents produced before the board and retain them for a reasonable time and make copies of any relevant matters therein ;
- (d) examine witnesses on oath or affirmation.

(2) The chairman or a member or the secretary of the appeal board may administer an oath or affirmation to any persons before the board.

(3) If a person—

- (a) who has been personally served with a notice to attend before the appeal board fails without reasonable excuse to attend as required by the notice ; or
- (b) misbehaves himself before the appeal board ; or
- (c) being called or examined by or before the board as a witness refuses to be sworn or to affirm, or refuses to answer any lawful question ; or
- (d) fails, without reasonable excuse, to produce any books, papers or documents mentioned in a notice personally served on him,

he shall be guilty of an offence.

PART IV.

36. Upon the hearing of an appeal, the appeal board shall have the following powers :—

Powers of
appeal board.

- (a) to adjourn the proceedings from time to time ;
- (b) to inform its mind in any way it deems just and convenient ;
- (c) to follow such practice and procedure as it deems just and convenient ;
- (d) to affirm, vary, or quash the decision or direction appealed against ;
- (e) to make any decision or give any direction which the board deems just either in substitution for or in addition to the decision or direction appealed against ;
- (f) to waive any of the provisions of section 33 which would otherwise prevent the hearing of the appeal.

37. (1) If the appeal board is satisfied that an appeal is frivolous or was instituted for the purpose of delaying the operation of a decision or direction and not for the purpose of contesting a decision or direction on its merits, the appeal board may order the appellant to pay a sum of money to the Minister as costs of the appeal.

Costs of
appeal.

(2) The Minister may recover any such sum of money as a debt by action brought in the name of "The Minister of Mines" in any court having jurisdiction in personal actions for amounts not less than the amount claimed by the Minister.

(3) Any money recovered in any such action shall be paid into the general revenue of the State.

38. Where a decision or direction which fixes a time for doing anything is affirmed on appeal, and the appeal board does not vary the time so fixed, that time shall run from the day when the appellant receives notice of the appeal board's decision.

Effect of
appeal on time
for compliance
with directions.

39. Forthwith after deciding an appeal the appeal board shall give a written notice of its decision to the appellant and to the Minister.

Notice of
decision.

PART V.

PART V.

GENERAL PROVISIONS.

Powers of entry.

40. (1) The Minister or the director or any authorized person may, at any reasonable time, enter and remain upon any land or premises within defined areas for the purpose of making any inspection which he deems it necessary or convenient to make in connection with the administration or enforcement of this Act.

(2) A person shall not hinder or resist an authorized person making or endeavouring to make an inspection under this section.

(3) An owner of land who is not in occupation thereof and has been directed under this Act to carry out any work on a well on such land, may, after giving seven days' notice to the occupier of the land, enter upon the land with or without servants, agents and workmen and carry out such work and remain on the land for such time as is necessary for that purpose.

False statements.

41. (1) A person who (whether orally or in writing) makes a false statement to the Minister or the director or an authorized person or a member of the police force, in connection with any matter arising under this Act shall be guilty of an offence.

(2) On a charge for an offence against this section it shall not be necessary for the prosecution to prove the state of mind of the defendant but the defendant shall be entitled to be acquitted if he proves that when making the statement he believed and had reasonable grounds for believing that it was true.

Service of notices.

42. (1) A notice required or permitted to be given to a person under this Act shall be in writing and may be served upon that person—

- (a) personally or by post ; or
- (b) by leaving it for him at his last or usual place of abode or business with some person apparently an inmate thereof or employed thereat and apparently not less than sixteen years of age ; or
- (c) where the person to be served is a body corporate, by serving it on the chairman, president, manager, secretary, or some other officer of such body in the same way as service on an individual might be effected.

(2) A notice to be served by post under this section may be addressed to the person to be served at his last known place of address, and service thereof shall be deemed to be effected at the time at which such notice would in the ordinary course of post be delivered at such address.

43. (1) The Minister may, with the written consent of the holder of a permit, vary any terms or conditions of that permit or include additional terms or conditions therein. Variation of permits and notices.

(2) Where pursuant to this Act the Minister gives directions to a person by a notice and imposes a time limit for compliance with those directions, the Minister may extend that time or withdraw the notice.

(3) No variation of a term or condition of a permit and no additional term or condition therein and no extension of a time specified in a notice shall have any effect unless endorsed by the Minister on the permit or notice or on a document annexed thereto.

(4) The holder of a permit or notice shall, upon the request of the Minister or of any authorized person, deliver the permit or notice to the Minister within such reasonable time as the Minister or authorized person specifies at the time of making the request.

(5) The Minister may retain a permit or notice delivered to him under this section for such reasonable period as is necessary to enable the Minister to endorse on the permit or notice any variation, addition or extension.

44. The Minister, upon proof to his satisfaction that any permit has been lost or destroyed, and on payment of such fee as may be prescribed, may issue to the holder of that permit, a duplicate in lieu of the permit which has been lost or destroyed. Duplicate permit.

45. Proceedings for offences against this Act shall be heard and determined in a summary way. Summary proceedings.

46. (1) A person who fails to comply with a duty imposed on him by or under this Act shall be guilty of an offence and liable to a fine not exceeding one hundred pounds, and to an additional fine not exceeding five pounds for every day on which such failure continues. Offences.

(2) Where the offence consists of failing to do any work as required by this Act or a notice under this Act, the court may, in proceedings for that offence, order that such work be done within a time fixed by the court.

PART V.

(3) If a person against whom any such order is made fails to comply with such order the Minister may himself do the work and recover the cost of so doing from the defendant as a debt by action brought in the name of "The Minister of Mines" in any court having jurisdiction in personal actions for amounts not less than the amount claimed.

(4) Where a defendant convicted of an offence against this Act is the holder of a permit, the court may, in addition to imposing any penalty, or making any other order authorized by law, cancel the permit.

Onus of proof.

47. (1) In any legal proceedings under this Act an averment in a complaint or pleading—

- (a) that any person is an authorized person ; or
- (b) that any person is an owner or occupier of land ; or
- (c) that any notice, direction or decision has been duly served on a person ; or
- (d) that any person is or is not the holder of a permit,

shall be *prima facie* evidence of that fact.

(2) All maps, permits, notices, plans or copies thereof which are signed or purport to be signed by the director and to be certified correct by him, shall, without proof of his signature or official capacity, be *prima facie* evidence of the matters therein appearing.

(3) *Prima facie* evidence of the contents of a notice, including the date of posting and service, may be given by the production of a document purporting to be a copy of the notice and having endorsed thereon a certificate purporting to be signed by the director to the effect that the document is a true copy of the notice posted to the person named therein at the address and on the day stated therein and that in the ordinary course of post the notice would be delivered at that address on the day stated therein.

Regulations.

48. (1) The Governor may by regulations prescribe any matters or things necessary or convenient to be prescribed for carrying this Act into effect and for securing the due observance thereof and for preventing evasions thereof and may, by any regulation, impose penalties recoverable summarily and not exceeding fifty pounds for breach of any regulation.

PART V.

49. (1) Nothing in the Pastoral Act, 1936-1953, or any amendment thereof shall affect the obligations of any person to comply with this Act.

Saving provision.

(2) Nothing in this Act shall affect the obligation of any person to comply with the provisions of the Health Act, 1935-1956, and the Pastoral Act, 1936-1953.

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

R. A. GEORGE, Governor.