

WESTERN AUSTRALIA.

METROPOLITAN WATER SUPPLY, SEWERAGE, AND DRAINAGE.

No. 43 of 1972.

AN ACT to amend the Metropolitan Water Supply,
Sewerage, and Drainage Act, 1909-1970.

[Assented to 16th June, 1972.]

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 *Metropolitan Water Supply, Sewerage, and Drainage Act Amendment Act, 1972*.

Short title
and citation.

(2) In this Act the Metropolitan Water Supply, Sewerage, and Drainage Act, 1909-1970, is referred to as the principal Act.

Reprinted as
approved for
reprint on
21st November,
1969, as
amended by
Acts Nos. 11
and 48 of
1970.

(3) The principal Act as amended by this Act may be cited as the Metropolitan Water Supply, Sewerage, and Drainage Act, 1909-1972.

Commence-
ment.

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

Amendment
to s. 3.
(Division.)

3. Section 3 of the principal Act is amended—

(a) by substituting for the passage “Ss.57A-57D” in line fourteen the passage “ss.57A-57I”; and

(b) by substituting for the words “Recovery of Rates”, in line twenty-four, the passage “Recovery of Rates, Moneys due for Water Supplied,”.

Amendment
to s. 5.
(Interpreta-
tion.)

4. Section 5 of the principal Act is amended by adding after the definition “Waterworks” a definition as follows—

“well” means a pit, excavation, shaft, hole or other opening made for the purpose of obtaining a supply of underground water; .

Amendment
to s. 16.
(Penalty for
diverting
water.)

5. Section 16 of the principal Act is amended—

(a) by substituting for the word “forty” in line seven the words “one hundred”; and

(b) by substituting for the words “diverted or diminished” in lines eight and nine the words “so diverted or so diminished or so injured”.

Amendment
to s. 24.
(Powers of
Board.)

6. Section 24 of the principal Act is amended—

(a) by adding after the section number “24.” the subsection designation “(1)”;

(b) by deleting the words “upon the lands authorised to be taken”, in line nineteen;

(c) by adding after the word "shall", in line one of the second proviso, the passage "subject to subsection (2) of this section,"; and

(d) by adding a subsection as follows—

(2) The Board shall not be liable to make to any person interested compensation for any actionable damage actually sustained by him through the exercise of the powers conferred by this Act unless—

(a) within three months after the damage is sustained, or within such further period as the Minister may allow he delivers in writing to the Board a claim, or notice of intention to make a claim, for such compensation; and

(b) where there is no agreement with the Board on the claim within twelve months after he so delivers the claim, or the notice, he, within that time, brings an action against the Board to establish his right to receive such compensation.

7. The principal Act is amended by adding a section as follows— S. 57E added.

57E. (1) The Governor may, on the recommendation of the Board, by proclamation constitute and declare any part or parts of the Area to be a Public Water Supply Area with such name and from such date subsequent to the proclamation as may be specified therein.

Constituting
Public Water
Supply
Areas.

(2) The Governor may, on the recommendation of the Board, by subsequent proclamation, extend or reduce any Public Water Supply Area, change its name or abolish the Area.

(3) (a) Before presenting a recommendation to the Governor pursuant to the provisions of this section the Board shall cause the proposed recommendation to be laid before each House of Parliament.

(b) Either House of Parliament may pass a resolution rejecting the proposed recommendation, of which resolution notice has been given within fourteen sitting days of such House after the proposed recommendation has been laid before it, whether or not the fourteen days or some of them occur in the same session of Parliament or during the same Parliament as that in which the proposed recommendation is laid before the House.

(c) The Board shall not present to the Governor a recommendation pursuant to the provisions of this section which—

- (i) has not been laid before each House of Parliament;
- (ii) is before either House of Parliament and is subject to rejection; or
- (iii) has been rejected.

S. 57F added.

8. The principal Act is amended by adding a section as follows—

Wells to be licensed.

57F. (1) Subject to subsection (2) of this section, a person shall not, except for or on behalf of the Crown, or pursuant to a licence issued for the purpose under section fifty-seven G of this Act, commence, construct, enlarge, deepen, alter or draw water from any well that is within a Public Water Supply Area or cause, suffer or permit any of those things to be done contrary to this subsection.

(2) Where any work that would be required under subsection (1) of this section to be done pursuant to a licence if the work were done in a Public Water Supply Area—

(a) has been commenced before the date of the publication in the *Government Gazette* of the proclamation constituting and declaring the area wherein such work was commenced to be a Public Water Supply Area; and

(b) has not been completed by that date, the owner of the land on which the work is to continue shall, within two months after that date, apply for a licence for that work under section fifty-seven G of this Act.

(3) Where an existing well is, by operation of a proclamation made under section fifty-seven E of this Act, brought within a Public Water Supply Area, the owner of the land upon which the well is situate shall, within two months of the date of the publication of the proclamation in the *Government Gazette*, apply under section fifty-seven G of this Act, for a licence to draw water from that well.

(4) A person—

(a) who contravenes or fails to comply with a provision of this section; or

(b) who, being engaged for the purpose of carrying out any work for which a licence is required under this section, carries out or commences any such work for which a licence has not been issued or causes, suffers or permits any such work to be so carried out or commenced,

commits an offence against this Act.

Penalty: Two hundred dollars and in the case of a continuing offence, to a further fine of ten dollars for each day upon which the offence continues after conviction. .

S. 57G added.

9. The principal Act is amended by adding a section as follows—

Licenses and issuing thereof.

57G. (1) An application for a licence referred to in section fifty-seven F of this Act—

- (a) shall be made to the Board in the prescribed form;
- (b) shall be accompanied, if the application relates to the construction of a well or for the deepening, enlargement or alteration of a well, by the prescribed plans and specifications of the construction, deepening, enlargement or alteration of the well; and
- (c) shall be accompanied by a statement of the purposes for which the water from the well is to be used or is being used.

(2) The Board may—

- (a) issue a licence to the applicant, in the prescribed form, subject to such terms, limitations and conditions, as it thinks fit;
- (b) before granting a licence, require such alterations to be made in, or in connection with, the work to which the application relates or the plans and specifications accompanying the application, as it thinks fit;
- (c) refuse a licence; or
- (d) from time to time, after giving the holder of the licence an opportunity to be heard, suspend or amend a licence or revoke a licence.

(3) A licence—

- (a) except during the period of suspension thereof, shall, subject to subsection (6) of this section, be in force until it is revoked;

- (b) shall be issued for and in respect of the well or proposed well specified therein;
- (c) shall be deemed for the purposes of this Act to be held by the owner of the land whereon the well is sunk or is proposed to be sunk, and shall operate for the benefit of—
 - (i) such owner where he is the occupier of that land or the occupier of that land where the owner thereof is not the occupier; and
 - (ii) the occupier of any land contiguous to the first mentioned land who, by agreement with any such holder, is entitled under that agreement to draw water from the well.

(4) Subject to subsection (5) of this section, no deepening or enlarging of a well specified in a licence shall be made during the currency of the licence, nor shall the water from the well be used for purposes other than those authorised by the licence.

(5) During the currency of a licence issued under this section—

- (a) application may be made to the Board by the holder of the licence for the licence to be amended to permit alterations to be made to the well specified therein or to alter the terms, limitations, or conditions to which the licence is subject and the application shall, with such modifications as circumstances require, be made and dealt with in the manner provided in this section in respect of an application for a licence in the first instance; and

- (b) works may be carried out by the holder of the licence on the well specified therein if the works are necessary for the maintenance of the well or are occasioned by any unforeseen emergency, but written notice of the works shall be given to the Board by the holder of the licence within seven days after the works are commenced.

(6) When the construction of a well or alteration thereof is not completed within a period of two years from the date of the licence or amendment thereof permitting the construction or alteration—

- (a) the licence or amendment of the licence shall be deemed to have been revoked; and
- (b) an application shall be made for, and a licence obtained, to permit such construction or alteration before the construction or alteration is commenced or completed, as the case may require,

and the application shall, with such modifications as circumstances require, be dealt with in the manner provided in this section in respect of an application for a licence in the first instance.

(7) A person who is aggrieved by any decision of the Board made under this section, section fifty-seven H or fifty-seven I of this Act, may appeal against the decision, and the provisions of section fifty-seven D of this Act shall, with such modifications as circumstances require, apply to and in relation to, the appeal. .

S. 57H added.

10. The principal Act is amended by adding a section as follows—

Conditions of licence to be complied with.

57H. (1) Where the holder of a licence issued under section fifty-seven G of this Act fails to comply with all or any of the terms, conditions

or limitations to which the licence is subject, the Board may, by instrument in writing served on the holder, direct him to comply with all or such of those terms, conditions or limitations as are specified in the instrument within the time so specified.

(2) Where a person on whom there has been served an instrument under subsection (1) of this section does not, within the period specified in the instrument, comply with the direction, the Board may do all or any of the things required by the direction to be done.

(3) Costs and expenses incurred by the Board under subsection (2) of this section are a debt due to the Board by the person referred to in that subsection and are recoverable in a court of competent jurisdiction.

11. The principal Act is amended by adding a section as follows— S. 57I added.

57I. (1) The holder of a licence issued under section fifty-seven G of this Act shall maintain the well to which the licence relates in good condition and repair and if the holder fails to so maintain the well, the Board may revoke, suspend or amend the licence as it thinks fit. Maintenance of well by holder of licence.

(2) Where at any time the Board considers that water drawn from a well within a Public Water Supply Area is being improperly or wastefully used, or that water is being drawn from such a well in such a manner or in such quantities as to substantially affect the use by users or future users of underground water in that area, the Board may suspend, amend or revoke the licence relating to the firstmentioned well.

12. Section 100 of the principal Act is amended by substituting for the words "by him", in the penultimate line, the words "in accordance with section one hundred and three of this Act". Amendment to s. 100. (Payment by measure when land rated.)

Amendment to s. 100A. (Payment by measure as assessed in certain cases.)

13. Section 100A of the principal Act is amended—

- (a) by deleting the words “each owner or occupier is liable to pay”, in lines eighteen and nineteen; and
- (b) by adding after the word “him”, being the last word in the section, the words “shall be paid in accordance with section one hundred and three of this Act”.

Amendment of heading.

14. The principal Act is amended by adding after the word “Rates”, in the heading of Division (6) of Part VIII, following section one hundred and two, the passage “, Moneys due for Water Supplied,”.

Amendment to s. 103. (Who is liable for rates.)

15. Section 103 of the principal Act is amended—

- (a) by repealing and re-enacting subsection (1) as follows—

(1) The amount of any rates made and levied, moneys due for water supplied, or prescribed charges levied under this Act shall be payable, in the first instance, by the occupier of the land rated, the land in respect of which the water is supplied, or the land in respect of which the charge is levied, as the case may be. ;

- (b) by repealing and re-enacting subsection (2) as follows—

(2) The amount of the rates, moneys, or prescribed charges referred to in subsection (1) of this section may also, at the option of the Board, be recovered from the owner of the land rated, the land in respect of which the water is supplied, or the land in respect of which the charge is levied, as the case may be. ; and

- (c) by adding after the word “owner” being the last word in subsection (3) the passage “; and any amount of such moneys due for water supplied and paid by an owner shall,

in the absence of special agreement to the contrary, be deemed to be rent due and owing by the occupier to the owner in respect of the land, in addition to any other rent so due and owing, and shall be recoverable as such”.

16. Section 104 of the principal Act is amended by adding after the word “rates”, in line two, the passage “, moneys due for water supplied,”.

Amendment to s. 104.
(Payment of rates by mortgagee.)

17. Section 109 of the principal Act is amended by substituting for the words “under this Act or any”, in line two, the passage “, moneys due for water supplied, or”.

Amendment to s. 109.
(How rates may be recovered.)

18. The principal Act is amended by adding after section 124 a section as follows—

Addition of s. 124A.

124A. (1) Where, in relation to any land, payment of any rates made and levied, moneys due for water supplied, or prescribed charges levied under this Act is in arrear, the Board may deliver a memorial, in the prescribed form, to that effect to the Registrar of Titles, or the Registrar of Deeds, as the case requires, who, without payment of a fee, shall register the memorial and endorse or note the title and land register or record, in respect of that land.

Prohibition on dealings in land.

(2) When the memorial is registered the Registrar of Titles, or the Registrar of Deeds, as the case requires, is prohibited from registering and from accepting for registration an instrument affecting the land without the consent of the Board until the land ceases under subsection (3) of this section to be bound by this subsection.

(3) When the payment in respect of which a memorial is registered under this section ceases to be in arrear, the Board shall deliver to the Registrar of Titles, or the Registrar of Deeds, as the case requires, a certificate signed and

dated by the General Manager of the Board certifying that the payment has ceased to be in arrear and the Registrar of Titles, or the Registrar of Deeds, as the case requires, shall endorse the title and land register or record to that effect and when the certificate is so noted, the land ceases to be bound by subsection (2) of this section. .

Amendment
to s. 146.
(Board may
make
by-laws.)

19. Section 146 of the principal Act is amended—

(a) by repealing paragraph (3) and re-enacting it as follows—

(3) Regulating and controlling the commencement, drilling, sinking, construction, form, maintenance, alteration or effecting the permanent closure and sealing off of any existing or proposed artesian bores within the Area and regulating the quantity of water that may be drawn from any such artesian bore. ; and

(b) by adding after paragraph (3) a paragraph as follows—

(3a) Regulating and controlling the commencement, drilling, sinking, construction, form, maintenance and alteration of any proposed or existing well within a Public Water Supply Area and regulating the quantity of water that may be drawn from any such well and providing for the maintaining and keeping by the Board of a register of licences relating to such a well. .