

RIGHTS IN WATER AND IRRIGATION.

No. 48 of 1974.

AN ACT to amend the Rights in Water and Irrigation Act, 1914-1973, to make further provision to control the discharge of effluent into waters, and for purposes connected therewith.

[Assented to 26th November, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Rights in Water and Irrigation Act Amendment Act, 1974.* Short title and citation.

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(2) In this Act the Rights in Water and Irrigation Act, 1914-1973, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Rights in Water and Irrigation Act, 1914-1974.

Commence-
ment.

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

Long title
amended.

3. The long title of the principal Act is amended by inserting after the passage "Irrigation," in line three, the passage "the Prevention of the Pollution of Waters, the Control of the Disposal of Waste and Industrial Effluent,".

Section 1
amended.

4. Subsection (2) of section 1 of the principal Act is amended by inserting in its appropriate numerical sequence the passage, "PART IIIA.—WASTE AND EFFLUENT.".

Section 10
amended.

5. Section 10 of the principal Act is amended—

- (a) by deleting the passage commencing with the word "throws", in line one, and ending with the word "or", where it first appears in line eight;
- (b) by deleting the word "and", in line nine, and substituting the word "or";
- (c) by deleting the word "thereinto", in line nine;
- (d) by deleting the words "any such", in line ten, and substituting the passage "the flow of the current, into any";
- (e) by deleting the words "or the current through any", in lines eleven and twelve; and
- (f) by deleting subsection (2).

6. The principal Act is amended by inserting after section 27 a new heading as follows—

Part IIIA
heading
added.

PART IIIA.—WASTE AND EFFLUENT. .

7. The principal Act is amended by inserting after section 27 a new section, to stand as section 27A, as follows—

Section 27A
added.

27A. (1) Subject to subsection (2) of this section, a person shall be guilty of an offence if he causes or knowingly permits—

Control of
pollution.

- (a) any poisonous, noxious or polluting matter to be discharged or deposited on or in any land or water which he knows or ought reasonably to know will lead, or be likely to lead, to the impairment of the physical, chemical or biological condition of the waters in any watercourse, lake, lagoon, swamp, marsh, or subterranean water source, or will tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of those waters in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of the consequences of such pollution; or
- (b) any industrial effluent, waste or other matter from any mine, treatment plant, processing establishment, or factory, whether treated or otherwise, to be discharged or deposited so as to run or otherwise enter into the waters in any watercourse, lake, lagoon, swamp, marsh or subterranean water source.

(2) A person shall not be guilty of an offence by virtue of subsection (1) of this section if—

- (a) the discharge or deposit is authorised by a disposal license issued for the

purpose under this Part of this Act and is in accordance with the conditions, if any, to which the license is subject; or

- (b) the discharge or deposit is caused or permitted in an emergency in order to avoid danger to the public and, as soon as reasonably practicable after it occurs, particulars of the discharge or deposit are furnished to the Minister or to such other person as the Minister may direct.

(3) A person guilty of an offence under this section shall be liable to a fine not exceeding one thousand dollars, and where the offence is a continuing offence an additional fine not exceeding one hundred dollars for each day on which the offence continues after service by the Minister on the offender of written notice of the offence. .

Section 27B
added.

8. The principal Act is amended by inserting after section 27 a new section, to stand as section 27B, as follows—

Applications
for a
disposal
license.

27B. (1) An application for a disposal license authorising the discharge or deposit of any matter shall be made to the Minister in the prescribed manner and shall state—

- (a) the place and time at which it is proposed to make the discharge or deposit to which the application relates;
- (b) the nature and composition of the matter proposed to be discharged or deposited, and the maximum temperature of it; and
- (c) the maximum quantity of the matter which it is proposed to discharge or deposit on any one day, or the highest rate at which it is proposed to discharge or deposit it.

(2) An application for a license authorising discharges or deposits at two or more places or times may be treated as separate applications for licenses in respect of each of those places or times.

(3) The Minister may—

(a) grant a disposal license either unconditionally or subject to conditions; or

(b) refuse to grant a license,

and if, within the period of thirty days beginning with the date when an application for a disposal license is received, or within such longer period as the Minister may by notice in writing to the applicant allow, the Minister has neither granted or refused to grant a disposal license the application shall be deemed to have been refused. .

9. The principal Act is amended by inserting after section 27 a new section, to stand as section 27C, as follows—

Section 27C
added.

27C. (1) The Minister shall determine any application for a disposal license authorising the discharge or deposit of any matter having regard to all the circumstances of the case and in particular to the type of industry, the quantity, composition and temperature of the matter to be discharged or deposited, the conditions and usage of the waters, the ability of the waters to absorb the matter without detriment or deterioration, and the number of similar or other types of matter already being discharged in the waters.

Principles
to be
considered.

(2) In considering any application, the Minister shall have regard to broad principles, and generally any matter which it is proposed to discharge into the waters shall not contain—

(a) sewage unless treated to a standard approved by the Minister;

- (b) acidity or alkalinity outside the range of a pH value between pH5 and pH9;
- (c) poisons; or
- (d) any substance which is likely—
 - (i) to contribute to the formation of sludge or other deposit;
 - (ii) to contribute to the formation of scum, fat, oil, grease or floating material;
 - (iii) to contribute to the formation of objectionable odours or discoloration;
 - (iv) to be injurious to marine or animal or human life; or
 - (v) to deplete excessively the oxygen content of the waters. .

Section 27D
added.

10. The principal Act is amended by inserting after section 27 a new section, to stand as section 27D, as follows—

Conditions.

27D. (1) The conditions subject to which the Minister may grant a disposal license authorising the discharge or deposit of any matter shall be such reasonable conditions as the Minister thinks fit.

(2) Without prejudice to the generality of subsection (1) of this section, the conditions to which a disposal license may be made subject include reasonable conditions—

- (a) as to places and times at which the discharge or deposit to which the license relates may be made;
- (b) as to the nature, composition, temperature, volume and rate of the discharge or deposit;
- (c) as to the provision of facilities for taking samples of the matter discharged or deposited;

- (d) as to the provision, maintenance and testing of meters for measuring the volume and rate of the discharge or deposit, and apparatus for determining the nature, composition and temperature of any discharge or deposit;
- (e) as to the keeping of records of the nature, composition, temperature, volume and rate of the discharge or deposit and in particular of records of the readings of meters and other recording apparatus provided in accordance with any other condition relating to that license; and
- (f) as to the making of returns and the furnishing of other information to the Minister in relation to any discharge or deposit,

and any such condition may be of general or limited application according to place, time, or circumstance. .

11. The principal Act is amended by inserting after section 27 a new section, to stand as section 27E as follows—

Section 27E
added.

27E. (1) Subject to the provisions of this section, at any time during the currency of a disposal license the Minister, by notice in writing served on the licensee, may—

Revocation,
alteration
and
duration of
licenses.

- (a) revoke the license;
- (b) vary or add to the conditions of a license; or
- (c) in the case of an unconditional license, provide that it shall be subject to reasonable conditions specified in the notice.

(2) Where a licensee is convicted of failing to comply with any condition to which the license was made subject, the court may by order cancel that license.

(3) Subject to the provisions of this section, a disposal license shall take effect for the period specified therein.

(4) A disposal license in relation to industrial effluent or waste may specify a period during which no notice under subsection (1) of this section is to be served in respect of that license without the written consent of the licensee, and that period shall be a reasonable period of not less than two years beginning with the day on which the license takes effect.

(5) Notwithstanding the provisions of subsection (4) of this section a notice under subsection (1) of this section may be served if in the opinion of the Minister it is necessary in the public interest in consequence of a change of circumstance (which may include a change in the information available as to the discharge or deposit to which the notice relates or as to the interaction with other matter) which could not reasonably have been foreseen at the time the license was granted.

Section 27F
added.

12. The principal Act is amended by inserting after section 27 a new section, to stand as section 27F, as follows—

Appeals.

27F. (1) A person who is aggrieved—

(a) by the refusal of the Minister to grant a disposal license;

(b) by a condition imposed by the Minister in relation to a disposal license; or

(c) by the revocation of a disposal license, may, within thirty days after the notice of the Minister's decision is received, give notice to the Minister of his wish to be heard.

(2) Where the Minister receives a notice under subsection (1) of this section, the Minister shall cause an enquiry to be conducted

by such person or persons as he shall appoint and the person aggrieved shall be heard at that enquiry; and the Minister shall thereafter give such decision as he thinks fit. .

13. The principal Act is amended by inserting after section 27 a new section to stand as section 27G, as follows—

Section 27G
added.

27G. (1) The provisions of this Part of this Act shall apply to and have effect in relation to every river, stream, watercourse, lagoon, lake, swamp, marsh or subterranean water throughout the State except such as the Governor may, on the recommendation of the Minister, from time to time by proclamation declare to be subject to the provisions of any other Act and excluded from the provisions of this Part of this Act.

Application
of this Part

(2) A proclamation made under subsection (1) of this section may be varied or revoked by a subsequent proclamation. .
