

[AS REPORTED FROM THE AGRICULTURAL, PASTORAL, STOCK, AND COMMERCE COMMITTEE.]

House of Representatives, 31st October, 1912.

Hon. Mr. Massey.

POLLUTION OF WATER.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p style="text-align: center;">PART I.</p> <p style="text-align: center;">OFFENCES.</p> <p style="text-align: center;"><i>Solid Matter.</i></p> <p>3. Prohibition as to pollution of streams by solid matter.</p> <p style="text-align: center;"><i>Sewage Pollutions.</i></p> <p>4. Prohibition as to pollution of streams by sewage-matter.</p> <p style="text-align: center;"><i>Manufacturing-pollutions.</i></p> <p>5. Prohibition as to pollution of streams by liquid refuse from factory, &amp;c.</p> <p style="text-align: center;"><i>Administration.</i></p> <p>6. Power of local authorities to enforce Act.</p> <p>7. Power of Minister to enforce Act.</p> <p>8. Penalties for offences.</p> <p style="text-align: center;"><i>Legal Proceedings.</i></p> <p>9. Legal proceedings to be commenced in Magistrate's Court.</p> <p>10. Appeals from decisions of Magistrate's Court to Supreme Court.</p> <p>11. Certificate of District Health Officer as to means of rendering pollution harmless.</p> <p>12. Proceedings not to be commenced within twelve months after passing of this Act.</p> <p>13. Powers of District Health Officers.</p>	<p style="text-align: center;"><i>Saving Clauses.</i></p> <p>14. Powers conferred by this Act not to restrict application of other Acts.</p> <p>15. Saving of powers as to impounding or diverting water.</p> <p>16. Saving of powers of local authorities as to disposal of sewage.</p> <p style="text-align: center;">PART II.</p> <p style="text-align: center;">CIVIL REMEDIES FOR POLLUTION BY THE LIQUID WASTE PRODUCTS OF CERTAIN INDUSTRIES.</p> <p>17. Interpretation.</p> <p>18. Plaintiff in action for pollution of water by liquid waste products of special industry not entitled to injunction, except in special cases.</p> <p>19. Conditions precedent to issue of injunction.</p> <p>20. Judgment may provide for damages for subsequent pollution.</p> <p>21. Injunction may be granted to operate only for specified times, and not continuously.</p> <p>22. Injunction heretofore granted may be dissolved and damages awarded in lieu thereof.</p> <p>23. Notwithstanding foregoing provisions, injunction may be granted if defendant fails to take proper steps to minimize pollution.</p> <p>24. Restriction of jurisdiction of Magistrate's Court.</p> <p>25. Remedies in respect of pollution by solid matter not affected by this Act.</p>
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A BILL INTITULED

AN ACT to amend the Law relating to the Pollution of Water. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as

5 follows:—

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| <p>1. This Act may be cited as the Pollution of Water Act, 1912.</p> <p>2. In this Act, if not inconsistent with the context,—</p> <p style="padding-left: 20px;">“ Action ” means any action or proceeding in any Court :</p> <p style="padding-left: 20px;">“ Court ” means the Supreme Court of New Zealand :</p> <p>10 “ Injunction ” means an injunction or other order restraining the continuance of the pollution of water by waste products, or requiring the cessation thereof :</p> | <p>Short Title.</p> <p>Interpretation.</p> |
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*Struck out.*

“Waste products” means the waste products of any butter-factory, cheese-factory, flax-mill, or sawmill, and includes refuse and chemicals, and other matter the result of the process of manufacture adopted in such factory or mill :

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“Water” means any river, stream, lake, or other water, and includes the bed of such river, stream, lake, or other water.

*New.*

“Minister” means the Minister of Public Health :

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“District Health Officer” means a District Health Officer appointed under the Public Health Act, 1908 :

“Solid matter” does not include particles of matter in solution in water :

“Stream” includes the sea to such extent and tidal waters to such point as may be defined by regulations under this Act. Save as aforesaid, it includes rivers, streams, canals, lakes, and watercourses (other than watercourses mainly used at the commencement of this Act as sewers) :

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“Waste products” means the waste products of any manufactory or manufacturing process, and includes refuse and chemicals and other matter the result of the process of manufacture adopted in such manufactory or manufacturing process :

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“Water” means any river, stream, lake, or other water, and includes the bed of such river, stream, lake, or other water.

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## PART I.

## OFFENCES.

*Solid Matter.*

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Prohibition as to pollution of streams by solid matter.

2A. (1.) Every person who places or causes to be placed or to fall, or knowingly permits to be placed or to fall or to be carried, into any stream, so as (either singly or in combination with other similar acts of the same or any other person) to interfere with its due flow, or to pollute its waters, the solid refuse of any manufactory, manufacturing process, or quarry, or any rubbish, or cinders, or any other waste or any putrid solid matter, or any solid waste products, shall be deemed to have committed an offence against this Act.

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(2.) In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose.

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*Sewage Pollutions.*

Prohibition as to pollution of streams by sewage-matter.

2B. (1.) Every person who causes to fall or flow, or knowingly permits to fall or flow or to be carried, into any stream any solid or liquid sewage-matter shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

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*New.*

(2.) Where any sewage-matter falls, or flows, or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage-matter, the person causing or knowingly permitting the sewage-matter so to fall, or flow, or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the Court having cognizance of the case that he is using the best practicable and available means to render harmless the sewage-matter so falling, or flowing, or carried into the stream.

(3.) Where a District Health Officer is satisfied after local inquiry that further time ought to be granted to any local authority which at the date of the passing of this Act is discharging sewage-matter into any stream, or permitting it to be so discharged by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage-matter, the Governor may by Order declare that this section shall not, so far as regards the discharge of sewage-matter by such channel, be in operation until the expiration of a period to be limited in the Order.

(4.) Any Order made under this section may be from time to time renewed by the Governor, subject to such conditions, if any, as the Governor may see fit.

(5.) A person other than a local authority shall not be guilty of an offence under this section in respect of the passing of sewage-matter into a stream along a drain communicating with any sewer belonging to or under the control of any local authority, provided he has the sanction of the local authority for so doing.

*Manufacturing-pollutions.*

2c. (1.) Every person who causes to fall or flow, or knowingly permits to fall or flow, or to be carried into any stream any poisonous, noxious, or polluting liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Prohibition as to pollution of streams by liquid refuse from factory, &c.

(2.) Where any such poisonous, noxious, or polluting liquid as aforesaid falls, or flows, or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall, or flow, or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the Court having cognizance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting liquid so falling, or flowing, or carried into the stream

*Administration.*

2D. (1.) Every local authority shall have power to enforce the provisions of this Act in relation to any stream being within or passing through or by any part of their district, and for that purpose

Power of local authorities to enforce Act.

*New.*

to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other local authority or person, whether such offence is committed within or without the district of the first-named local authority. 5

(2.) Any expenses incurred by a local authority in the execution of this Act shall be payable as if they were expenses properly incurred by that authority in the execution of the Public Health Act, 1908. 10

(3.) Proceedings under this Part of this Act shall be instituted only by a local authority or by a District Health Officer.

Power of Minister  
to enforce Act.

2E. The Minister shall have power to enforce the provisions of this Act in any part of the Dominion of New Zealand.

Penalties for  
offences.

2F. Every person who commits an offence against this Act is liable to a penalty not exceeding *fifty* pounds. 15

*Legal Proceedings.*

Legal proceedings  
to be commenced  
in Magistrate's  
Court.

2G. (1.) The Magistrate's Court having jurisdiction in the place where any offence against this Act is committed may by summary order require any person to abstain from the commission of such offence, and, where such offence consists in default to perform a duty under this Act, may require him to perform such duty in manner in the said order specified. The Magistrate's Court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the Court seems meet. Previous to granting such order the Court may, if it thinks fit, remit to skilled parties to report on the "best practicable and available means" and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report. 20 25 30

(2.) Any person making default in complying with any requirements of an order of a Magistrate's Court made in pursuance of this section shall pay to the person complaining, or such other person as the Court may direct, such sum, not exceeding *fifty* pounds a day for every day during which he is in default, as the Court may order; and such penalty shall be enforced in the same manner as any debt adjudged to be due by the Court; moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month or such other period less than a month as may be prescribed by such order, the Court may, in addition to any penalty it may impose, appoint any person or persons to carry into effect such order, and all expenses incurred by any such person or persons to such amount as may be allowed by the Magistrate's Court shall be deemed to be a debt due from the person in default to the person or persons executing such order, and may be recovered accordingly in the Magistrate's Court. 35 40 45

New.

2H. (1.) If either party in any proceedings before the Magistrate's Court under this Act feels aggrieved by the decision of the Court in point of law or on the merits, or in respect of the admission or rejection of any evidence, he may appeal from that decision to the Supreme Court.

Appeals from decisions of Magistrate's Court to Supreme Court.

(2.) Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in Magistrates' Courts, and to enforcing judgments in Magistrates' Courts, and appeals from decisions of the Magistrates' Courts and to the conditions of such appeals, and to the power of the superior Courts on such appeals shall apply to all proceedings under this Act and to an appeal from any decision in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the Court.

(3.) Any proceedings commenced in a Magistrate's Court under this Act may be removed into the Supreme Court by leave of any Judge of the said Supreme Court, if it appears to such Judge desirable in the interests of justice that such case should be tried in the first instance in the Supreme Court and not in a Magistrate's Court, and on such terms as to security for and payment of costs, and such other terms (if any) as such Judge may think fit.

2I. (1.) A certificate granted by a District Health Officer to the effect that the means used for rendering harmless any sewage-matter or poisonous, noxious, or polluting matter falling or flowing or carried into any stream, are the best or only practicable and available means under the circumstances of the particular case shall in all Courts and in all proceedings under this Act be conclusive evidence of the fact. Such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period.

Certificate of District Health Officer as to means of rendering pollution harmless.

(2.) All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

2J. Proceedings shall not be taken under this Act against any person for any offence against the provisions of this Act until the expiration of *twelve* months after the passing of this Act; nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of *two* months after written notice of the intention to take such proceedings has been given to the offender, nor shall proceedings under this Act be taken for any offence against this Act while other proceedings in relation to such offence are pending.

Proceedings not to be commenced within twelve months after passing of this Act.

2K. Every District Health Officer shall, for the purposes of any inquiry under this Act, have, in relation to the inspection of places and matters required to be inspected, and in relation to all matters under this Act, the same powers and authorities which a District Health Officer has under the Public Health Act, 1908, for the purposes of that Act.

Powers of District Health Officers.

Saving Clauses.

2L. The powers given by this Part of this Act shall not be deemed to prejudice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or

Powers conferred by this Act not to restrict application of other Acts.

*New.*

custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall legalise any act or default which would but for this Act be deemed to be a nuisance or otherwise contrary to law: 5

Provided, nevertheless, that in any proceedings for enforcing against any person such rights or powers the Court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act.

2M. This Act shall not apply to or affect the lawful exercise of any rights of impounding or diverting water. 10

2N. Where any local authority has been empowered or required by any Act of Parliament to carry any sewage into the sea, or any tidal waters, or any stream, nothing done by such authority in pursuance of such enactment shall be deemed to be an offence against this Act. 15

## PART II.

## CIVIL REMEDIES FOR POLLUTION BY THE LIQUID WASTE PRODUCTS OF CERTAIN INDUSTRIES.

2O. In this Part of this Act, if not inconsistent with the context,— 20

“Special industry” means and includes any manufactory or manufacturing process for dealing in any manner with milk or the products of milk, and any manufactory or manufacturing process dealing in any manner with New Zealand flax or the products of New Zealand flax. 25

2P. In any action relating to pollution of water by the liquid waste products of a special industry the plaintiff’s remedy shall be in damages, and he shall not be entitled to an injunction unless he shall prove to the satisfaction of the Court that such pollution has caused or is causing to him or to his property such actual and irreparable loss and damage as cannot be the subject of compensation by damages. 30

2Q. Proof that water is rendered by the liquid waste products of a special industry to be less fit for use, either by persons or animals, shall not be sufficient to entitle the plaintiff to an injunction unless it is also proved— 35

- (a.) That the quality of the water is so deteriorated by the pollution as to render it unfit for use by persons or animals; and also 40
- (b.) That there is not available to the plaintiff a sufficient supply of other unpolluted water upon or immediately adjacent to his property.

2R. (1.) In any action for pollution of water by the liquid waste products of a special industry the Court may, in addition to assessing damages for injury already thereby suffered by the plaintiff from such pollution, either— 45

- (a.) Assess and ascertain the amount of further sums to be paid thereafter by defendant to plaintiff either annually or at other periods during the subsequent continuance of such pollution until the Court shall otherwise order; or 50

Saving of powers as to impounding or diverting water.

Saving of powers of local authorities as to disposal of sewage.

Interpretation.

Plaintiff in action for pollution of water by liquid waste products of special industry not entitled to injunction, except in special cases.

Conditions precedent to issue of injunction.

Judgment may provide for damages for subsequent pollution.

*New.*

(b.) Direct that in the same action, and notwithstanding that judgment (in other respects final) may have been given in such action, there shall thereafter be assessed and ascertained from time to time, in such manner as the Court may direct, damages in respect of the injury that may be thereafter suffered by the plaintiff by reason of such pollution.

(2.) The Court shall have jurisdiction to make such judgments or orders and give such directions in any such action as may be necessary to give effect to the provisions of this Act, and to enforce by execution, attachment, or otherwise, as to the Court shall seem fit, every such judgment, order, or direction.

2s. If the Court shall in any action for pollution of water by the liquid waste products of a special industry determine, having regard to the provisions of this Act, that an injunction should issue, the Court may, if it thinks fit, limit such injunction to certain periods of the year in lieu of making such injunction continuous and perpetual.

Injunction may be granted to operate only for specified times, and not continuously.

2t. Where in any action for pollution of water by the waste products, whether liquid or solid, of a special industry heretofore heard and determined the Court has granted an injunction, the Court may, upon the application of the defendant at any time within twelve months after the commencement of this Act, if it thinks fit, dissolve such injunction, and assess damages to be paid by the defendant to the plaintiff, as well for past as for subsequent injury from such pollution from time to time.

Injunction heretofore granted may be dissolved, and damages awarded in lieu thereof.

2u. If in any action for pollution of water by the liquid waste products of a special industry it is proved to the satisfaction of the Court that such pollution is due wholly or in part to the refusal or neglect of the defendant to adopt methods which are the best or only practicable and available means under the circumstances of the particular case for preventing such pollution, the Court may, notwithstanding anything in this Act, grant an injunction in such action unless the defendant forthwith proceeds to effectually adopt such methods for prevention or diminution of pollution:

Notwithstanding foregoing provisions, injunction may be granted if defendant fails to take proper steps to minimize pollution.

Provided that a certificate granted by a District Health Officer under section eleven of this Act shall be conclusive evidence that the defendant has not refused or neglected to adopt such methods.

2v. A Magistrate's Court shall not have jurisdiction to grant an injunction in any action for pollution of water by the liquid waste products of a special industry.

Restriction of jurisdiction of Magistrate's Court.

2w. Nothing in this Part of this Act shall in any manner affect the rights or remedies to which any person may be entitled in respect of the pollution of water by any solid matter, whether such solid matter is or is not waste products of a special industry.

Remedies in respect of pollution by solid matter not affected by this Act.

*Struck out.*

3. In any action relating to pollution of water by waste products the plaintiff's remedy shall be in damages, and he shall not be entitled to an injunction unless he shall prove to the satisfaction of the Court that such pollution has caused or is causing to him or to his property such actual and irreparable loss and damage as cannot be the subject of compensation by damages.

Plaintiff in action for pollution of water by waste products not entitled to injunction, except in special cases.

*Struck out.*

Conditions precedent to issue of injunction.

Judgment may provide for damages for subsequent pollution.

Injunction may be granted to operate only for specified times and not continuously.

Injunction heretofore granted may be dissolved and damages awarded in lieu thereof.

Notwithstanding foregoing provisions, injunction may be granted if defendant fails to take proper steps to minimize pollution.

Restriction of jurisdiction of Magistrate's Court.

4. Proof that water is rendered by waste products to be less fit for use, either by persons or animals, shall not be sufficient to entitle the plaintiff to an injunction unless it is also proved—

(a.) That the quality of the water is so deteriorated by the pollution by waste products as to render it unfit for use by persons or animals; and also

(b.) That there is not available to the plaintiff a sufficient supply of other unpolluted water upon or immediately adjacent to his property.

5. (1.) In any action for pollution of water by waste products the Court may, in addition to assessing damages for injury already thereby suffered by the plaintiff from such pollution, either—

(a.) Assess and ascertain the amount of further sums to be paid thereafter by defendant to plaintiff either annually or at other periods during the subsequent continuance of such pollution until the Court shall otherwise order; or

(b.) Direct that in the same action, and notwithstanding that judgment (in other respects final) may have been given in such action, there shall thereafter be assessed and ascertained from time to time, in such manner as the Court may direct, damages in respect of the injury that may be thereafter suffered by the plaintiff by reason of such pollution.

(2.) The Court shall have jurisdiction to make such judgments or orders and give such directions in any such action as may be necessary to give effect to the provisions of this Act, and to enforce by execution, attachment, or otherwise, as to the Court shall seem fit, every such judgment, order, or direction.

6. If the Court shall in any action for pollution of water by waste products determine, having regard to the provisions of this Act, that an injunction should issue, the Court may, if it thinks fit, limit such injunction to certain periods of the year in lieu of making such injunction continuous and perpetual.

7. Where in any action for pollution of water by waste products heretofore heard and determined the Court has granted an injunction, the Court may, upon the application of the defendant at any time within twelve months after the commencement of this Act, if it thinks fit, dissolve such injunction, and assess damages to be paid by the defendant to the plaintiff, as well for past as for subsequent injury from such pollution from time to time, as if such action had been commenced after the passing of this Act.

8. If in any action for pollution of water by waste products it is proved to the satisfaction of the Court that such pollution is due wholly or in part to the refusal or neglect of the defendant to adopt methods which are usually and properly adopted in New Zealand in the case of a manufacturing industry of the like nature, the Court may, notwithstanding anything in this Act, grant an injunction in such action unless the defendant forthwith proceeds to effectually adopt such methods for prevention or diminution of pollution.

9. A Magistrate's Court shall not have jurisdiction to grant an injunction in any action for pollution of water by waste products.