

# SWAN RIVER CONSERVATION.

7° Elizabeth II., No. LIII.

---

No. 53 of 1958.

---

**AN ACT to make New Provision for Maintaining and Improving the Condition of the Waters and of the Foreshores of the Swan River.**

*[Assented to 23rd December, 1958.]*

**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:—

## PART I.—INTRODUCTORY PROVISIONS.

1. This Act may be cited as the *Swan River Conservation Act, 1958.* Short title and citation.

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

Arrangement.

3. The arrangement of this Act is as follows:—

PART I.—INTRODUCTORY PROVISIONS.

PART II.—THE SWAN RIVER CONSERVATION BOARD.

PART III.—FUNCTIONS OF THE SWAN RIVER CONSERVATION BOARD.

*Division 1.—General Functions of the Board.*

*Division 2.—General Powers of the Board.*

*Division 3.—Particular Functions and Powers of the Board.*

PART IV.—THE RIVERS AND WATERS TECHNICAL ADVISORY COMMITTEE.

*Division 1.—Constitution of the Advisory Committee.*

*Division 2.—Functions of the Advisory Committee.*

PART V.—FINANCIAL PROVISIONS.

PART VI.—OFFENCES.

PART VII.—MISCELLANEOUS PROVISIONS.

*Division 1.—Legal Proceedings by and against the Board.*

*Division 2.—Regulations.*

Interpreta-  
tions.

4. (1) In this Act unless the context requires otherwise—

“Advisory Committee” means The Rivers and Waters Technical Advisory Committee constituted under this Act;

“Board” means The Swan River Conservation Board constituted under this Act;

“conservation region” means the area of the State defined from time to time by proclamation made under subsection (2) of this section as the Swan River conservation region;

“foreshores” means the foreshores of the waters;

“function” includes power, right, benefit, duty, and obligation;

“industrial waste” means any and all liquid or solid waste substance, not sewage, from any producing, manufacturing, or processing operation;

“inspector” means a person authorised by the Board or by the Advisory Committee to be an inspector for the purposes of this Act;

“local authority” means a council of a municipal district constituted under the Municipal Corporations Act, 1906, and a board of a road district constituted under the Road Districts Act, 1919, the whole or any part of the district of which council or board is in the Swan River conservation region;

“member of the Board” includes the Chairman of the Board;

“permit” means a valid and current permit issued or renewed by the Board;

“public notice” means a notice published in the *Gazette*;

“Secretary to the Board” means the chief administrative officer of the Board;

“sewage” means any and all waste substance, liquid or solid which is associated with human habitation, or which contains or may be contaminated with human or animal excreta or excrement, offal, or feculent matter;

“standard” means any standard as fixed from time to time for the purposes of this Act by the Board, including without prejudice to the generality of the foregoing, standards relating to the maintenance and improvement of the condition of the waters and of the foreshores, and including standards for the components of industrial wastes or classes of industrial wastes discharged, or intended to be discharged, into any part of the waters, or onto, over, or through, any part of the foreshores;

Cf. Assembly  
Bill, No. 2156,  
1949, of  
California.

“Minister.”  
see No. 30 of  
1918, s. 4.

“subject to the Minister” means subject to constitutional responsibility and duty of the Minister to direct whenever he considers necessary;

“to pollute” means to discharge or to deposit, or both, without permit, into or in the waters, or onto or on the foreshores, or any part of the waters or foreshores,

(a) sewage; or

(b) any other liquid or solid matter, whether it is or is not industrial waste,

(i) the discharge or deposit of which impairs or is likely to impair the physical, chemical, or biological, condition of the waters, or any part of them; or

(ii) the discharge or deposit of which affects adversely or is likely to affect adversely the condition of the foreshores or any part of them; or

(iii) the discharge or deposit of which affects adversely and unreasonably, or is likely to affect adversely and unreasonably, the waters or foreshores, or any part of either, for navigational, recreational, or other beneficial use;

and “pollution” and other derivatives, primitives, and inflexions, of the verb, “to pollute” have correlative meanings;

“waters” means such of the waters of the Swan River and its tributaries as are bounded by the shore-lines at high water mark between

- (a) that part of the boundary of the Fremantle Harbour which traverses the Swan River, and which is established at the time of the coming into operation of this Act by the Fremantle Harbour Trust Act, 1902;
- (b) the Kent Street weir on the Canning River;
- (c) the Scott Street Bridge over the Helena River; and
- (d) the Middle Swan Road Bridge over the Swan River.

## (2) Power to define from time to time

- (a) waters of the Swan River and of its tributaries as waters to which this Act applies; and
- (b) an area of the State which constitutes the Swan River conservation region;

Power to define waters and to define the conservation region.  
Cf. No. 30 of 1918, s. 4, "Proclamation".

is conferred on the Governor, and is exercisable from time to time by proclamation.

## (3) This Act shall be construed

- (a) so as to apply, subject to paragraph (c) of this subsection, to any power and to the exercise of any power which any agency or instrumentality of the Crown, or any local authority, is authorised by law to exercise in, on, or about, the whole or any part of the waters or of the foreshores or of both; and
- (b) so as to apply notwithstanding any right however arising of any person, body, or authority, including an agency or instrumentality of the Crown and any local authority, in respect of any part of the waters or foreshores or of both, whether arising by or pursuant to Act, grant, conveyance, lease, license, or other assurance, or by prescription, limitation, or otherwise; and whether arising before or after the coming into operation of this Act; but

Principles to be applied in construing this Act.

- (c) so as not to apply to any power, and so as not to limit or restrict the exercise of any power, conferred, whether before or after the coming into operation of this Act, by or under the Health Act, 1911.

PART II.—THE SWAN RIVER CONSERVATION BOARD.

- The Board. 5. A body constituted in accordance with the provisions of this Part has the functions and immunity prescribed by this Act.
- Name. 6. The name of the body is The Swan River Conservation Board.
- Offices on the Board. 7. (1) The offices on the Board are those of Chairman and sixteen other members.  
(2) An office on the Board shall be deemed not to be
- Cf. 63 Vict., No. 10 as amended, s. 38. (a) an office of profit from the Crown, on acceptance of which office by a member of the Legislative Council or of the Legislative Assembly, his seat becomes vacant;
- Cf. No. 32 of 1906 as amended, s. 39. (b) an office or place of profit under or in the gift or disposal of a council of a municipality, by holding which office or place, a person is rendered incapable of being or continuing mayor or councillor of the municipality; or
- Cf. No. 38 of 1919 as amended, s. 24. (c) an office of profit under the board of a road district, by holding which office, a person is rendered incapable of being elected or as acting as member of the Board.
- Appointment of members. 8. Power to make the first appointments of persons to fill the offices of Chairman and other members on the Board, and to make subsequent appointments to fill vacancies as they occur in those offices, is conferred on the Governor and is exercisable in accordance with the provisions of this Part, on recommendation by the Minister.

9. (1) A person nominated by the Minister shall be appointed to the office of Chairman of the Board.

Interests represented on the Board. Chairman.

(2) The occupants of the sixteen other offices of members of the Board shall be—

(a) two persons,

Representatives of local authorities.

(i) of whom one shall be the senior qualified civil engineer whose services as such are employed or engaged by the Council of the City of Perth; and

(ii) of whom one shall be nominated by the Council of the City of Perth;

to represent on the Board the interests of that Council;

(b) four persons, all of whom shall be nominated by the body known as the Local Government Association of Western Australia, to represent on the Board the interests of local authorities;

(c) one person who shall be nominated by the committee appointed under the National Fitness Act, 1945, and known as the Associated Sporting Committee, to represent persons who use the waters, or foreshores, or both, for the purposes of recreation; and

Representative of sporting bodies.

(d) a member of the W.A. Aquatic Council;

(e) a nominee of the Chamber of Manufactures, W.A., Inc.;

(f) seven persons, each of whom shall be nominated by the respective Ministers for the time being controlling the administration of the respective establishments of the State which are mentioned in the respective subparagraphs of this paragraph, and which are concerned with works or activities, or both, in respect of the whole or part of the waters or of the foreshores, or of both, to represent the respective establishments on the Board, and of whom

Departmental representatives.

- (i) one shall be a drainage and sewerage engineer to represent the Metropolitan Water Supply, Sewerage, and Drainage Department on the Board;
- (ii) one shall be a qualified medical practitioner or a qualified health inspector to represent the Public Health Department on the Board;
- (iii) one shall be a representative on the Board of the Public Works Department and shall be attached to the Harbours and Rivers Branch of that Department;
- (iv) one shall be a representative on the Board of the Harbour and Light Department;
- (v) one shall be a representative on the Board of the Government Chemical Laboratories;
- (vi) one shall be a representative on the Board of the Lands and Surveys Department; and
- (vii) one shall be a representative on the Board of the Town Planning Board.

Nominations  
of persons for  
appointment  
to office on  
the Board.

(3) (a) Where nominations are required under paragraph (a), paragraph (b), paragraph (c), paragraph (d) or paragraph (e), of subsection (2) of this section, the Minister shall cause the bodies which may make the nominations to be invited to supply him with the names of nominees of the number required.

(b) If within twenty-eight days after the giving of the invitation names of nominees of the required number and representative capacity and qualification, have been supplied to the Minister, he shall recommend those nominees to the Governor for appointment, but if within that time, the names of nominees of the required number, or, as the case may be, representative capacity, or qualification,



have not been so supplied, the Minister may recommend to the Governor for appointment such person or persons as he thinks fit, and as is or are necessary to make up the required number.

(4) A person is eligible for appointment to office on the Board notwithstanding that he has previously occupied office on the Board.

Eligibility not affected by prior occupancy of office on the Board.

(5) The term of tenure of office on the Board of Chairman or of other member terminates *ipso facto*

Tenure of office on the Board.

(a) if the occupant of the office is absent from three consecutive meetings of the Board without permission granted by the Minister who is hereby authorised to grant the permission from time to time;

(b) if the occupant of the office tenders his resignation from the office in writing signed by him, and the Governor, who is hereby authorised to do so, accepts the resignation;

(c) if the nominator by whom he was nominated pursuant to subsection (2) of this section, causes written notice to be served on him and on the Board, that on and from the day of the service on him of the notice, his office is terminated, in which case his tenure of office terminates on the day of service on him of the notice;

(d) if the occupant of the office dies; or

(e) if the Governor, as he is hereby authorised to do, terminates the occupant's term of tenure of the office.

(6) (a) Persons nominated in accordance with the provisions of subsections (1) and (2) of this section and recommended by the Minister may be appointed by the Governor as deputies to act in the respective offices mentioned in those subsections.

Deputies for members of the Board.

(b) The provisions of subsection (3), and of subsection (4), and of paragraphs (b), (c), (d), and (e) of subsection (5), of this section apply in respect of deputies for members as if repeated *mutatis mutandis* in this subsection.

(c) During the absence of, or a vacancy in the office of, a member of the Board, a deputy so appointed to act in the office, is authorised to carry out any function which the member if present or the occupant of the office if it were not vacant, could have carried out, or would have been required to carry out.

Remuneration and expenses.

(7) (a) Each member of the Board whether he is or is not a public servant under the Public Service Act, 1904, is entitled to remuneration for his services as member of the Board at the rate of

(i) one hundred pounds per annum in the case of the Chairman; or

(ii) three guineas per meeting of the Board but not exceeding thirty-seven pounds sixteen shillings per annum, in the case of a member other than the Chairman;

but the Chairman is not entitled to any remuneration for his services as member of the Board, other than that specified in subparagraph (i) of this paragraph.

(b) Each member of the Board, whether he is or is not a public servant under the Public Service Act, 1904, is entitled to reimbursement of travelling and other expenses incurred in carrying out his functions under this Act at the same rate and to the same extent as prescribed under that Act.

(c) If the deputy for the Chairman, whether the deputy is or is not a public servant under the Public Service Act, 1904, attends any meeting of the Board in the absence of the Chairman, the deputy is entitled to remuneration at the rate prescribed and limited by subparagraph (ii) of paragraph (a) of this subsection; but if the office of Chairman is vacant, the deputy for the Chairman whether the deputy is or is not a public servant under the Public Service Act, 1904, is entitled to remuneration at whichever is the greater of the rate prescribed by subparagraph (i), or the rate prescribed by subparagraph (ii) of paragraph (a) of this subsection during such time as he acts in the office of Chairman during the vacancy but not exceeding the rate of one hundred pounds per annum.

(d) If the deputy for any member of the Board attends and acts at any meeting of the Board in the absence of the member for whom he is deputy, the deputy, whether he is or is not a public servant under the Public Service Act, 1904, is entitled to remuneration at the rate prescribed by subparagraph (ii) of paragraph (a) of this subsection for his attendance, but the member absent is not entitled to remuneration in respect of the meeting.

(e) The provisions of paragraph (b) of this subsection apply *mutatis mutandis* to travelling and other expenses incurred by a deputy while acting in place of a member.

(f) The provisions of this subsection apply in respect of a member of the Board who is a public servant under the Public Service Act, 1904, notwithstanding any provision of that Act.

10. (1) (a) The Minister shall cause notice of appointments to the respective offices of members of the Board to be published in the *Gazette*.

Gazetted of appointments of members.

(b) By the publication of the first appointments, the Board is constituted a body corporate with perpetual succession, and an official seal in the form prescribed by the regulations, and has and may exercise the functions prescribed by this Act.

Board constituted a body corporate with perpetual succession and an official seal.

(c) When constituted the Board is an agency of the Crown in right of the State.

Board is a Crown agency.

(2) Courts, Judges, and other persons acting judicially shall take judicial notice of the official seal of the Board affixed to any document, and, if the seal purports to have been affixed, in the presence of the Chairman, or his deputy, and another member of the Board or his deputy, shall presume that it was regularly affixed.

Official seal to be judicially noticed.

11. (1) The Chairman shall convene the first meeting of the Board to be held at a time and place appointed by him, and the Board shall meet accordingly, and shall hold subsequent meetings at times and places appointed by the Board.

Convening of meetings.

(2) The Chairman or his deputy in the absence of the former shall preside at meetings of the Board.

Quorum.

12. A quorum present at any meeting of the Board at, or within half an hour after, the time appointed for the commencement of the meeting may exercise any function of the Board as effectively as if all members were present, and is constituted by nine whether all are members or all are deputies, or some are members and some are deputies, but so that a deputy is not included unless the member, for whom he is appointed deputy, is absent or that member's office is vacant.

Determina-  
tion of  
questions by  
the Board.

13. (1) Where at a meeting of the Board any question arises for determination by the Board, each member or deputy present is entitled to, and shall exercise, one deliberative vote only.

Motions—  
how carried.

(2) If a majority of those present vote in favour of a motion for the determination of a question, the question shall be deemed to be determined in accordance with their votes, but if votes in favour equal votes against the motion, the question shall be deemed to be determined in the negative.

Vacancy in,  
or defect in  
appointment  
to office, no  
ground for  
invalidity.

14. An act or determination of the Board is not invalid or defective on the ground that when the act was done or the determination was made, a vacancy existed in office of a member or deputy, or on the ground of a defect in the appointment of a member or deputy.

Conduct of  
Board's pro-  
ceedings.

15. (1) Where this Act or any regulation, prescribes how the Board shall conduct proceedings in relation to any matter, the Board shall conduct the proceedings as so prescribed, but in relation to any other matter, the Board shall conduct proceedings as the members or deputies present determine and are hereby authorised to determine from time to time.

Minutes of  
Board's  
meetings to  
be kept.

(2) The Board shall cause proper minutes of the Board's proceedings to be recorded, and to be preserved for a period of five years and thereafter until the Governor authorises, as he is hereby empowered to do, destruction of them.

16. (1) The Board may, in relation to any particular matter or class of matters, by written authorisation sealed with the official seal of the Board, delegate to any number of members as a subcommittee, or where it is inconvenient or impracticable for a subcommittee to act, then to any member or employee of the Board, power to exercise any of the powers conferred or to carry out any of the duties imposed on the Board by this Act, except this power of delegation.

Delegation.

(2) A delegation of power conferred by this section has the effect and may be exercised according to its tenor, but is revocable at the will of the Board, and does not preclude the Board from exercising the power.

17. A member or a deputy for a member, in his capacity as member or deputy, is not a public servant under the provisions of the Public Service Act, 1904, but if at the time of his appointment to, or during his tenure of office in, office of member or as deputy he is a public servant under the provisions of that Act, his appointment to and service in the office of member or as deputy shall be deemed to be without prejudice to his rights under that Act, or any other Act applying to him as a public servant.

Preservation of existing rights.

18. A person who is or has been a member, deputy for a member, delegate, or employee, of the Board is not personally liable for anything done or omitted in good faith, in, or in connection with, the exercise or purported exercise of any power conferred, or the carrying out of any duty imposed, on the Board by this Act.

Exemption from personal liability.

### PART III.—FUNCTIONS OF THE SWAN RIVER CONSERVATION BOARD.

#### *Division 1.—General Functions of the Board.*

19. The functions of the Board, subject to the Minister, are in general

General functions of the Board. Cf. No. 30 of 1918, s. 4, "Minister"

(a) to administer this Act; and

"This Act"  
includes  
regulations.  
No. 30 of  
1918, s. 4.

- (b) to exercise such powers as the Board deems necessary, desirable, or expedient, and as are conferred on the Board by this Act, to maintain and improve, or cause to be maintained and improved, the condition of the waters and of the foreshores.

*Division 2.—General Powers of the Board.*

General  
powers of  
the Board.

20. (1) For the general purposes of carrying out its functions under this Act, subject to the Minister, the Board has and may exercise in accordance with, and subject to the provisions of this Act,

- (a) power to carry out, and to enter into any contract, agreement, or arrangement with any person or authority for the carrying out of any work for the purposes of improving and maintaining the condition of the waters and the foreshores, including work for the removal from the whole or any part or parts of the waters or foreshores and the disposal of algae or other matter; but excluding

- (i) river training;
- (ii) dredging;
- (iii) reclamation; and
- (iv) structural works;

authority to carry out any of which is conferred by law on any agency or instrumentality of the Crown other than the Board;

- (b) power to hire, or to acquire by agreement, and to hold, maintain, protect, manage, and dispose of, personal property including plant, machinery and apparatus;
- (c) power to employ and to engage personnel;
- (d) power to borrow money;
- (e) power to sue and be sued, to compromise claims made by or against the Board, and to submit questions and disputes to arbitration; and

(f) power to do or cause to be done any other thing which the Board deems necessary, desirable, or expedient, to maintain and improve, or cause to be maintained and improved, the condition of the waters and of the foreshores, but excluding

- (i) river training;
- (ii) dredging;
- (iii) reclamation; and
- (iv) structural works,

authority to carry out any of which is conferred by law on any agency or instrumentality of the Crown other than the Board.

(2) With the consent

- (a) of the Minister having the administration of a Department of the State or Commonwealth or other agency or instrumentality of the Crown in right of the State or Commonwealth;
- (b) of the body having the control or management of an agency or instrumentality of the Crown in right of the State or Commonwealth; or
- (c) of the local authority;

the Board

in order to conduce to economy, efficiency, and uniformity, of action in carrying out its functions under this Act,

is authorised to co-opt; and in every case in which it is practicable to do so shall make every reasonable endeavour to co-opt;

any service or thing available from the Department, or, as the case may be, the agency or instrumentality, or local authority,

on such terms and conditions as are agreed between that Minister, or, as the case may be, that body, or that local authority, and the Board.

*Division 3.—Particular Functions and Powers  
of the Board.*

Particular  
functions  
and powers of  
the Board.

21. The particularisation or enumeration in this Division of functions and powers of the Board does not prejudice or limit the generality of the provisions of Divisions 1 and 2 of this Part.

Authority  
and duty  
included in  
functions of  
the Board.

22. The functions of the Board include

- (a) authority to formulate and implement schemes, not involving expenditure by the Board, for co-ordinated action in the abatement, control, and prevention of pollution, by owners and occupiers of land, and agencies and instrumentalities of the Crown and local authorities having the control of land, adjacent to any part of the waters or on or adjacent to any part of the foreshores, and for the beautification of the land and foreshores: Provided no resumption or filling in of an area greater than ten acres of the Swan River shall be undertaken until the consent of both Houses of Parliament has been given;
- (b) authority to fix, and to promulgate by public notice, standards for the purposes of this Act, and by subsequent public notice from time to time to alter standards so fixed, or to substitute other standards for those so fixed;
- (c) authority to promulgate and advise as to principles adopted from time to time by the Board in relation to consideration by the Board of applications for permits;
- (d) authority to obtain the advice of the Advisory Committee on any matter relating to the purposes of this Act;
- (e) a duty to refer to the Advisory Committee all matters relating to the fixing and alteration of standards for the purposes of this Act;



- (f) authority to receive and consider and grant or refuse, applications for permits; and on payment of the appropriate respective fees prescribed by the regulations issue and renew any permit for any period not exceeding twelve months expiring on the thirtieth day of June next after the issue of the permit, unconditionally, or subject to conditions;
- (g) authority to impose the conditions of any permit and from time to time by notice in writing served on the permit holder to cancel, add to, or substitute new conditions for, any of the conditions of the permit;
- (h) authority to appoint inspectors; and
- (i) a duty whenever required by the Minister to do so to report to the Minister on the activities and proposals of the Board; and as soon after the thirtieth day of June in each year as is practicable to report to the Minister a summary of the Board's activities for the year ending on that day and its proposals for the year commencing on the next day.

PART IV.—THE RIVERS AND WATERS TECHNICAL  
ADVISORY COMMITTEE.

Constitution.

*Division 1.—Constitution of the Advisory Committee.*

23. (1) For the purposes of this Act there is hereby constituted a body

- (a) having the name of The Rivers and Waters Technical Advisory Committee; and
- (b) consisting of the persons for the time being and from time to time occupying or acting in the following respective offices, or their respective nominees as deputies, namely
  - (i) Chairman of the Board;
  - (ii) Chief Engineer, Metropolitan Water Supply, Sewerage and Drainage Department;

- (iii) Commissioner of Public Health;
- (iv) Director, Government Chemical Laboratory;
- (v) Director of Works;
- (vi) Director, Industrial Development;
- (vii) Director of Agriculture;
- (viii) Commissioner of Main Roads; and
- (ix) a member of the Board representing the Local Government Association nominated from time to time by the Board.

(2) The office of the Chairman of the Advisory Committee shall be occupied by the Chairman of the Board or in his absence such member of the Committee constituted aforesaid, as such Committee may appoint.

Conduct of  
Advisory  
Committee's  
proceedings.

24. The proceedings of the Advisory Committee shall be conducted in such manner as that Committee from time to time determines and is hereby authorised to determine.

*Division 2.—Functions of the Advisory Committee.*

Functions of  
the Advisory  
Committee.

25. The functions generally of the Advisory Committee are to advise the Minister and the Board on all matters relating to the giving of effect to this Act, and include in particular, subject to the Minister,

- (a) authority from time to time at the request of the Board to advise the Board as to the fixing or alteration of standards;
- (b) authority at the request of the Board to advise on any other matter relating to the purposes of this Act;
- (c) authority to undertake such research as the Advisory Committee considers is necessary or desirable in order to enable it to tender the best advice relating to the giving of effect to this Act;

- (d) authority by an inspector appointed by the Advisory Committee or by the Board to enter, inspect, and takes samples from, any premises or vessel of any matter being or likely to be discharged therefrom into the waters or onto the foreshores or any part of either; and
- (e) authority to appoint inspectors.

PART V.—FINANCIAL PROVISIONS.

26. (1) The Treasurer of the State shall cause to be opened and kept at the Treasury an account entitled The Swan River Conservation Board's Trust Fund Account.

The Swan  
River Con-  
servation  
Board's  
Trust Fund  
Account.

(2) All money which the Board receives pursuant to this Act shall be paid into the Fund Account.

(3) The Board shall pay out of the money represented in the Fund Account, the expenses of and incidental to, the giving of effect to this Act, and the administration of this Act.

(4) The Fund Account may be operated upon in such manner as the Treasurer of the State approves and is hereby authorised to approve from time to time.

27. (1) By the thirtieth day of April in each year after the coming into operation of this Act the Board shall cause to be prepared a written statement showing

Estimates.

- (a) the amount which the Board estimates will be required to meet the expenses of and incidental to, the giving of effect to this Act, and the administration of this Act, for the financial year commencing on the next succeeding first day of July;
- (b) the amount which the Board has or is likely to have in hand on its own account to meet those expenses; and

- (c) the amount of the balance remaining after deduction from the estimated amount of those expenses, the amount referred to in paragraph (b) of this subsection.

Service of  
copies of  
estimates.

(2) The Board shall cause a copy of each statement so prepared to be delivered by the thirtieth day of April

- (a) to the Treasurer of the State;
- (b) to the Minister; and
- (c) to each of the local authorities.

Contributions  
to the Fund  
Account.

(3) In order that the amount of the balance which is referred to in paragraph (c) of subsection (1) of this section may be met;

- (a) the Treasurer of the State is authorised and shall cause to be paid into the Fund Account from the money referred to in section four of the Audit Act, 1904, as "public moneys", two-thirds of the amount of that balance; and

- (b) as to the remaining one-third of the amount of that balance, the local authorities are hereby authorised to pay, and shall pay, into the Fund Account that one-third out of their ordinary revenue in accordance with the following subparagraphs of this paragraph in which the expression "estimated" means estimated and certified under subsection (4) of this section—

- (i) all of the local authorities whether there are or are not parts of the shore-lines of the waters in their districts shall pay seventy-five per centum by contributions apportioned among them in the ratio which the estimated population of each bears to the estimated aggregate of the populations of all of those local authorities;

- (ii) those local authorities in whose districts there are parts of the shore-lines of the waters shall pay twenty-five per centum by contributions apportioned among them in the ratio which the estimated length of shore-lines in each bears to the estimated aggregate length of the shore-lines in all of those local authorities but so that where parts of the shore-lines on opposite banks of the waters are in any one district, the estimated length of shore-line in that district shall be deemed to be one-half of the total of the estimated lengths of shore-line on both banks in that district.

(4) At the request of the Board

Estimates of  
populations  
and shore-  
lines of  
districts.

- (a) the Government Statistician shall estimate, according to the latest information available to him, the number of persons living in the districts of the respective local authorities and shall sign and give to the Board a certificate of the estimate;
- (b) the Surveyor General shall estimate the length of shore-lines at high water mark which length is included in the districts of the respective local authorities, for which purpose the Surveyor General shall take any length of shore-line which forms a boundary or part of a boundary of a district as being in the district, and shall sign and give to the Board a certificate of the estimate; and
- (c) certificates of estimates mentioned in this subsection shall be the basis of the apportionment under paragraph (b) of subsection (3) of this section.

(5) (a) The Board shall in every year assess the amounts payable into the Fund Account by the local authorities and not later than the thirty-first day of July in each year shall send notice of the

Assessments.

amount assessed to the respective local authorities which shall, subject to any revised or interim assessments rendered necessary, and which the Board is hereby authorised to make, in the case of alteration of the boundaries of the district of any local authority, cause the amount to be paid into the Fund Account by the thirty-first day of the next succeeding October.

Triennial estimates of factors of population and shore-line.

(b) The Board shall subject to any such revised or interim assessments assess the amounts on the basis of the estimates of the factors of population and shore-line as first certified under subsection (4) of this section after the coming into operation of this Act until the thirtieth day of June, one thousand nine hundred and sixty-one, but thereafter for each period of three years ending on the thirtieth day of June, shall assess the amounts on the basis of the estimates of those factors as at the commencement of each of those periods of three years as so certified.

Recovery of contributions unpaid.

(6) If a local authority does not punctually make payment of any amount into the Fund Account as required by this Act, the Board may recover the amount from the local authority by action in a court of competent jurisdiction as a debt due to the Board.

Authority for Treasurer to make advances to the Fund Account.

28. Where there is, or is likely to be, insufficient money in the Fund Account to meet payments required to be made out of the Fund Account, the Treasurer of the State may cause to be advanced to the Fund Account on such terms and conditions as the Treasurer imposes and is hereby authorised to impose, including conditions as to the use of, repayment of, and payment of interest on, the sum advanced, such sum as is necessary to make good or to avoid the deficiency out of money referred to in section four of the Audit Act, 1904, as "public moneys".

Accounts.

29. (1) The Board shall cause to be kept true and regular accounts—

(a) of money received by and money owing to the Board;

- (b) of money paid and money owing by the Board; and
- (c) of the purposes for which the money is owing or has been paid;

and shall cause the accounts to be balanced at the thirtieth day of June in each year.

(2) The Auditor General

Audit.

- (a) has in respect of the accounts of the Board, the powers conferred upon him by the Audit Act, 1904;
- (b) shall arrange for the audit of the accounts; and
- (c) shall, as soon as practicable after the completion of the audit in each year, prepare and deliver to the Board and the Minister a report on the audit of the accounts.

PART VI.—OFFENCES.

30. (1) A person who does or omits or knowingly causes to be done or omitted anything, the doing or omission of which results or is likely to result in pollution, commits an offence, except where the doing or omission of the thing is authorised by a permit.

Offence of causing pollution.

(2) The penalty for an offence mentioned in subsection (1) of this section is a maximum penalty of fifty pounds, and the court convicting the offender may impose in addition a maximum daily penalty of ten pounds for each day in which the offence continues after service by the Board on the offender of written notice of the offence.

31. (1) A person who

- (a) uses any of the waters for industrial purposes; or

Offence of using any of the waters for industrial purposes, or works, without a permit.

- (b) commences or continues to carry out any work or proposed work of any kind in, on, over, or under, the waters or the foreshores or both or any part of either or both of them, including work or proposed work which relates to, or is connected with, or is ancillary to, dredging, drainage, river training, or the provision of any structure including a jetty, wharf or bridge;

commits, subject to paragraph (c) of subsection (3) of section four of this Act, an offence, except where the person does so by authority of a permit.

(2) The penalty for an offence mentioned in subsection (1) of this section is a maximum penalty of twenty pounds and the court convicting the offender may impose in addition a maximum penalty of two pounds for each day in which the offence continues after service by the Board on the offender of written notice of the offence.

Offences generally.  
"This Act" includes regulations.  
Cf. No. 30 of 1918, s. 4.

32. (1) A person who does not do a thing, which by or under this Act he is required or directed to do, and a person who does or attempts to do a thing which by or under this Act he is prohibited from doing, commits an offence against this Act.

(2) A breach of any condition of a permit issued, or, as the case may be, approval under section forty-four of this Act given, by the Board under this Act is punishable as an offence against this Act notwithstanding any subsequent alteration of the condition or cancellation of the permit and notwithstanding section eleven of the Criminal Code.

General penalty.  
"This Act" includes regulations.  
Cf. No. 30 of 1918, s. 4.

33. A person who commits an offence against this Act is liable to the penalty expressly mentioned as the punishment for the offence, but where a penalty is not expressly mentioned, is liable

- (a) where the offence is not a continuing offence, to a maximum penalty of ten pounds; and



- (b) where the offence is a continuing offence, to such maximum penalty as does not exceed ten pounds and an additional amount not exceeding five shillings for each day during which the offence continues.

34. (1) The provisions of this section are in addition to and do not derogate from those of section forty-six of the Interpretation Act, 1918.

Offenders being bodies corporate, or agencies, or instrumentalities of the Crown.

(2) A body corporate may be found guilty of, and be liable for any offence, against this Act, and for the purposes of this Act there shall be imputed to a body corporate any knowledge, intent, or wilfulness of any officer or any member of the body.

"This Act" includes regulations. Cf. No. 30 of 1918, s. 4.

35. A complaint of an offence against this Act may be made only by a person authorised by the Board to make it; and then only with the consent of the Minister.

Complaints for offences.

36. (1) It is the duty of the members of the Police Force of the State who find a person committing or attempting to commit, or who on reasonable grounds suspect a person of having committed or attempted to commit, an offence against the provisions of this Act, to demand from the person his name and place of abode, and immediately to report the offence or attempt and the name and place of abode of the person to the Secretary to the Board.

Duty of members of Police Force to report breaches of Act.

(2) A member or his deputy, employee, or servant, of the Board, or a member of the Police Force of the State who finds a person committing or attempting to commit, or who on reasonable grounds suspects a person of having committed or attempted to commit, an offence against the provisions of this Act, may demand from the person his name and place of abode.

Power to demand name and address of offender.

(3) A person who refuses to state his name and place of abode, or who states a false name or place of abode, on demand being so made, commits an offence against this Act.

(4) A person who gives or is suspected of giving a false name or place of abode to the person making the demand may without other warrant than this Act be apprehended by the person making the demand and taken before a justice to be dealt with according to law.

PART VII.—MISCELLANEOUS PROVISIONS.

*Division 1.—Legal Proceedings by and against the Board.*

Service of  
notice of legal  
proceedings.

37. Service of any document on the Board is validly effected if the document is given personally to the Secretary to the Board, but the provisions of this section do not prejudice or otherwise affect those of section thirty-one of the Interpretation Act, 1918.

Authentica-  
tion of  
documents.

38. A writ, summons, notice, or other document, is sufficiently authenticated by the Board without the official seal of the Board, if signed by the Chairman of, or Secretary to, the Board.

Proceedings  
in  
bankruptcy.

39. If a person, against whom the Board has a claim or demand, takes the benefit of an Act for the relief of bankrupt debtors, the Secretary to the Board, in proceedings in respect of the claim, may represent the Board, and act on behalf of the Board in all respects as if the claim or demand were that of the Secretary to the Board.

Board may  
direct  
prosecutions.

40. (1) The Board may, subject to section thirty-five of this Act, order, either generally or in a particular case, proceedings to be taken for the recovery of penalties, or for the punishment of a person offending against the provisions of this Act, and may order the expenses of the prosecution or other proceedings to be paid out of the funds of the Board.

(2) Proceedings in connection with the prosecution of an offence under this Act may be commenced within one year after the offence has been committed.

Cf. No. 11 of 1902, s. 51.

(3) The institution of proceedings against, or the conviction of, a person for an offence against this Act does not affect a remedy which the Board or another person has in civil proceedings.

(4) In proceedings in a local court or court of petty sessions, or before a justice,

Proceedings in local court.

(a) the Secretary to the Board; or

(b) an employee of the Board appointed for the purpose generally or in a particular case in writing signed by the Chairman;

may represent the Board in all respects as if he were the party concerned.

(5) The Board shall, out of its funds, reimburse the Secretary to the Board or other employee the amount of any damages, costs, charges, and expenses, to which he is put, or with which he is chargeable, by reason of anything done, performed, suffered, or incurred, by him under this section for and on behalf of the Board.

Reimbursement of proof of employee.

41. In a prosecution or in other legal proceedings instituted by or under the direction of the Board under the provisions of this Act, until proof is given to the contrary, proof is not required of

Presumption of proof of certain formalities.

(a) the constitution of the Board or the Advisory Committee;

(b) any order of the Board to prosecute;

(c) any authorisation by which the Board authorises a person to make a complaint for an offence against this Act;

(d) any consent of the Minister to the making of a complaint for an offence against this Act;

- (e) the particular or general appointment of the Secretary to the Board or any other employee of the Board to take proceedings against any person;
- (f) the powers of the Secretary to the Board or other employee to prosecute;
- (g) the appointment of the Chairman of, or of the Secretary to, or other employee of, the Board or the Advisory Committee; or
- (h) the presence of a quorum at any meeting at which any order is made or any act is done by the Board or the Advisory Committee.

Evidence of  
exercise of  
authority.

42. (1) The production in a prosecution or other legal proceedings of

- (a) a copy of the *Gazette* containing a regulation, Order-in-Council, proclamation, notice, or containing other evidence of the exercise of any power or authority in pursuance or purported pursuance of the provisions of this Act; or
- (b) a copy purporting to be certified as a copy of a regulation, Order-in-Council, proclamation, notice, or evidence of the exercise of any such power or authority, by a certificate purporting to have been signed by the Chairman of, or Secretary to, the Board; or
- (c) a consent in writing signed by the Minister to the Board making a complaint for an offence against this Act; or
- (d) a written authorisation sealed with the official seal of the Board for a person to make a complaint for an offence against this Act;

is evidence of the making, existence, and giving of the regulation, Order-in-Council, proclamation, notice, consent, or authorisation; or of the exercise of the power or authority; and of all preliminary steps having been regularly taken to give full force and effect to it and to its provisions.

(2) The provisions of this section

- (a) are in addition to and not in derogation of those of the Evidence Act, 1906; and
- (b) do not render valid, a regulation, which has been disallowed under subsection (2) of section thirty-six of the Interpretation Act, 1918, or which has been invalidly made.

43. (1) Where a record is produced and identified as the minutes or an excerpt from the minutes of the board, or, as the case may be, the Advisory Committee, the record is, until the contrary is proved, proof of the matters recorded having taken place, without proof—

Evidence of minutes.

that the meeting to which the record relates was duly convened;

that other requirements relating to the regularity of the meeting were complied with; and

that the minutes were confirmed, and that the signature purporting to be that of the person authorised to sign the confirmation of the minutes is in fact his signature and that he was so authorised.

(2) Where a document purporting to have been certified

- (a) by the Secretary to the Board as being a copy of the minutes, or of an excerpt of the minutes of the Board; or
- (b) by the Chairman or deputy Chairman of the Advisory Committee as being a copy of the minutes, or of an excerpt of the minutes of the Advisory Committee;

is produced, the copy has the same probative force as if, instead of the copy so certified, the minutes or the excerpts of the minutes were produced.

Prohibition of granting of rights in respect of waters or foreshores without consent of the Board.

44. A right to tenure, occupancy, or use of, or easement in respect of, any part of the waters or foreshores or both, shall not be granted after the coming into operation of this Act and shall not be renewed after the coming into operation of this Act, whether granted before or after the coming into operation of this Act, by or under grant, conveyance, lease, license, or other assurance, from the Crown or otherwise, without prior written approval of the Board, or otherwise than in accordance with such conditions, if any, as the Board specifies in, and is hereby authorised to specify in, the approval.

Appeals against refusal of Board to grant permit or give approval.

45. (1) A person who is aggrieved

(a) by a refusal of the Board to grant a permit or to give an approval under this Act; or

(b) by a condition imposed by the Board as a condition of a permit, or approval;

may, within such time and in such manner as the regulations prescribe, appeal against the refusal, or, as the case may be, the condition, to the Minister, who in accordance with the regulations may hear and determine the appeal, and may uphold, reverse, or vary, the decision of the Board.

(2) Such person may appeal from the decision of the Minister to a Judge of the Supreme Court.

*Division 2.—Regulations.*

Power to make regulations.

46. (1) The Governor may make such regulations as he considers necessary, convenient, or desirable, to enable the functions of the Minister, the Board, and the Advisory Committee, to be carried out, or for better carrying out the objects and purposes of this Act.

(2) Without prejudice to the generality of subsection (1) of this section,

(a) regulations may be so made so as to apply generally, or in a particular class of case; at all times or at a specified time or specified

times; to the whole of the functions of the Minister, the Board or the Advisory Committee, or in respect of any part or parts of those functions;

- (b) regulations may be so made so as to require any matter to which a regulation relates, to be in accordance with a specified requirement, or as approved by, or to the satisfaction of, a specified person or body or specified class of person or body, or so as to delegate to, or confer on, a specified person or body or class of person or body, a discretionary authority;
- (c) regulations may be so made so as to impose for a breach of a regulation
  - (i) a maximum penalty of ten pounds; with or without provision for
  - (ii) a maximum daily penalty during the breach, of five shillings per day;
- (d) regulations may be so made prescribing or relating to
  - (i) the conduct of proceedings at meetings of the Board;
  - (ii) the form of the official seal of the Board; and
  - (iii) the time and manner within which appeals to the Minister under section forty-five of this Act may be brought, heard and determined by the Minister; and
- (e) regulations may be so made
  - (i) authorising the Board to issue and serve on any person any order requiring the person to do or refrain from doing anything for the purposes of preventing or minimising the effect of pollution, or any of them; and

authorising the Board to give effect to the order on default by the person of compliance with the requisition, and, without affecting the liability of the person to any penalty for non-compliance with the order, to recover the expense of doing so as a debt due to the Board from the person in any court of competent jurisdiction;

- (ii) relating to the functions of inspectors whether appointed by the Board or the Advisory Committee, including power to enter, inspect, and to take samples from, any premises or vessel of any matter being or likely to be discharged therefrom into the waters or onto the foreshores or any part of either, and relating to hindrance, and obstruction of inspectors; and
  - (iii) prohibiting the deposit of rubbish, litter, and other objectionable matter, in or on any part of the waters or foreshores, or adjacent to the foreshores in any place where it or any of its components is, or is likely to be or to become, a source of pollution;
  - (iv) prescribing fees payable under this Act; and
  - (v) prescribing forms for use under this Act.
-