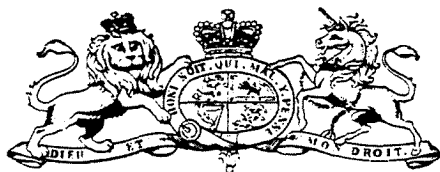


Queensland



ANNO VICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 9 of 1975

An Act to amend the Water Act 1926–1973 in certain particulars

[ASSENTED TO 1ST MAY, 1975]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Water Act Amendment Act 1975*.

(2) The *Water Act 1926–1973* is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Water Act 1926–1975*.

2. Commencement. This Act shall commence on a date appointed by Proclamation.

3. Amendment of s. 1. Section 1 of the Principal Act is amended by inserting after the expression "PART VII.—ARTESIAN WELLS.;" the expression "PART VIII.—PROVISIONS RELATING TO REFERABLE DAMS.;"

4. Amendment of s. 3. Section 3 of the Principal Act is amended by—

(a) omitting the definition “ Owner ” and substituting the following definition:—

“ “ Owner ”—When used in the provisions of this Act that confer authority on the Commissioner in relation to referable dams means the owner of the land that comprises the referable dam:
When used in relation to land—

(a) means—

- (i) where the land comprises a referable dam, any person, including the Crown or a person representing the Crown;
- (ii) where the land is land other than that referred to in provision (i) the person other than the Crown or a person representing the Crown who for the time being is entitled to the rents and profits of the land;

(b) means, in the case of land held from the Crown for an estate less than freehold, the person who holds directly from the Crown; and

(c) includes the occupier of land;”;

(b) inserting after the definition “ Ratepayer ” the following definition:—

“ “ Referable dam ”—Any works—

(a) that include a barrier whether permanent or temporary that does or could impound, divert or control water and—

- (i) is 10 metres or more in height (calculated as prescribed) and creates a reservoir storage capacity (calculated as prescribed) of more than 20 000 cubic metres;
- (ii) creates a reservoir storage capacity (calculated as prescribed) of 50 000 cubic metres or more and is more than 5 metres in height (calculated as prescribed); or

(b) that are declared by the Commissioner, by notification published in the Gazette, to be a referable dam by reason of the danger to life or property that would or could eventuate upon the collapse or failure of the works:

The term does not include a tank constructed of steel or concrete or a combination of those materials;”.

5. New s. 4A. The Principal Act is amended by inserting after section 4 the following section:—

“ **4A. Control of safety of referable dams.** (1) Notwithstanding any other Act or law, for the purposes of ensuring the safety of referable dams and the protection of life or property that would or could be endangered by the collapse or failure thereof, the Commissioner shall have control of the design, construction, alteration, repair, maintenance, operation, abandonment and removal of referable dams and, for the proper exercise of that control, shall have the functions and may exercise the powers and authorities conferred on him by the *Irrigation Act* 1922–1973, for the purposes of that Act, or by this Act, either with respect to the control of water or with respect to referable dams.

(2) The Commissioner shall have and may exercise the control conferred upon him by subsection (1) irrespective of—

- (a) the situation or proposed situation of the referable dam;

- (b) the ownership of the referable dam;
- (c) the source of supply of the water contained or to be contained in the referable dam.”.

6. Amendment of s. 9. Section 9 of the Principal Act is amended by—

(a) inserting after the word “stock” the words “(not exceeding the number being depastured ordinarily on the land having regard to seasonal fluctuations in the carrying capacity thereof and provided such stock are not held on that land in close concentration for any purpose)”;;

(b) omitting the expression “1.25” and substituting the expression “0.25”.

7. Repeal of and new s. 11. The Principal Act is amended by repealing section 11 and substituting the following section:—

“**11. Right to apply for licenses.** If it is proposed—

- (a) to construct on any land a referable dam;
- (b) to alter, repair, maintain, operate, abandon or remove a referable dam constructed on land, whether or not that dam exists at the commencement of the *Water Act Amendment Act 1975*; or
- (c) to construct works on land that abuts on a watercourse or to use works constructed on land that abuts on a watercourse in either case to supply water for any purpose or for water conservation, irrigation, water supply, drainage, the prevention of flooding of land by water or of erosion of stream banks, improving the flow in or changing the course of a watercourse,

the owner of land on which the works are to be constructed or are constructed shall, before work is commenced in connexion with any of those purposes or use made of the works, make application in writing to the Commissioner for a license.

The expression “to use works” in this section includes to use, take or dispose of water contained in any works or obtained by means of any works whether for the use of the owner of the land on which the works are constructed or for the use of occupiers of land in the neighbourhood of the site of the works.”.

8. Amendment of s. 11A. Section 11A of the Principal Act is amended by, in subsection (1), omitting the words “as prescribed by section eleven of this Act” and substituting the words “to construct works or to use works referred to in subparagraph (c) of section 11”.

9. New s. 11C. The Principal Act is amended by inserting after section 11B the following section:—

“**11C. Referable dams.** A person—

- (a) shall not commence work in connexion with the construction, alteration, repair, maintenance, operation or removal of a referable dam;
- (b) shall not operate a referable dam;
- (c) shall not abandon a referable dam,

save under the authority of and in compliance in every respect with the provisions, terms and conditions of a license under this Act issued by the Commissioner.

The provisions of this section apply whether or not the referable dam exists at the commencement of the *Water Act Amendment Act 1975*.”

10. Amendment of s. 12. Section 12 of the Principal Act is amended by—

(a) omitting subsection (3) and substituting the following subsection:—

“(3) Within the time so appointed any owner of land situated as prescribed may in writing signed by him and addressed to the Commissioner object to the granting of an application made under this section and, if any owner does so object, he shall submit to the Commissioner the grounds of his objection.

Land shall be taken to be situated as prescribed for the purposes of this subsection if it complies with the following provisions of this paragraph, namely—

- (a) where the application relates to works constructed or to be constructed in or on a watercourse or spring such land abuts on the watercourse or spring and—
 - (i) being upstream of the land of the applicant or to which the application relates (such land being hereafter in this subsection called the “applicant’s land”), is so situated that the point where its downstream boundary abuts on the watercourse or spring is within a radius of 8 kilometres measured from the point where the upstream boundary of the applicant’s land abuts on the watercourse or spring;
 - (ii) being downstream of the applicant’s land, is so situated that the point where its upstream boundary abuts on the watercourse or spring is within a radius of 24 kilometres measured from the point where the downstream boundary of the applicant’s land abuts on the watercourse or spring;
- (b) where the application relates to works constructed or to be constructed in or on a lake, such land abuts on the lake and is so situated that the point where its boundary nearest to the applicant’s land is within a radius of 8 kilometres measured from the point where the boundary of the applicant’s land nearest to such land abuts on the lake;
- (c) where the application relates to works constructed or to be constructed elsewhere than in or on a watercourse, lake or spring, such land is so situated that any point on its boundary nearest to the applicant’s land is within a radius of 8 kilometres measured from any point on the boundary of the applicant’s land nearest to such land.”;

(b) in subsection (4), adding at the end thereof after the word “fit” the words “or in respect of the referable dam specified in the application”;

(c) in subsection (4A), inserting after the word “section” the words “other than a decision that concerns the safety of a referable dam or the protection of life or property in connexion with a referable dam”.

(d) in subsection (6),

(i) inserting after the word “years” where it firstly occurs the words “or, where the license is in respect of a referable dam and not of a specified area of land or a specified quantity of water, for such term longer than ten years as the Commissioner in a particular case determines”;

(ii) inserting after the word “subsection” where it occurs in the fourth paragraph the words “other than a decision that concerns the

safety of a referable dam or the protection of life or property in connexion with a referable dam”;

(e) in subsection (8), omitting the words “lawful occupier” and substituting the word “owner”.

11. Amendment of s. 15. Section 15 of the Principal Act is amended by—

(a) in subsection (1), inserting after the word “order” the words “or, in the case of a referable dam, authorized in the license issued in respect thereof,”;

(b) in subsection (2),

(i) omitting the words “fifty pounds” and substituting the expression “\$2 000”;

(ii) omitting the words “five pounds” and substituting the expression “\$200”.

12. Amendment of s. 22. Section 22 of the Principal Act is amended by, in subsection (2),

(a) omitting the words “a period as may be determined by the Governor in Council” and substituting the words “such period”;

(b) omitting the words “(not exceeding six per centum)”.

13. New s. 23. The Principal Act is amended by inserting after section 22 the following section:—

“23. Assignment of liability to Board. (1) Where the Commissioner has raised a loan in connexion with the construction of works that are transferred by him to a Board he may assign to the Board all or any of his liabilities as borrower of the loan and if his liabilities so assigned are provided for in any security, debenture or other document the Commissioner shall transfer and deliver such security, debenture or other document to the Board.

(2) If the Commissioner assigns any obligation to a Board pursuant to subsection (1) then, subject to subsection (3)—

(a) the Board shall accept and, for the purposes of the enforcement of any such obligation, the Board shall be deemed to have accepted every such assignment;

(b) the Board shall be deemed to be the borrower of the loan concerned in the stead of the Commissioner;

(c) every security, debenture and other document made or given by the Commissioner in connexion with the loan concerned shall be read and construed as if the Board were bound thereby in the stead of the Commissioner.

(3) No provision of this section shall require a Board to accept nor shall it be deemed to have accepted any liability of the Commissioner that has accrued prior to the assignment by the Commissioner.”

14. New s. 46I. The Principal Act is amended by inserting after section 46H the following section:—

“46I. Investment of moneys. (1) A Board may from time to time invest moneys standing to the credit of any fund kept by it under this Act and not required for the time being for the purposes of this Act upon security with an approved dealer or upon such other security or investment as the Governor in Council authorizes.

(2) Every security or safe custody acknowledgement or other document evidencing title in respect of any investment shall be held by the Board.

(3) For the purposes of this section the expression "approved dealer" means a person who—

- (a) is an authorized dealer in the short term money market with established lines of credit with the Reserve Bank of Australia as a lender of last resort; and
- (b) is approved by Order in Council."

15. Amendment of s. 63. Section 63 of the Principal Act is amended by omitting the first paragraph and substituting the following paragraph:—

"Save where the Governor in Council by Order in Council otherwise declares in respect of an area within a district declared by Order in Council made pursuant to section 54E, no provision of this Part applies to a sub-artesian well the supply of water from which is used or required for use for domestic purposes only."

16. New Part VIII. The Principal Act is amended by inserting after section 63 the following heading and sections:—

"PART VIII.—PROVISIONS RELATING TO REFERABLE DAMS.

64. Interpretation. (1) In relation to a referable dam—

"height" means the measurement equivalent to the difference in level between the natural bed of the watercourse at the downstream toe of the barrier (or if the barrier is not across a watercourse between the lowest elevation of the outside limit of the barrier) and the top of the dam;

"top of the dam" means the level of the top of the barrier exclusive of any parapet or ancillary structure or, where the barrier includes a spillway section, the level of the top of the abutment walls adjoining the spillway section exclusive of any parapet or ancillary structure;

"reservoir storage capacity" means the measurement (expressed in cubic measure) equivalent to the total storage capacity of a reservoir up to the top water level at which water is ordinarily retained therein;

"water" includes any other liquid or a mixture that includes water, any other liquid or suspended solid.

(2) The words "alterations", "repairs", "maintenance" and "operations", when used in relation to a referable dam mean only such alterations, repairs, maintenance or operations as, in the opinion of the Commissioner, affect or affects directly the safety of the referable dam.

65. Requirements by Commissioner. The Commissioner—

- (a) may from time to time and in respect of a specified referable dam constructed or to be constructed on any land, require that the preparation of designs, plans and specifications for the initial construction or subsequent alteration, repair, maintenance, operation, removal or abandonment of the referable dam so specified and the supervision of work in progress in connexion therewith be under the direction and control of a

suitably qualified person adequately experienced in the design and construction of dams to the satisfaction of the Commissioner and assisted where necessary by such and so many persons suitably qualified to the satisfaction of the Commissioner;

- (b) may, by notice in writing, require the owner of a referable dam to cause to be carried out by persons suitably qualified and experienced to the satisfaction of the Commissioner and in accordance with procedures and at intervals of time determined by the Commissioner, periodical inspections of the referable dam and to furnish to the Commissioner reports of those inspections;
- (c) may, by notice in writing, require the owner of a referable dam to cause to be carried out by persons suitably qualified and experienced to the satisfaction of the Commissioner and in accordance with procedures determined by the Commissioner a review of the design, construction and operating procedures of the referable dam specified in the notice and may require the owner to furnish to the Commissioner, with respect to the review, such information as is specified in the notice;
- (d) may, by notice in writing, require the owner of a referable dam to carry out within the time specified in the notice such repairs or to take such measures to ensure the safety of the referable dam as are specified in the notice.

66. Advisory committee. The Commissioner may appoint an advisory committee to assist him in the efficient exercise of his powers and authorities and the discharge of his functions and duties for the achievement of the objects and purposes of this Act with respect to referable dams.

The advisory committee shall consist of such and so many—

- (a) engineers suitably qualified to the satisfaction of the Commissioner; and
- (b) specialists in disciplines determined by the Commissioner suitably qualified to the satisfaction of the Commissioner, as the Commissioner determines.

67. Functions of advisory committee. The functions of the advisory committee are—

- (a) to enquire into, report upon and make recommendations with respect to such aspect of the investigations, designs, proposed construction and operating procedures or other proposals submitted in respect of a referable dam or a proposed referable dam as the Commissioner in any particular case requires;
- (b) to enquire into, report upon and make recommendations with respect to the implementation of the provisions of this Act with respect to referable dams.

68. Exemption of owner of referable dam. (1) The Commissioner, if for any reason he considers that the collapse or failure of a referable dam would not endanger life or property, may, by notice in writing, grant to the owner of the referable

dam for such period and upon such terms and conditions as he determines exemption from the operation of all or any of the provisions of this Act with respect to referable dams.

(2) The Commissioner may by like notice revoke an exemption granted or vary the terms and conditions to which an exemption is subject.

(3) An owner to whom an exemption is granted pursuant to this section—

(a) shall, for so long as the exemption subsists, be exempt from the application of the provisions of this Act specified in the notice or notices issued in relation to such exemption; and

(b) shall, for so long as the exemption subsists, comply in every respect with the terms and conditions to which the exemption is, at the material time, subject.

69. Exemption from liability. Liability shall not attach to the Commissioner and an action shall not lie against him for loss or injury caused by the total or partial failure or collapse of a referable dam by reason only of any approval by the Commissioner of proposals submitted by the owner of land on which the referable dam is constructed or to be constructed for the design, construction, alteration, repairs, maintenance, operation, abandonment or removal of the referable dam.”