

VICTORIA.



ANNO VICESIMO TERTIO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 8548.

An Act to make Provision for the Establishment of the Swan Hill Pioneer Settlement Authority and the Management and Control of the Swan Hill Pioneer Settlement.

[7th May, 1974.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. (1) This Act may be cited as the *Swan Hill Pioneer Settlement Act 1974*. Short title.

(2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*. Commencement.

(3) This Act is divided into Parts as follows:— Division.

Part I.—Establishment of Swan Hill Pioneer Settlement Authority ss. 2-9.

Part II.—Procedure of Swan Hill Pioneer Settlement Authority ss. 10-19.

Part III.—Officers ss. 20-21.

Part IV.—Financial ss. 22-29.

Part V.—Miscellaneous ss. 30-40.

PART

PART I.—ESTABLISHMENT OF SWAN HILL PIONEER SETTLEMENT AUTHORITY.

Establishment
of Swan Hill
Pioneer
Settlement
Authority.

2. On the recommendation of the Minister the Governor in Council may by Order provide for the constitution and establishment under this Act of the Swan Hill Pioneer Settlement Authority (hereafter in this Act called the "Authority").

3. The Authority established under this Act shall be responsible for the promotion, control, and management of the Swan Hill Pioneer Settlement.

Matters to be
provided for by
Order in
Council.

4. The Order in Council providing for the establishment of the Authority shall be published in the *Government Gazette* and shall subject to this Act—

- (a) describe the boundaries of the settlement and specify the lands in the Settlement which are the property of the Authority ;
- (b) state the total amount of money which may be granted or lent pursuant to the provisions of this Act by the Minister to the Authority for the purposes of this Act and also the amount which the Authority may borrow by way of overdraft ;
- (c) set out what undertakings, facilities, works, equipment, plant, or machinery are the property of the Authority or may be acquired by the Authority for the purposes of this Act ;
- (d) provide for the winding up of the Authority in circumstances in which a company may be wound up under the *Companies Act* 1961 ;
- (e) contain such other provisions as the Governor in Council thinks fit for the management of the Settlement.

Additional
Orders in
Council.

5. On the petition of the Authority the Governor in Council may make any additional Order in Council and in any such Order may vary the original Order to provide for any matter which might have been provided for in the original Order.

Directors.

6. (1) The Authority shall consist of ten persons appointed by the Governor in Council to be directors of the Authority of whom—

- (a) five shall be nominated by the Council of the City of Swan Hill ; and
- (b) three shall be nominated by the life members and subscribers for the time being of the Swan Hill Pioneer Settlement.

(2) If

(2) If for any reason any of the above-mentioned bodies does not within twenty-eight days after being requested in writing in that behalf by the Minister make nomination as provided in sub-section (1) the Governor in Council may without submission of nominations appoint suitable persons as directors of the Authority and any person so appointed shall for all purposes be deemed to be duly appointed.

(3) The directors of the Authority shall not in any way be personally liable to the Authority or to any other person for anything done by them in the course of carrying out their duties under this Act in accordance with the provisions of this Act and the regulations.

7. The directors of the Swan Hill Pioneer Settlement Authority shall be a body corporate by the name of the "Swan Hill Pioneer Settlement Authority" shall have perpetual succession and a common seal and shall be capable in law of suing and being sued and shall, subject, to this Act, have power to take, purchase, sell, lease, take on lease, and hold lands, goods, chattels, and other property and to enter into any contract, agreement, or arrangement for any of the purposes of this Act.

8. On the commencement of this Act—

(a) all the right, title, and interest in any property described in the Order in Council referred to in section 4 shall vest in the Authority ; and

(b) all the liabilities of that body in respect of the property referred to in paragraph (a) shall pass to the Authority.

Property of predecessor to pass to Authority. &c.

9. (1) The directors of the Authority shall hold their first meeting within thirty days after the commencement of this Act at such time and place as the Governor in Council appoints in that behalf and shall proceed to put this Act into execution in relation to the Swan Hill Pioneer Settlement.

First meeting of Authority.

(2) On the day appointed under sub-section (1) the Authority shall be and be deemed to be duly and legally constituted a body corporate in pursuance of the provisions of this Act.

PART II.—PROCEDURE OF AUTHORITY.

10. Subject to this Act the directors of the Swan Hill Pioneer Settlement Authority are entitled to hold office for a period of three years from the date of their appointment and are eligible for re-appointment.

Term of office.

11. (1) In

**Casual
vacancies.**

11. (1) In the event of a vacancy occurring in the office of director of the Authority the Governor in Council may appoint some eligible person to be a director and if the person whose office is vacant was appointed on the nomination of some persons or body of persons the person to be appointed in his stead shall be nominated by those persons or that body and the provisions of sub-section (2) of section 6 shall with such modifications as are necessary extend and apply accordingly.

(2) Any person appointed to fill a casual vacancy in the office of director shall be entitled to hold office for the remainder of the term of office of the person in whose stead he is appointed and shall be eligible for re-appointment.

Chairman.

12. (1) At the first meeting of the Authority in each year the directors of the Authority shall appoint one of the directors to be chairman of the Authority.

(2) The Chairman shall preside at all meetings of the Authority at which he is present and in his absence a director elected by the directors present to be chairman of the meeting shall preside.

Quorum.

13. (1) A quorum of the Authority consists of six directors of the Authority.

(2) Subject to the presence of a quorum the Authority may act notwithstanding any vacancy in its membership.

Decisions.

14. (1) The decision on any question of a majority of the directors present at a meeting of the Authority shall, subject to the presence of a quorum, be the decision of the Authority on that question.

**Chairman to
have casting
vote.**

(2) In the event of an equality of votes on any question the chairman of the meeting shall have a second or casting vote.

**Expenses.
of directors.**

15. The chairman and every other director of the Authority is entitled to receive from the Authority such travelling and other allowances as are from time to time fixed by the Authority.

Judicial notice.

16. (1) All courts, judges, and persons acting judicially shall take judicial notice of the incorporation of the Authority and of the common seal of the Authority affixed to any deed, instrument, or writing and shall presume that any such seal was properly affixed.

(2) Every such deed, instrument, or writing when sealed and whether required to be sealed or not shall be admissible in evidence for and against the Authority on the production thereof without any other or further proof of the making thereof or of the due incorporation of the Authority.

17. The

17. The office of director of the organization becomes vacant if the member—

Disqualification
from office.

- (a) dies ;
- (b) is absent without leave from four consecutive meetings of the Authority ;
- (c) by writing under his hand addressed to the chairman resigns his office as director ;
- (d) accepts any office under the Authority ;
- (e) is an undischarged bankrupt or person whose property is subject to an order or arrangement under the laws relating to bankruptcy ; or
- (f) is attainted of treason or convicted of an indictable offence or is a person of unsound mind.

18. (1) A director of the Authority shall not take part in the discussion of or vote upon any matter in or before the Authority in which that director has directly or indirectly by himself or his partners any pecuniary or other valuable interest :

Provided that—

- (a) where the matter relates to any contract or proposed contract with or work to be done by an incorporated company consisting of more than twenty persons the Governor in Council upon the request of the Authority may by Order permit any director who is a member of the company to take part in the discussion of and to vote upon the matter if without him and other directors in like case there would not be sufficient directors available to form a quorum of the Authority ;
- (b) where the matter relates to or concerns any club or association or body consisting of more than twenty members formed for charitable cultural educational sporting or recreational purposes and any director is a member of such club association or body but is not a member of any committee of, and does not hold any other office in, such club association or body that director may take part in the discussion and vote upon the matter.

(2) Every director of the Authority who knowingly offends against this section shall for every such offence be liable to a penalty of not more than \$200.

19. (1) Subject to this Act the Authority may regulate its own procedure. Procedure.

(2) The directors of the Authority may employ such consultants and technical advisers as they think necessary from time to time for enabling them to carry out their duties under this Act.

(3) The

(3) The Authority may make rules governing the proceedings of the Authority, the management of the affairs of the Authority and the duties of its officers and employes.

PART III.—OFFICERS.

Manager.

20. (1) The Authority shall appoint some competent person to be manager of the business of the Settlement and may at any time revoke any such appointment.

(2) The manager shall hold office for such term as is determined by the Authority prior to his appointment and shall be entitled to receive such salary and travelling and other allowances as are from time to time determined by the Authority.

(3) Subject to the direction and control of the Authority the manager—

(a) shall carry out or cause to be carried out the decisions of the Authority and general policies determined by the Authority ;

(b) shall attend meetings of the directors of the Authority as instructed from time to time by the directors of the Authority ;

(c) shall be responsible for the employment of staff and the maintenance of proper records and accounts ; and

(d) shall promote the objects of the Authority to the best of his ability.

(4) A person appointed to be the manager of the Authority shall not engage in any other employment without the approval in writing of the Authority.

Offices.

21. (1) The Authority—

(a) shall provide and maintain a fit and convenient office for holding meetings of the Authority and transacting the business of the Authority and for the use of its manager and other officers and employes ; and

(b) shall cause the manager or some person authorized in that behalf by the Authority to attend at the office of the Authority during the days and hours notified to the public as the days and hours during which the office will be open.

(2) The Authority shall cause particulars of the location of the office of the Authority and the days upon which and the hours during which the office is open to the public to be published from time to time in some newspaper circulating in the Swan Hill district.

PART IV.—FINANCIAL.

General Fund.

22. All moneys received by the Authority (including loan moneys) shall be paid into and form a fund to be called the " General Fund " and may be applied by the Authority in carrying this Act into execution.

23. Any

23. Any surpluses arising out of the operation of the undertaking of the Swan Hill Pioneer Settlement shall be applied by the Authority—

Application of
revenues.

- (a) for or towards discharging the liabilities of the Authority ; and
- (b) in the absence of any liabilities and with the approval of the Minister for or towards any public, tourist, or recreational facility within the Swan Hill district.

24. The Authority shall cause records to be provided and kept and true and regular accounts to be entered therein of—

Records of
Authority.

- (a) all moneys received and paid for or on account of the Authority ; and
- (b) of the several purposes for which moneys have been received and paid for or on account of the Authority.

25. (1) The accounts of the Swan Hill Pioneer Settlement shall be audited regularly by an auditor appointed by the Authority and once at least in every year by the Auditor-General who shall have with respect to such accounts all the powers conferred upon him by any law for the time being in force relating to the audit of the public accounts.

Audit.

(2) The Authority shall once at least in every year furnish to the Minister a true copy of the accounts so audited together with a statement of the moneys received by the Authority and of the expenditure thereof.

Copies of
accounts to be
furnished to
Minister.

(3) Copies of such accounts and statement shall be laid before both Houses of Parliament if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament.

26. (1) Subject to this Act the Authority may borrow such moneys as it thinks necessary from time to time for carrying out its objects.

Borrowing by
Authority.

(2) Before the Authority adopts any project or scheme or programme of works involving in whole or in part the expenditure of moneys borrowed or proposed to be borrowed by the Authority under this Act the Authority shall submit or cause to be submitted to the Minister a statement of the purpose of the expenditure, including particulars of any proposed works or services, and a

Spending
programmes
including
borrowed
moneys to be
approved by
Minister.

detailed

detailed statement of the manner in which the Authority proposes to repay the moneys to be borrowed under the project, scheme, or programme.

Authority
may make
loans.

27. (1) For carrying out its objects the Authority may make loans to any person seeking to assist in establishing or developing the undertaking of the Authority on such terms and conditions as the Authority thinks fit.

(2) The Authority shall not make a loan to a director, officer, or employé of the Authority or enter into a guarantee with respect to any director, officer, or employé of the Authority.

Loans by
Minister.

28. (1) Subject to this Act the Minister may upon such terms and conditions as are agreed upon between the Minister and the Authority make any grant or loan to the Authority out of any moneys made available to him by Parliament for the purpose and may make advances from time to time on account of any such grant or loan.

(2) All loans made by the Minister to the Authority and all advances thereunder shall together with interest be charged upon the property and revenues of the Authority.

Application by
Authority for
loan by
Minister.

29. An application by the Authority for a grant or loan by the Minister shall not be considered until there has been prepared and laid before the Minister the following documents verified by the signature of some competent architect engineer or like person appointed by the Minister:—

(a) A detailed statement showing—

- (i) the cost of all works the construction of which has been paid for out of any grant or loan previously granted by the Minister to the Authority ;
- (ii) the purposes served by such works ;
- (iii) the cost of maintenance and management of such works ; and
- (iv) the annual net revenue derived from such works ;

(b) A description of the works proposed to be executed by the Authority and an estimate of the cost of their construction ;

(c) An estimate of the additional revenue to be derived therefrom ; and

(d) A report as to whether the proposed works are considered to be flexible and satisfactory.

PART

PART V.—MISCELLANEOUS.

30. (1) In case default is made by the Authority in the repayment of moneys lent by the Minister—

Procedure upon default in repayment of loan by Authority.

(a) the Director of Finance shall give notice of the default to the Minister ; and

(b) thereupon, without prejudice to any other remedies, the Minister may after the expiration of three months from the date at which the last of such payments became due give one month's notice in writing of the default to the Authority.

(2) After the expiration of the period of notice referred to in sub-section (1) unless payment of the amount due is made in the meantime the Minister may enter upon and take possession of and manage and maintain the undertaking of the Authority and all the property and revenues of the Authority and without further or other authority than this section may do all things which may be done by the Authority in all respects as though the Minister were the Authority and any reference in any Act to the Authority includes the Minister during such time as he retains such possession.

(3) The Minister—

(a) may appoint some person on his behalf to enter upon and take possession of the undertaking of the Authority and the property and revenues of the Authority and the person so appointed shall subject to the Minister, manage and maintain the undertaking and the property and revenues of the Authority and in relation thereto may exercise all the powers, rights, and duties of the Minister as provided under this section ; and

(b) may at any time remove any person appointed under paragraph (a) and appoint some other person in his place.

31. (1) Possession of the undertaking of the Authority and of any property and revenues taken by the Minister under section 30 may be relinquished at such time and in such manner and upon such terms and conditions as the Minister thinks fit.

Relinquishment of possession by Minister.

(2) The Minister may on the relinquishment of possession reserve any of the said property and revenues and any powers, rights, and duties of the Authority with a view to the payment of any moneys remaining or accruing due to the Treasurer of Victoria from or on account of the Authority.

(3) Upon

(3) Upon relinquishment all property, revenues, powers, rights, and duties which became vested in the Minister shall so far as they are not reserved revert to and become vested in the Authority.

(4) A relinquishment under this section shall be without prejudice to the power of again taking possession of the undertaking of the Authority or any property, revenues, powers, rights, and duties as provided in this section and without prejudice to any security for the repayment of any loan or advance by the Minister.

Authority
not liable for
municipal rates.

32. The Swan Hill Pioneer Settlement Authority is exempt from the payment of rates to any municipality under the provisions of the *Local Government Act* 1958 in respect of the premises of the Swan Hill Pioneer Settlement.

Appointment of
inspector by
Governor in
Council.

33. Where it appears to the Governor in Council that—

- (a) it is desirable for the protection of the public ;
- (b) it is in the public interest because fraud or misfeasance or other misconduct by a person who is or has been concerned with the affairs of the Authority is alleged ; or
- (c) in any case it is in the public interest—

to appoint an inspector to investigate affairs of the Authority he may by instrument in writing appoint an inspector.

Conditions of
appointment of
inspector.

34. (1) The Governor in Council shall in the instrument appointing an inspector specify full particulars of the appointment including—

- (a) the matters into which the investigation is to be made being all the affairs or particular affairs of the Authority ;
- (b) the period in respect of which the investigation is to be made ; and
- (c) the terms and conditions of the appointment of the inspector including terms and conditions relating to remuneration.

(2) The Governor in Council may by notice in writing given to an inspector terminate his appointment at any time.

(3) Notice of the appointment and notice of the termination of the appointment of an inspector shall be published in the *Government Gazette*.

Powers of
inspector.

35. (1) An inspector may require an officer of the Authority by notice in writing in accordance with the prescribed form given in the prescribed manner—

- (a) to produce to the inspector such books of the Authority and other books relating to affairs of the Authority

as are in the custody or under the control of the officer ;

(b) to give to the inspector all reasonable assistance in connexion with the investigation ; and

(c) to appear before the inspector for examination on oath.

(2) An inspector may administer an oath referred to in paragraph (c) in sub-section (1).

(3) An inspector shall not exercise his powers under sub-section (1) in respect of an officer of the Authority unless he has furnished to the officer a certificate stating that he is investigating affairs of the Authority under this Part and that the officer is an officer of the Authority.

(4) Where books are produced to an inspector under this Part the inspector may take possession of the books for such period as he considers necessary for the purposes of the investigation and during that period he shall permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

36. (1) Where affairs of the Authority are being investigated under this Part an officer of the Authority shall not— Examination of officers.

(a) refuse or fail to comply with a requirement of an inspector under section 35 to the extent to which he is able to comply with it ;

(b) in purported compliance with such a requirement knowingly furnish information that is false or misleading in a material particular ; or

(c) when appearing before an inspector for examination in pursuance of such a requirement—

(i) make a statement that is false or misleading in a material particular ; or

(ii) refuse or fail to be sworn.

Penalty : \$1,000.

(2) A duly qualified legal practitioner acting for the officer—

(a) may attend the examination ; and

(b) may, to the extent that the inspector permits—

(i) address the inspector ; and

(ii) examine the officer—

in relation to matters in respect of which the inspector has questioned the officer.

(3) The

(3) The officer is not excused from answering a question put to him by the inspector on the ground that the answer might tend to incriminate him but, where the officer claims before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under sub-section (1) or in relation to a charge of perjury in respect of the answer.

(4) A person who complies with the requirement of an inspector under section 35 shall not incur any liability to any person by reason only of that compliance and for the purposes of this sub-section a certificate under sub-section (3) of section 35 is conclusive evidence of the facts required to be stated in that certificate.

(5) A person required to attend for examination under this Part is entitled to receive such allowances and expenses as are prescribed.

Notes of
examination.

37. (1) An inspector may cause notes of an examination made by him under this Part to be recorded in writing and be read to or by the person examined and may require that person to sign the notes and, subject to this section, notes signed by that person may be used in evidence in any legal proceedings against that person.

(2) A copy of the notes signed by a person shall be furnished without charge to that person upon request made by him in writing.

(3) Notes made under this section that relate to a question the answer to which a person has claimed might tend to incriminate him shall not be used as evidence in criminal proceedings other than proceedings under sub-section (1) of section 36 or in relation to a charge of perjury in respect of the answer.

(4) Nothing in this section affects or limits the admissibility of other written evidence or of oral evidence.

(5) Where a report is made under section 38 any notes recorded under this section relating to that report shall be furnished with the report.

Report of
inspector.

38. (1) An inspector—

(a) may make one or more reports in writing to the Minister during an investigation of affairs of the Authority

and

and if so directed in writing by the Governor in Council shall make such reports as are specified in the direction ; and

- (b) shall, on the completion or termination of the investigation, report in writing to the Governor in Council and to the Minister on the result of the investigation.

(2) A report shall include a statement of the opinion of the inspector in relation to the affairs of the Authority and the facts on which that opinion is based.

(3) An inspector shall not include in a report any recommendation relating to the institution of criminal proceedings or any statement to the effect that in his opinion a specified person has committed a criminal offence but, where an inspector is of the opinion that criminal proceedings ought to be instituted or that a person has committed a criminal offence, he shall state that opinion in writing given to the Minister.

(4) Subject to sub-section (5) a copy of a report made to the Minister under this section shall be given to the Authority.

(5) Subject to sub-section (6) the Minister shall not give a copy of a report under this Part to the Authority if he believes that legal proceedings which have been or which in his opinion might be instituted might be prejudiced by the report.

(6) The court before which legal proceedings are brought against the Authority or other person for or in respect of matters dealt with in a report under this Part may order that a copy of the report be given to the Authority or person.

(7) The Governor in Council may if he is of opinion that it is in the public interest so to do cause the whole or any part of a report to be printed and published.

(8) A copy of a report of an inspector purporting to be certified as such a report by the Minister is admissible in legal proceedings as evidence of the inspector's report.

(9) Nothing in this section operates to diminish the protection afforded to witnesses by the *Evidence Act 1958*.

39. The Authority may with the approval of the Governor in Council make regulations for governing the affairs of the Authority and in particular, without in any way limiting or derogating from the generality of the foregoing provisions of this section, for or with respect to—

Regulations.

- (a) meetings of the Authority and the management and conduct of business thereat ;

(b) the

- (b) the control, supervision, and guidance of all officers of and the control of all property vested in or belonging to the Authority and the time and mode of accounting by officers for all moneys coming into their hands ;
- (c) the construction of the works of the undertaking of the Authority ;
- (d) the mode of making contracts for the purposes of this Act and supervising the execution thereof ;
- (e) the management and improvement of the undertaking of the Authority ;
- (f) the making levying and collecting of charges for admission and for services performed by the Authority ;
- (g) forms for the purposes of this Act ;
- (h) any matters authorized or required by this Act to be prescribed by regulations ;
- (i) the conduct of members of the public on premises managed and controlled by the Authority and the removal of persons contravening or failing to comply with such regulations ;
- (j) imposing penalties of not more than \$50 for any contravention of or failure to comply with the regulations ; and
- (k) generally carrying out the objects and purposes of this Act.

General
penalty.

40. Any breach of regulations made under section 39 for which no special penalty is therein provided shall be punishable by a penalty of not more than \$20.