



Western Australia

Rights in Water and Irrigation Act 1914

Reprinted as at 10 January 2001

Western Australia

Rights in Water and Irrigation Act 1914

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Notes

Defined Terms



Western Australia

Reprinted under the
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at 10 January 2001

Rights in Water and Irrigation Act 1914

An Act relating to rights in water resources, to make provision for the regulation, management, use and protection of water resources, to provide for irrigation schemes, and for related purposes.

[Long title inserted by No. 49 of 2000 s.4.]

Part I — Preliminary

[Heading inserted by No. 119 of 1984 s.3.]

1. Short title

This Act may be cited as the *Rights in Water and Irrigation Act 1914*¹.

[Section 1 inserted by No. 119 of 1984 s.3.]

2. Interpretation

(1) In this Act, unless the contrary intention appears —

“**artesian well**” means a well, including all associated works, from which water flows, or has flowed, naturally to the surface;

“**bed**” with reference to any watercourse or wetland means the land over which normally flows, or which is normally covered by, the water thereof, whether permanently or intermittently; but does not include land from time to time temporarily covered by the flood waters of such watercourse or wetland and abutting on or adjacent to such bed;

“**Commission**” means the Water and Rivers Commission established by section 4 of the *Water and Rivers Commission Act 1995*;

“**Corporation**” means the Water Corporation established by section 4 of the *Water Corporation Act 1995*;

“**Crown land**” means land vested in Her Majesty which is not for the time being dedicated to any public purpose, or subject to any grant, lease, licence, contract, or engagement made by or on behalf of Her Majesty;

“**degradation**”, in respect of water, includes the sensible diminishing of the quality or quantity of that water;

“**District**” means an Irrigation District or “**irrigation district**” constituted under this Act;

“former Authority” means the Water Authority of Western Australia under the *Water Authority Act 1984*² before the commencement of Part 2 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995*³;

“former Minister” means a Minister administering this Act before, pursuant to the *Water Authority Act 1984*², the former Authority became charged with the administration of functions under this Act, whether in his capacity as a Minister of the Crown or as (pursuant to section 2 of the *Water Supply, Sewerage, and Drainage Act 1912* as read with this Act) a body corporate;

“irrigation charge”, in relation to land, means a water charge in respect of that land relating to the provision of irrigation under this Act;

“local by-laws” means local by-laws made under section 26L;

“non-artesian well” means a well, including all associated works, from which water does not flow, and has not flowed, naturally to the surface, but has to be raised, or has been raised, by pumping or other artificial means;

“prescribed” means prescribed under the *Water Agencies (Powers) Act 1984* for the purposes of this Act or that Act, as the case requires;

“spring” means a spring of water naturally rising to and flowing over the surface of land, but does not include the discharge of underground water directly into a watercourse, wetland, reservoir or other body of water;

“take”, in relation to water, means to remove water from, or reduce the flow of water in, a watercourse, wetland or underground water source, including by —

- (a) pumping or siphoning water;
- (b) stopping, impeding or diverting the flow of water;
- (c) releasing water from a wetland;

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(d) permitting water to flow under natural pressure from a well; or

(e) permitting stock to drink from a watercourse or wetland,

and includes storing water during, or ancillary to, any of those processes or activities;

“the regulations” means regulations made as mentioned in section 27;

“underground water” or **“underground water source”** includes water that percolates from the ground into a well or other works;

“water charge”, in relation to land, means a charge made under the *Water Agencies (Powers) Act 1984* in respect of that land relating to a water service provided under this Act;

“watercourse” has the meaning given by section 3;

“water resources” includes —

(a) watercourses and wetlands together with their beds and banks;

(b) other surface waters; and

(c) aquifers and underground water;

“well” means an opening in the ground made or used to obtain access to underground water;

“wetland” means a natural collection of water, whether permanent or temporary, on the surface of any land and includes —

(a) any lake, lagoon, swamp or marsh; and

(b) a natural collection of water that has been artificially altered,

but does not include a watercourse.

(2) Terms not otherwise assigned a meaning under subsection (1) but referred to in section 3 of the *Water Agencies (Powers) Act 1984* as having a meaning assigned for the purposes of a

relevant Act have that meaning in and for the purposes of this Act.

[Section 2 inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 s.275; No. 24 of 1987 s.140; No. 73 of 1995 ss.113 and 140; No. 49 of 2000 ss.5 and 15.]

3. Meaning of “watercourse”

(1) In this Act, unless the contrary intention appears —

“watercourse” means —

- (a) any river, creek, stream or brook in which water flows;
- (b) any collection of water (including a reservoir) into, through or out of which any thing coming within paragraph (a) flows;
- (c) any place where water flows that is prescribed by local by-laws to be a watercourse,

and includes the bed and banks of any thing referred to in paragraph (a), (b) or (c).

(2) For the purposes of the definition in subsection (1) —

- (a) a flow or collection of water comes within that definition even though it is only intermittent or occasional;
- (b) a river, creek, stream or brook includes a conduit that wholly or partially diverts it from its natural course and forms part of the river, creek, stream or brook; and
- (c) it is immaterial that a river, creek, stream or brook or a natural collection of water may have been artificially improved or altered.

[Section 3 inserted by No. 49 of 2000 s.6.]

[Part II repealed by No. 73 of 1995 s.114.]

Part III — Control of water resources

[Heading inserted by No. 119 of 1984 s.3; amended by No. 49 of 2000 s.17.]

Division 1 — Objects and application of this Part

[Heading inserted by No. 49 of 2000 s.7.]

4. Objects

- (1) The objects of this Part are —
 - (a) to provide for the management of water resources, and in particular —
 - (i) for their sustainable use and development to meet the needs of current and future users; and
 - (ii) for the protection of their ecosystems and the environment in which water resources are situated, including by the regulation of activities detrimental to them;
 - (b) to promote the orderly, equitable and efficient use of water resources;
 - (c) to foster consultation with members of local communities in the local administration of this Part, and to enable them to participate in that administration; and
 - (d) to assist the integration of the management of water resources with the management of other natural resources.
- (2) The reference to “**use and development**” in subsection (1)(a)(i) includes use and development for domestic, commercial, recreational, cultural and navigational purposes.
- (3) The Commission is to seek to ensure that the objects stated in subsection (1) are achieved, and other persons are to do so to the extent that they have relevant functions under this Part.

[Section 4 inserted by No. 49 of 2000 s.7.]

4A. Meaning of “watercourse” in this Part

In this Part —

“**watercourse**” includes waters flowing from a spring to which this Part applies.

[Section 4A inserted by No. 49 of 2000 s.7.]

5. Waters to which this Part does not apply

(1) This Part does not apply to or in relation to —

- (a) the water flowing from any spring the water of which rises to the surface on land that has been granted or demised by the Crown until it has passed beyond the boundaries of the land belonging to the owner or occupier of the land on which the water so rises; or
- (b) the water in any wetland the bed of which is on land that has been granted or demised by the Crown and is wholly within the boundaries of the land belonging to the owner or occupier of the land on which it is situated,

unless the spring or wetland is prescribed by local by-laws as being a spring or wetland to which this Part applies.

(2) A spring or wetland may not be prescribed as a spring or wetland to which this Part applies unless —

- (a) taking water from the spring or wetland will, in the opinion of the water resources management committee established under Division 3C for the locality or localities in which the by-law is intended to apply, have a significant impact on the flow or level of a watercourse or wetland;
- (b) that committee recommends to the Commission that this Part applies to or in relation to the spring or wetland; and
- (c) the Commission recommends to the Minister that this Part applies to or in relation to the spring or wetland.

[Section 5 inserted by No. 49 of 2000 s.7.]

Division 1A — Ownership and control of waters

[Heading inserted by No. 49 of 2000 s.18.]

5A. Natural waters vest in Crown

The right to the use and flow, and to the control, of the water at any time in any —

- (a) watercourse;
- (b) wetland; or
- (c) underground water source,

vests in the Crown except as appropriated under this Act or another written law.

[Section 5A inserted by No. 49 of 2000 s.18.]

5B. Saving for works

- (1) The operation of section 5A does not prevent the owner or occupier of land —
 - (a) subject to any relevant local by-laws, from —
 - (i) draining the land; or
 - (ii) making any dam or tank on the land, not on a watercourse or wetland,if as a result of doing so —
 - (iii) the flow of water in a watercourse, or the amount of water in a wetland, is not diminished; or
 - (iv) there is no significant adverse effect on the quality of water, or any ecosystem, in a watercourse, or a wetland; or
 - (b) from making any dam or tank on the land, not on a watercourse or wetland, for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4).

- (2) In subsection (1) —
- “**diminished**” means —
- (a) sensibly diminished; or
 - (b) if local by-laws prescribe a greater diminution of the flow or amount of water for the purposes of this section, diminished to a greater extent than is so prescribed.

[Section 5B inserted by No. 49 of 2000 s.18.]

5C. Unauthorised taking of water prohibited

- (1) A person must not —
- (a) take water from any watercourse, wetland or underground water source to which this section applies; or
 - (b) cause or permit any of those things to be done,
- except under and in accordance with —
- (c) a right conferred by —
 - (i) section 9, 10, 20, 21, 22 or 25A;
 - (ii) a local by-law of the kind referred to in section 26L(3)(d); or
 - (iii) another written law;or
 - (d) a licence under this section granted by the Commission in accordance with Schedule 1.

Penalty: \$10 000 and a daily penalty of \$1 000.

- (2) This section applies to —
- (a) a watercourse or wetland to which Division 1B applies;
 - (b) a watercourse or wetland to which Division 2 applies if it is —
 - (i) prescribed by the regulations to be subject to the operation of this section; or
 - (ii) situated within an area that is so prescribed;

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Division 1A Ownership and control of waters

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- (c) any artesian underground water; and
 - (d) any other underground water if it is —
 - (i) in a proclaimed area under section 26B; or
 - (ii) in an area that is prescribed by the regulations for the purposes of section 26B(3a).
- (3) Schedule 1 has effect to make provision for and in relation to the licences referred to in subsection(1)(d).

[Section 5C inserted by No. 49 of 2000 s.18.]

5D. Rights cannot be acquired by length of use

A right —

- (a) to take and divert water;
- (b) to the diversion of water; or
- (c) to the exclusive use of water,

cannot be acquired by any person, by length of time of use or otherwise, except under this Act or any other written law.

[Section 5D inserted by No. 49 of 2000 s.18.]

5E. Civil remedy where unlawful taking of water or degradation of water resource

- (1) Subsection (2) applies if —
- (a) a person contravenes section 5C and the contravention affects —
 - (i) the exercise by a person of a right referred to in section 5C(1)(c); or
 - (ii) the taking of water by a person under a licence under section 5C;
- or
- (b) a person taking or using water from a water resource does not take all reasonable steps to minimise the degradation of the water resource.

- (2) The contravention is a breach of statutory duty that is actionable at the suit of —
- (a) in respect of subsection (1)(a), a person referred to in subsection (1)(a)(i) or (ii); or
 - (b) in respect of subsection (1)(b), a person directly affected by the degradation of the water resource referred to in that subsection.
- (3) Subsection (2) has effect subject to the defences and other incidents applying to actions for breach of statutory duty.

[Section 5E inserted by No. 49 of 2000 s.18.]

Division 1B — Certain surface waters

[Heading inserted by No. 119 of 1984 s.3; amended by No. 49 of 2000 s.19.]

6. Application of Division

[(1) repealed]

- (2) Subject to section 5 and any proclamation under subsection (3), this Division applies to and in relation to every watercourse or wetland that is for the time being situated within the boundaries of a District but not otherwise.
- (3) Subject to subsection (4), the Governor may, on the recommendation of the Minister, at any time and from time to time by proclamation declare that this Division —
- (a) shall; or
 - (b) shall not,

apply to and have effect in relation to any watercourse or wetland specified in the proclamation or situated in a portion of the State so specified and any such proclamation shall have effect according to its tenor.

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Part III Control of water resources

Division 1B Certain surface waters

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- (4) A proclamation under subsection (3) shall not be made unless —
- (a) the Commission has given notice of the proposed proclamation —
 - (i) to each interested local government, within the meaning of subsection (5); and
 - (ii) to each water resources management committee established under Division 3C for the locality or localities to which the proclamation is intended to apply;
 - (b) the local governments and water resources management committees have been given the opportunity to make submissions on the proposal to the Commission;
 - (c) the Commission has called for public comment on the proposal in accordance with subsection (6); and
 - (d) the Commission has considered any submissions made under this section and given a report on them to the Minister.
- (5) For the purposes of subsection (4), where a watercourse or wetland runs through, is contiguous to, or is situated wholly or partly in, a local government district, the local government of that district is, in relation to a proposed proclamation under that subsection affecting that watercourse or wetland an interested local government.
- (6) The Commission is taken to comply with subsection (4)(c) by —
- (a) publishing in 2 issues of a daily newspaper circulating in the locality concerned a notice stating the proposal to make the proclamation; and
 - (b) including in the notice a statement —
 - (i) specifying the places at which a copy of the proposed proclamation may be inspected or obtained;

- (ii) indicating that written submissions on the proposed proclamation may be made by any person within a specified period; and
 - (iii) showing the address to which submissions may be delivered or posted.
- (7) The period specified under subsection (6)(b)(ii) is to be not less than 30 days after both of the notices referred to in paragraph (a) of that subsection have been published.

[Section 6 inserted by No. 119 of 1984 s.3; amended by No. 14 of 1996 s.4; No. 49 of 2000 ss.14(2) and (3), 15 and 20.]

7. Saving

A proclamation made under section 27(5) as enacted before the coming into operation of section 3 of the *Rights in Water and Irrigation Amendment Act 1984*¹ and in force immediately before the coming into operation of that section shall —

- (a) in the case of a proclamation under paragraph (a) or (b) thereof, be deemed to have been made under section 6(3)(a);
- (b) in the case of a proclamation under paragraph (c) thereof, be deemed to have been made under section 6(3)(b),

and a reference in any such proclamation to this Part shall be read as a reference to this Division.

[Section 7 inserted by No. 119 of 1984 s.3.]

[8. Repealed by No. 49 of 2000 s.21.]

9. Riparian right defined

- (1) Subject to this section, the owner or occupier of any land alienated from the Crown through or contiguous to which runs any watercourse, or contiguous to which, or partly within which,

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Division 1B Certain surface waters

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is situate any wetland, has the right, as such owner or occupier, to take water in that watercourse or wetland free of charge —

- (a) for the domestic and ordinary use of himself and of his family and servants; and
- (b) for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4),

and every owner of land alienated from the Crown before the relevant day has a further right to take such water for the irrigation of a garden not exceeding 2 hectares in extent and from which no produce is sold, being part of that land and used in connection with a dwelling.

(2) For the purposes of this section —

- (a) **“the relevant day”**, in relation to land through or contiguous to which runs a watercourse, or contiguous to which or partly within which is situate a wetland, means —
 - (i) where this Division applies to and has effect in relation to the watercourse or wetland by reason of a proclamation under section 6(3), the day on which that proclamation was published;
 - (ii) in any case, the day when this Act came into operation;

and

- (b) land that, on the relevant day, was or is in process of alienation shall be deemed to have been alienated before that day.

(3) This section has effect subject to Division 3A.

[Section 9 inserted by No. 119 of 1984 s.3; amended by No. 49 of 2000 ss.8, 15 and 22.]

10. Other rights to water

(1) Any person may take water for domestic and ordinary use, and for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4), from any watercourse or wetland vested in the Crown and to which there is access by a public road or reserve at the point at which the water is taken.

(2) This section has effect subject to Division 3A.

[Section 10 inserted by No. 119 of 1984 s.3; amended by No. 49 of 2000 ss.14(2), 15 and 23.]

11. Works for purposes of section 10

(1) Section 10 does not authorise a person for the purpose of taking water under that section —

(a) to do anything, or install any works or object, that causes obstruction of or interference to a watercourse or wetland or its bed or banks, unless the person holds a permit granted by the Commission authorising the person to do so; or

(b) to do anything, or install any works or object, that causes obstruction or disturbance of or interference with a road or reserve, unless the person is authorised to do so by the body in which the control and management of the road or reserve is vested.

(2) The regulations may make provision for the permits referred to in subsection (1)(a), including provision for the matters set out in section 27B.

[Section 11 inserted by No. 49 of 2000 s.24.]

[12. Repealed by No. 49 of 2000 s.25.]

[13. Repealed by No. 49 of 2000 s.26.]

[14. Repealed by No. 49 of 2000 s.56.]

15. The *alveus* of waters not alienated

- (1) Subject to subsection (4), where a watercourse or wetland forms the boundary or part of the boundary of a parcel of land that has at any time been alienated by the Crown, the bed thereof shall, for the purposes of this Act, be deemed to have remained the property of the Crown, and not to have passed with the land so alienated.
- (2) Subject to subsection (4), where a watercourse or wetland forms the boundary, or part of the boundary of a parcel of land that is alienated by the Crown, the bed thereof shall, notwithstanding such alienation, remain the property of the Crown, and shall not pass with the land so alienated.
- (3) Subsections (1) and (2) apply notwithstanding that one and the same person has been or is the owner of the lands adjacent to both banks.
- (4) This section does not apply to —
 - (a) the bed of a natural collection of water into and out of which flows a river, stream, or creek to the extent that it exceeds in width the width of the river, stream, or creek at its inlet to or outlet from that natural collection of water; or
 - (b) the bed of a natural collection of water, whether or not it is part of a watercourse, to the extent that it is cultivated, either wholly or in part, at any time during the year, or is capable of being drained and cultivated.

[Section 15 inserted by No. 119 of 1984 s.3; amended by No. 49 of 2000 ss.14(1) and 15.]

16. Owner of land adjacent to watercourse to have certain rights

- (1) Notwithstanding anything in section 15 —
 - (a) the owner or occupier for the time being of any land adjacent to any watercourse or wetland the bed whereof is by this Act declared to have remained the property of

the Crown, shall have the like access to the portion of the bed to which that land is adjacent, and the like use of that portion as if this Act had not been passed unless such portion has been actually appropriated by or is under the sanction of the Crown for any of the purposes of this Act; and

- (b) such owner or occupier may have and pursue against any person trespassing upon that portion of the land any remedy for trespass which he might have had and pursued if this Act had not been passed, and as if that person were a trespasser upon land in the possession of such owner or occupier.
- (2) The Commission may, with the approval of the Minister, in the name and on behalf of the Crown, grant to the owner or occupier of any land adjacent to any watercourse or wetland the bed whereof is by this Act declared to have remained the property of the Crown, permission subject to such conditions as the Commission may think fit to carry out works at the expense of that owner or occupier for the protection of that land from damage by erosion or flooding, if in the opinion of the Commission such works will not injuriously affect the bed or unduly obstruct the watercourse or wetland.
- (3) This section shall not be taken to restrict the right of the Crown to pursue any remedy against any person trespassing upon such bed nor shall this section entitle an owner or occupier to have or pursue any remedy for trespass against the Crown, the Commission, or a former Minister, or any person acting under the authority of the Crown, the Commission, or a former Minister.
- (4) A person exercising in respect of a bed a right of access or use conferred by subsection (1) does not by reason thereof trespass upon such bed.

[Section 16 inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 ss.279 and 281; No. 110 of 1985 s.121; No. 73 of 1995 s.138; No. 49 of 2000 ss.9, 14(1) and (3) and 15.]

17. Interference prohibited

- (1) Where, whether before or after the coming into operation of this Act, land was or is granted, transferred in fee simple, or demised by the Crown, a person shall not, except as authorised by a permit or by any other Act, obstruct, destroy, or interfere with any watercourse, race, or drain flowing through or over the land, or any dam or reservoir, or the bed of any disused watercourse, race, or drain, that is on the land.
- (2) Subsection (1) applies notwithstanding that although the watercourse, race, or drain flowed through or over the land, or the dam or reservoir, or the bed of a disused watercourse, race, or drain, was on the land at the time of the grant, transfer, or demise of the land, an appropriate reservation or exception was not included in the Crown grant, transfer of Crown land in fee simple, or lease.
- (3) A person shall not, except as authorised by a permit or by any other Act, obstruct, destroy or interfere with the waters, bed or banks of any watercourse flowing through or over, or wetland situate wholly or partly on, land that has not been granted or demised by the Crown.
- (3a) Without limiting subsection (1) or (3) —
 - (a) the construction or alteration of a dam is to be taken to be prohibited by that subsection; and
 - (b) the reference in that subsection to a permit is a reference to the grant of a permit by the Commission under regulations referred to in section 17B.
- (4) Any person who obstructs, destroys, or interferes with anything contrary to subsection (1) or (3) is guilty of an offence against this section; and any person who, being the occupier of any land granted or demised as mentioned in subsection (1), continues or fails to remove any such obstruction or interference is guilty of an offence against this section on every day during which such obstruction or interference is continued or not removed after

notice in writing to discontinue or to remove the same has been given by or on behalf of the Commission to such occupier.

- (4a) Despite subsections (1) and (3), this section does not apply to the construction or alteration of a dam in an area, or of a size or type, excluded from the operation of this section by local by-laws if the dam is constructed or altered in accordance with such by-laws.
- (4b) Despite section 19, this section applies to a watercourse to which Division 2 applies that is —
- (a) prescribed for the purposes of this section by local by-laws; or
 - (b) situated within an area that is so prescribed.
- (5) A prosecution for an offence against this section may be commenced at any time within 2 years after the offence was committed and not afterwards.
- (6) The Commission may, by notice in writing, direct any person who has been convicted of an offence against this section to carry out such works and take such other measures as the Commission specifies in the notice for the purpose of restoring the bed or banks of the watercourse, race, drain or wetland or minimising the effect of the obstruction or destruction thereof or interference therewith.
- (7) Where a direction contained in a notice given under subsection (6) has not been complied with and the time allowed by the notice for compliance has expired the Commission may cause such works to be carried out and measures to be taken as the Commission considers appropriate for achieving the purposes of the notice, and the Commission may recover the expenses thereby reasonably incurred as a debt due from the person to whom the notice was given.

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(8) In this section and in section 17A —

“dam” includes any artificial barrier or levee, whether temporary or permanent, which does or could impound, divert or control water, silt, debris or liquid borne materials, together with its appurtenant works.

[Section 17 inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 s.279; No. 110 of 1985 s.122; No. 73 of 1995 s.138; No. 31 of 1997 s.79(1) and (2); No. 49 of 2000 ss.14(1) and (4), 15 and 53.]

17A. Saving for existing dams

(1) Nothing in section 17 is to be taken to require a permit as mentioned in subsection (3a)(b) of that section for the construction or alteration of a dam if that construction or alteration was commenced before the coming into operation of section 53 of the *Rights in Water and Irrigation Amendment Act 2000* (**“the commencement day”**).

(2) Subsection (1) does not affect —

- (a) the application of section 17 to the alteration, after the commencement day, of a dam the construction of which is exempted from that section by subsection (1); or
- (b) any breach of that section that occurred before that day.

[Section 17A inserted by No. 49 of 2000 s.54.]

17B. Regulations as to permits for section 17

The regulations may make provision for the permits that are required under section 17(1) and (3), including provision for the matters set out in section 27B.

[Section 17B inserted by No. 49 of 2000 s.54.]

18. Obstruction of flow

Any person who conveys or discharges, or causes or permits to be conveyed or discharged any sludge, mud, earth, gravel, or

other matter likely to obstruct the flow of the current, into any watercourse, is guilty of an offence against this Act.

[Section 18 inserted by No. 119 of 1984 s.3; amended by No. 49 of 2000 s.15.]

Division 2 — Other surface waters

[Heading inserted by No. 119 of 1984 s.3.]

19. Application of Division

- (1) Subject to section 5, this Division applies to and has effect in relation to every watercourse or wetland to and in relation to which Division 1B does not apply.

[(2) repealed]

[Section 19 amended by No. 49 of 2000 ss.14(3), 15 and 27.]

20. Riparian right defined

- (1) The owner or occupier of any land (“**riparian land**”) alienated from the Crown through or contiguous to which runs any watercourse, or contiguous to which, or partly within which, is situate any wetland, has the right, as such owner or occupier, to take water in that watercourse or wetland free of charge —
- (a) for the domestic and ordinary use of himself and of his family and servants;
 - (b) for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4); and
 - (c) to the extent that the flow of water in the watercourse or the amount of water in the wetland, as the case may be, is not thereby sensibly diminished, for any other purpose,

but the right described in paragraph (c) may be made inapplicable to, or be restricted in relation to, any riparian land by the provisions of local by-laws that apply to the land, and that paragraph is to be read subject to any such provisions.

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- (2) Every owner of riparian land that was —
- (a) alienated from the Crown before the commencement of this Act; or
 - (b) in the process of alienation at that commencement,
- has the right, in addition to the rights conferred by subsection (1), to take water described in that subsection for the irrigation of a garden not exceeding 2 hectares if no produce is sold from the garden and the garden —
- (c) is part of that land; and
 - (d) is used in connection with a dwelling.
- (3) The owner of riparian land also has the right conferred by subsection (2) in relation to a watercourse or wetland where, although paragraph (a) or (b) of that subsection does not apply —
- (a) Division 1B has ceased to apply to the watercourse or wetland; and
 - (b) immediately before that cessation a right of the kind described in subsection (2), in relation to that watercourse or wetland, was appurtenant to the land by virtue of section 9(1).
- (4) The operation of this section does not prevent the owner or occupier of land from making any dam or tank on the land as long as the owner or occupier is taking water in accordance with this section.
- (5) This section has effect subject to Division 3A.

[Section 20 inserted by No. 119 of 1984 s.3; amended by No. 49 of 2000 ss.10, 15 and 28.]

21. Other rights to water

- (1) Any person may take water —
- (a) for domestic and ordinary use;

- (aa) for firefighting;
- (b) for watering cattle or other stock other than those being raised under intensive conditions; and
- (c) subject to subsection (2), to the extent that the flow of water in the watercourse or the amount of water in the wetland, as the case may be, is not thereby sensibly diminished, for any other purpose,

from any watercourse or wetland that is vested in the Crown and to which there is access by a public road or by a reserve for public access at the point where the water is taken.

- (2) The right described in subsection (1)(c) may be made inapplicable to, or be restricted in relation to, any watercourse or wetland by the provisions of local by-laws that apply to that watercourse or wetland, and that paragraph is to be read subject to any such provisions.
- (3) Subsection (1) has effect subject to Division 3A.
- (4) In subsection (1)(b) —
 - “**intensive conditions**” means conditions in which the cattle or stock —
 - (a) are confined to an area smaller than that required for grazing under normal conditions; and
 - (b) are usually fed by hand or by mechanical means.

[Section 21 inserted by No. 119 of 1984 s.3; amended by No. 49 of 2000 ss.11, 15 and 29.]

21A. Works for purposes of section 21

- (1) Section 21 does not authorise a person for the purpose of taking water under that section —
 - (a) to do anything, or install any works or object, that causes obstruction of or interference to a watercourse or wetland or its bed or banks, unless the person holds a

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permit granted by the Commission authorising the person to do so; or

- (b) to do anything, or install any works or object, that causes obstruction or disturbance of or interference with a road or reserve, unless the person is authorised to do so by the body in which the control and management of the road or reserve is vested.
- (2) The regulations may make provision for the permits referred to in subsection (1)(a), including provision for the matters set out in section 27B.

[Section 21A inserted by No. 49 of 2000 s.30.]

22. Directions

- (1) The Commission may, where the Commission is of the opinion that —
- (a) any person —
 - (i) having a right under section 20 or 21 to take water in a watercourse or wetland, has diverted, taken, or used such water for a purpose or to an extent not authorised by this Division or is not taking all reasonable steps to minimise the degradation of the watercourse or wetland; or
 - (ii) not having a right under section 20 or 21 to take water in a watercourse or wetland, has diverted, taken, or used such water;
- and
- (b) the unauthorised diversion, taking, or use —
 - (i) resulted in or contributed to the interference with the enjoyment by any other person of a right conferred by this Division, or any damage or injury to the land of any other person; or
 - (ii) should not, in the public interest, be permitted to continue,

by notice in writing give directions to the person who has so diverted, taken, or used the water defining, where applicable, the purposes for which, or the extent to which, water may be diverted, taken, or used by that person in the exercise of those rights and specifying the extent, if any, to which, the manner in which, and the conditions upon which, that person may divert, take, or use such water otherwise than in the exercise of those rights.

- (2) A direction given by the Commission under subsection (1) —
- (a) is to contain reasons for the direction; and
 - (b) may be varied or cancelled by the Commission by subsequent notice in writing.
- (2a) Clause 7(2) of Schedule 1 applies, with all necessary changes, when the Commission is considering whether to give or make, or is determining the contents of —
- (a) any direction under subsection (1) as to the diversion, taking or use of water otherwise than in the exercise of a right referred to in that subsection; or
 - (b) any variation of such a direction,
- or is considering whether to cancel any such direction.
- (3) A direction given under subsection (1) shall not permit the diversion, taking, or use of water otherwise than in the exercise of a right under section 20 or 21 unless the Commission is satisfied that such diversion, taking, or use will not result in or contribute to any interference, damage, or injury of the kind referred to in subsection (1)(b)(i).
- (4) Where by notice under subsection (1) or (2) the Commission gives to a person a direction or varies a direction previously given and, after the expiry of 30 days from the giving of the notice or such shorter time as is specified in the notice, the person to whom the notice was given diverts, takes, or uses water contrary to the direction so given or the direction as so

varied that person commits an offence and is liable to a fine not exceeding \$4 000 and a daily penalty of \$400.

[Section 22 inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 ss.279 and 282; No. 73 of 1995 s.138; No. 49 of 2000 ss.14(3), 15, 31 and 57.]

[23. *Repealed by No. 49 of 2000 s.58.*]

24. Saving of civil remedy

Nothing contained in, or done under, this Division affects any remedy to which a person would otherwise be entitled in civil proceedings except that a person shall not be liable to be proceeded against in respect of any diversion, taking, or use of water that is permitted by a direction under section 22 or authorised by a licence under section 5C or by a local by-law.

[Section 24 inserted by No. 119 of 1984 s.3; amended by No. 49 of 2000 s.32.]

25. Offences

- (1) A person shall not, except as authorised by or under this or any other Act, obstruct, destroy, or interfere with the waters, bed, or banks of any watercourse flowing through or over, or wetland situate wholly or partly on, land that has not been granted or demised by the Crown.
- (2) Any person who obstructs, destroys, or interferes with anything contrary to subsection (1) is guilty of an offence against this section.
- (3) A prosecution for an offence against this section may be commenced at any time within 2 years after the offence was committed and not afterwards.
- (4) The Commission may, by notice in writing, direct any person who has been convicted of an offence against this section to carry out such works and take such other measures as the

Commission specifies in the notice for the purpose of restoring the bed or banks of the watercourse or wetland or minimising the effect of the obstruction or destruction thereof or interference therewith.

- (5) Where a direction contained in a notice given under subsection (4) has not been complied with and the time allowed by the notice for compliance has expired the Commission may cause such works to be carried out and measures to be taken as the Commission considers appropriate for achieving the purposes of the notice, and the Commission may recover the expenses thereby reasonably incurred as a debt due from the person to whom the notice was given.

[Section 25 inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 ss.279 and 283; No. 73 of 1995 s.138; No. 49 of 2000 ss.14(1) and (4) and 15.]

Division 3 — Underground waters

[Heading inserted by No. 119 of 1984 s.3.]

25A. Rights to take water from non-artesian wells in prescribed areas

- (1) This section applies to any non-artesian well in an area that is prescribed as mentioned in section 26B(3a), but subject to the provisions of —
- (a) any local by-law referred to in section 26; and
 - (b) any other written law,
- that are applicable to that well.
- (2) A person may take water from a non-artesian well to which this section applies and to which the person has lawful access —
- (a) for domestic and ordinary use;
 - (b) for firefighting;

- (c) for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4); and
 - (d) for any other purpose that is prescribed by a local by-law referred to in subsection (1).
- (3) The right conferred by subsection (2) does not include authority to install any works or object on the land concerned.

[Section 25A inserted by No. 49 of 2000 s.33.]

26. Local by-laws for section 25A

Local by-laws may be made for the regulation and control of the taking of water under subsection (2) of section 25A, and may include a prohibition in particular circumstances on the taking of water for a purpose mentioned in that subsection.

[Section 26 inserted by No. 49 of 2000 s.33.]

26A. Artesian wells to be licensed

- (1) A person shall not, except pursuant to a licence issued for that purpose under section 26D, commence, construct, enlarge, deepen or alter any artesian well or cause, suffer, or permit any of those things to be done.
- (2) A person who —
 - (a) being an owner or occupier of land, contravenes or fails to comply with subsection (1); or
 - (b) being a person engaged for the purpose of carrying out any work mentioned in subsection (1), commences or carries out any such work that is not authorised by a licence issued under section 26D,

commits an offence and is liable to a fine not exceeding \$10 000 and a daily penalty of \$1 000.

[Section 26A inserted by No. 119 of 1984 s.3; amended by No. 49 of 2000 ss.34 and 59.]

26B. Non-artesian wells in certain areas to be licensed

- (1) The Governor may by proclamation declare any part of the State named or defined in the proclamation, to be a proclaimed area for the purposes of this section; and may, by subsequent proclamation, vary or cancel any such proclamation.
- (2) Section 42 of the *Interpretation Act 1984*, applies to any proclamation made under subsection (1) as though the proclamation were a regulation.
- (3) A person must not —
 - (a) commence, construct, enlarge, deepen or alter any non-artesian well that is situate in a proclaimed area; or
 - (b) cause, suffer or permit any of those things to be done,unless one of the following applies —
 - (c) the person does so under and in accordance with a licence under section 26D;
 - (d) the well is in an area specified in an order under section 26C(2) and is used, or to be used, for a purpose allowed by that order;
 - (e) an exemption or exclusion contained in local by-laws referred to in section 26L(3)(c) applies; or
 - (f) the work is allowed by subsection (4)(d).
- (3a) Subsection (3) also applies to —
 - (a) all wells; or
 - (b) all wells of a class prescribed by the regulations,that are not situated in a proclaimed area but are situated in an area that is prescribed by the regulations to be subject to the operation of that subsection.
- (4) Where any work required by this section to be the subject of a licence has been commenced and is not completed at the time when —
 - (a) a proclamation made under subsection (1); or

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Division 3 Underground waters

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- (b) regulations referred to in subsection (3a),
come into operation, the occupier of the land on which the work
was commenced —
- (c) must, within 2 months after that coming into operation,
apply for a licence under section 26D for that work; and
- (d) may continue the work during that period and until the
application is finally determined whether by the
Commission or on appeal under section 26GI.
- (5) Subject to section 26C, where an existing non-artesian well is,
by operation of —
- (a) a proclamation made under subsection (1) brought into a
proclaimed area; or
- (b) regulations referred to in subsection (3a) brought under
the operation of subsection (3),
the occupier of the land on which the well is situated —
- (c) must, within 2 months after the proclamation or
regulations come into operation, apply for a licence
under section 5C to take water from that well; and
- (d) may continue to take water from the well without a
licence during that period and until the application is
finally determined whether by the Commission or on
appeal under section 26GI.
- (6) A person who —
- (a) being an owner or occupier of land, contravenes or fails
to comply with this section; or
- (b) being a person engaged for the purpose of carrying out
any work mentioned in subsection (3), commences or
carries out any such work that is prohibited by that
subsection,

commits an offence and is liable to a fine not exceeding \$10 000
and a daily penalty of \$1 000.

*[Section 26B inserted by No. 119 of 1984 s.3; amended by
No. 49 of 2000 ss.35 and 60.]*

26C. Exemptions

- (1) In this section “**proclaimed area**” has the same meaning as it has in section 26B.
- (2) The Governor may, by Order in Council published in the *Gazette*, declare that sections 5C and 26B(3) to 26B(6) do not apply in relation to a non-artesian well, or a type or types of non-artesian wells, situated, or to be situated, in a proclaimed area or part thereof specified in the Order if that well is used or to be used for the taking of water and an Order published under this subsection shall have effect according to its tenor.
- (3) The Governor may, by a subsequent Order in Council published in the *Gazette*, vary or cancel an Order under subsection (2).
- (3a) Clause 7(2) of Schedule 1 applies, with all necessary changes, when the Governor is considering whether to make, or is determining the contents of —
 - (a) any order under subsection (1); or
 - (b) any variation of such an order,or is considering whether to cancel any such order.
- (4) Where an Order published under subsection (3) varies or cancels a previous Order so published —
 - (a) a person does not contravene section 5C or 26B(3) or (6) by reason of the doing, within 2 months after the publication of the Order effecting the variation or cancellation, of anything that would not have contravened that provision had the previous Order not been so varied or cancelled;
 - (b) in relation to work that, but for the variation or cancellation of the previous Order, would, by reason of that Order, not have been required under section 26B to be the subject of a licence, section 26B(4) applies as if the day on which the Order effecting the variation or

cancellation was published were the day on which a proclamation were made under section 26B(1) declaring the part of the State concerned to be a proclaimed area; and

- (c) in relation to a non-artesian well from which, but for the variation or cancellation of the previous Order, a person would, by reason of that Order, not have been prevented from taking water, section 26B(5) applies as if the day on which the Order effecting the variation or cancellation was published were the day on which a proclamation was made under section 26B(1) bringing the well into a proclaimed area.

[Section 26C inserted by No. 119 of 1984 s.3; amended by No. 57 of 1997 s.105(1); No. 49 of 2000 s.36.]

26D. Application for and issue of licences

- (1) Every application for a licence for the commencement or construction of an artesian well or a non-artesian well or for the enlargement, deepening or altering of an existing well shall be made to the Commission in the prescribed form and shall be accompanied by the prescribed plans and specifications, together with a statement of the purposes for which it is proposed to use the water.
- (2) The Commission may —
- (a) issue a licence to the applicant subject to such terms, limitations and conditions as the Commission thinks fit;
 - (b) before granting a licence, require such alterations to be made in, or in connection with, the work or the plans and specifications as the Commission thinks fit; or
 - (c) refuse a licence.
- (3) A licence shall be deemed to be held by, and shall operate for the benefit of, the lawful owner and the occupier, for the time

being, of the land whereon the well is sunk or is proposed to be sunk.

[Section 26D inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 s.284; No. 73 of 1995 s.138; No. 49 of 2000 ss.37 and 61.]

26E. Information on non-artesian wells

- (1) Where after the coming into operation of section 3 of the *Rights in Water and Irrigation Amendment Act 1984*¹ a non-artesian well is constructed or deepened, the person who carries out the work shall, within 1 month after completing the construction of or deepening of the well, furnish, in the prescribed form, to the Commission or to such other person as the Commission may direct such information in respect of the well as is prescribed.

Penalty: \$1 000.

- (2) The Commission may, by notice published in the *Gazette*, exempt persons from the requirement of complying with subsection (1) in respect of wells in any part of the State and may, by subsequent notice so published, vary or cancel any such notice.

[Section 26E inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 s.279; No. 73 of 1995 s.138; No. 49 of 2000 s.62.]

26F. Penalty for alterations in licensed well or contravention of licence

- (1) During the currency of a licence issued under section 26D no alterations shall be made in or in connection with the well, but works necessary for the maintenance of the well in good order or occasioned by any unforeseen emergency may be carried out if written notice of all such works is given to the Commission within 7 days after the same are commenced.

- (2) Any person who contravenes this section, or contravenes or fails to carry out any condition of the licence, shall be liable to a penalty not exceeding \$10 000 and a daily penalty of \$1 000; and, in addition to the imposition of the said penalty, the Commission may cancel the licence given in respect of the well in regard to which the offence was committed; and a person shall not thereafter do, or cause, suffer or permit to be done, any thing that was authorised by the licence to be done.
- (3) The holder of any such licence may, during the currency thereof, apply for an amended licence allowing alterations in the well; and every such application shall be dealt with as is herein provided in respect of applications for a licence in the first instance.

[Section 26F inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 s.279; No. 73 of 1995 s.138; No. 49 of 2000 ss.38 and 63.]

26G. Powers of Commission in case of improper use of water

- (1) If the Commission is of the opinion that water taken from any artesian well or from a non-artesian well in relation to which section 26B(3) applies, whenever constructed —
- (a) is being improperly used;
 - (b) is being wasted, whether by reason of neglect, failure to effect repairs or alterations reasonably necessary for the proper maintenance of the well or any other cause;
 - (ba) is being taken or used without all reasonable steps being taken to minimise the degradation of the water resource;
 - (c) is having harmful effect; or
 - (d) is not being used to the best advantage,

the Commission may, after giving 30 days' notice of the intention in that regard, direct the closing or partial closing of the well or direct such other steps (including any reasonable repairs and alterations) to be taken as the Commission thinks

necessary to prevent the continuance of any of the things mentioned in paragraph (a), (b), (ba), (c) or (d).

- (2) The Commission may, for the purpose of regulating the quantity of water to be taken from any artesian or non-artesian underground water source, from time to time give directions as to the amount of water that may be taken, and the rate at which it may be taken, from any artesian well or non-artesian well that relates to that underground source.
- (2a) A notice served on a person under this section —
- (a) is to contain reasons for the direction; and
 - (b) takes effect —
 - (i) when it is served; or
 - (ii) at the later time provided for in the notice.
- (2b) The Commission may at any time revoke or vary a notice by further notice served on the person concerned.
- (3) A person who fails to comply with a direction given pursuant to this section commits an offence.
Penalty: \$5 000 and a daily penalty of \$500.
- (4) Where a person is convicted of an offence against this section, the Commission may cancel any licence given in respect of the well in regard to which the offence was committed; and a person shall not thereafter do, or cause, suffer or permit to be done anything that was authorised by a licence so cancelled to be done.

[Section 26G inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 ss.279 and 285; No. 73 of 1995 s.138; No. 49 of 2000 ss.39 and 64.]

Division 3A — Limitations on rights conferred by and under Divisions 1B, 2 and 3

[Heading inserted by No. 49 of 2000 s.40.]

Subdivision 1 — Limitations where water is augmented

[Heading inserted by No. 49 of 2000 s.40.]

26GA. Rights under sections 9, 10, 20 and 21 do not extend to augmented volume of water

- (1) Where the volume of water in any watercourse or wetland is augmented by the introduction of water by works constructed for that purpose, the rights conferred by sections 9, 10, 20 and 21 to take water in that watercourse or wetland —
 - (a) are subject to the limitations set out in subsection (2); and
 - (b) may be exercised only in accordance with that subsection and the regulations.
- (2) A person is not entitled by section 9, 10, 20 or 21 to take any more of the water of the watercourse or wetland concerned than —
 - (a) the amount prescribed by local by-laws; or
 - (b) if paragraph (a) does not apply, the amount calculated in accordance with subsection (3).
- (3) The amount for the purposes of subsection (2)(b) is —
 - (a) the aggregate of —
 - (i) 14 kilolitres per day for —
 - (I) domestic and ordinary use; and
 - (II) watering cattle or other stock,
 - in respect of every kilometre of frontage measured by the general course to the watercourse or wetland; and

- (ii) where section 9 or 20 applies, 8 500 cubic metres per annum for the irrigation of a garden as mentioned in those sections;
 - or
 - (b) the amount of water that would be available to the person and to which the person would be so entitled but for the augmentation referred to in subsection (1),
- whichever is the lesser.
- (4) Local by-laws may, for particular cases or classes of cases, specify the amount of water to which subsection (3)(b) refers, and any such specification is conclusive as to that amount.

[Section 26GA inserted by No. 49 of 2000 s.40.]

Subdivision 2 — Limitations imposed by direction

[Heading inserted by No. 49 of 2000 s.40.]

26GB. Definition

In this Subdivision —

“**water resource**” means a watercourse, wetland or underground water source to which section 26GC applies.

[Section 26GB inserted by No. 49 of 2000 s.40.]

26GC. Commission may give directions

- (1) Where this section applies to a water resource, the Commission may by notice in writing served on a person give directions to the person —
- (a) restricting —
 - (i) the amount of water that the person may take from the water resource;
 - (ii) the rate at which the water may be taken by the person from the water resource; or

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- (iii) the purpose for which the water taken from the water resource may be used by the person;
 - (b) prohibiting —
 - (i) the taking of water by the person from the water resource; or
 - (ii) the purpose for which water taken from the water resource by the person may be used;
 - or
 - (c) imposing on the person obligations in terms of any combination of the matters in paragraphs (a) and (b).
- (2) A person on whom a notice is served under subsection (1) must not —
 - (a) take or use water; or
 - (b) cause or permit water to be taken or used,in contravention of the directions given to the person in the notice.

Penalty: \$4 000 and a daily penalty of \$400.
- (3) A notice served on a person under subsection (1) —
 - (a) is to contain reasons for the direction; and
 - (b) takes effect —
 - (i) when it is served; or
 - (ii) at the later time provided for in the notice.
- (4) The Commission may at any time revoke or vary a notice by further notice served on the person concerned.

[Section 26GC inserted by No. 49 of 2000 s.40.]

26GD. When section 26GC applies

- (1) Section 26GC applies to a watercourse, wetland or underground water source if the Commission —
 - (a) has made a determination that the quantity of water in the water resource is, or is likely to be, insufficient to

meet demand, including any demand made by the needs of the environment; or

- (b) has made, and published in the *Gazette*, an order declaring that a water shortage exists in the area in which the water resource is situated,

and so long as any such determination or order has not been revoked.

- (2) Section 26GC also applies so as to enable the Commission to give directions to a person who is taking water from a water resource if in the opinion of the Commission the taking of the water is having a harmful effect on the water resource or the water being taken —
 - (a) is being improperly used;
 - (b) is being wasted;
 - (c) is having a harmful effect; or
 - (d) is not being used to the best advantage.

[Section 26GD inserted by No. 49 of 2000 s.40.]

26GE. Further provisions as to orders and determinations

- (1) An order may only be made under section 26GD(1)(b) in respect of an area if the Commission considers that the water available in the area is, or is likely to be, insufficient to meet the demands for which it is managed as described in section 4(1)(a).
- (2) The Commission must —
 - (a) revoke a determination under section 26GD(1)(a); and
 - (b) by order published in the *Gazette*, revoke an order under section 26GD(1)(b),

as soon as it is satisfied that an insufficiency of the kind referred to in subsection (1)(a) of that section or in subsection (1) of this section, as the case may be, no longer exists in relation to the water resource or area concerned.

- (3) On the revocation of a determination or order in relation to a water resource or area any notice served on a person under section 26GC that applies to that water resource, or a water resource in that area, ceases to have effect.

[Section 26GE inserted by No. 49 of 2000 s.40.]

26GF. Directions override other rights

- (1) Where a notice is served on a person under section 26GC, any right that the person has —
- (a) under section 9, 10, 20, 21 or 22;
 - (b) under the regulations or a local by-law; or
 - (c) by virtue of a licence under section 5C,

is displaced by, or has effect subject to, the provisions of the notice so long as it continues in force.

- (2) If a direction given under section 26GC is inconsistent with a direction given under section 22 or 26G —
- (a) the direction under section 26GC prevails to the extent of the inconsistency; and
 - (b) to that extent the other direction does not have effect.

[Section 26GF inserted by No. 49 of 2000 s.40.]

Division 3B — Appeals

[Heading inserted by No. 49 of 2000 s.65.]

26GG. Appeals relating to licences to take water

- (1) A person referred to in subsection (2) may appeal under Schedule 2 if the person is aggrieved by a decision of the Commission under Schedule 1 —
- (a) to refuse an application for the grant or renewal of a licence under section 5C (“**a licence**”);
 - (b) as to the period for which a licence is granted or renewed;

- (c) as to any term, condition or restriction included in a licence;
 - (d) to undertake to grant a licence, including as to any term, condition, or restriction undertaken to be included in the licence;
 - (e) to amend, suspend or cancel a licence; or
 - (f) to refuse to approve the transfer of a licence or of a water entitlement under a licence, or an agreement referred to in clause 30 of Schedule 1.
- (2) A person may appeal under subsection (1) only if the person is an applicant for the licence, the licensee or, if the appeal is made under subsection (1)(f), a person to whom the licence or water entitlement would be transferred or a person who is a party to the agreement.

[Section 26GG inserted by No. 49 of 2000 s.65.]

26GH. Appeals relating to directions as to the taking of water

- (1) A person given a direction, or variation of a direction, under section 22, 26G or 26GC may appeal under Schedule 2 if the person is aggrieved by the direction or variation.
- (2) A person who requested compensation may appeal under Schedule 2 if the person is aggrieved by a decision of the Commission to refuse compensation under clause 39(5)(b) or 6(b) or (c) of Schedule 1.

[Section 26GH inserted by No. 49 of 2000 s.65.]

26GI. Appeals relating to licences under Division 3

An applicant for a licence under section 26D may appeal under Schedule 2 if the person is aggrieved by a decision of the Commission —

- (a) to refuse a licence under section 26D(2)(c);

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- (b) as to any term, limitation or condition included in a licence under that section; or
- (c) to require alterations to be made as mentioned in section 26D(2)(b).

[Section 26GI inserted by No. 49 of 2000 s.65.]

26GJ. Schedule 2 applies to appeals

An appeal under this Division is to be brought, dealt with and determined in accordance with the provisions of Schedule 2.

[Section 26GJ inserted by No. 49 of 2000 s.65.]

Division 3C — Local water resources management committees

[Heading inserted by No. 49 of 2000 s.44.]

26GK. Establishment of committees

- (1) The Minister may determine that a water resources management committee (a “**committee**”) is to be established for any locality or area of the State.
- (2) Subject to an order made under subsection (4), a committee may from time to time appoint, discharge or alter, subcommittees of members of the committee, or members and other persons, as it thinks fit to advise it on any matter within the functions of the committee, particularly a matter of localised interest.
- (3) A subcommittee is to be presided over by a member of the committee and sections 26GL(3), 26GN, 26GO, 26GR and 26GS apply in respect of a subcommittee as if a reference in those sections to “committee” were a reference to “subcommittee”.
- (4) Where subsection (1) applies, the Minister must, subject to section 26GL, by order prescribe —
 - (a) the locality or area for which the committee is established;

- (b) the name of the committee;
 - (c) the manner in which the committee is to be appointed;
and
 - (d) any other provisions the Minister thinks fit relating to subcommittees or the committee's membership, constitution and procedures, including providing that the terms of members' appointments are to vary, so that the terms of all members do not expire simultaneously.
- (5) The Minister may at any time by further order amend or revoke an order made under this section.
- (6) An order made under this section is to be published in the *Gazette* for public information.

[Section 26GK inserted by No. 49 of 2000 s.44.]

26GL. Certain requirements for orders under section 26GK

- (1) An order made under section 26GK must make provision for the members of a committee, so far as is practicable, to be drawn —
- (a) substantially from persons who —
 - (i) are residents of; or
 - (ii) employed in, or operate, a business in, the locality or area for which the committee is established; and
 - (b) from persons who —
 - (i) are representatives of a local government;
 - (ii) are officers of public authorities having functions in the locality or area;
 - (iii) have knowledge and experience relating to the water needs and practices of local communities, including Aboriginal communities; or
 - (iv) are members of the board of management of the Commission, or members of staff as defined in the *Water and Rivers Commission Act 1995*.

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- (2) An order made under section 26GK must also make provision for the members of a committee, so far as is practicable and, with respect to the functions of the committee, relevant, to be collectively persons who have knowledge of and experience in the following —
- (a) the management or development of water resources or other natural resources;
 - (b) the use of water resources;
 - (c) conservation of ecosystems;
 - (d) local government.
- (3) If the functions of a committee relate mainly to the use of water resources, persons who are users of those resources are, as far as is practicable, to form a majority of committee members.
- (4) An order made under section 26GK must make provision for notice of appointments to a committee to be published in the *Gazette* for public information.

[Section 26GL inserted by No. 49 of 2000 s.44.]

26GM. Functions of committees

- (1) The functions of a committee are, in respect of the locality or area for which it is established —
- (a) to provide the Commission with —
 - (i) assistance; and
 - (ii) advice,on matters relating to the functions of the Commission to the extent that the Commission asks the committee to do so;
 - (b) to perform the functions given to it —
 - (i) by section 26N(2), in respect of local by-laws; and
 - (ii) by section 26GZ, in respect of a plan under Division 3D;

- (c) to perform any function of the Commission that may be delegated to it by the Commission under section 26GP;
 - (d) to ensure that the Commission is informed of, and has access to, community views on matters relating to water resources; and
 - (e) to assist the Commission in the resolution of disputes about the use of water resources involving persons having rights under this Act or persons affected by the exercise of those rights.
- (2) A committee in performing its functions is subject to the direction and control of the Commission.

[Section 26GM inserted by No. 49 of 2000 s.44.]

26GN. Particular duties of members

- (1) A member of a committee must at all times act honestly and diligently in performing the member's functions under this Act.
- (2) If a matter is before a meeting of a committee for consideration and a member present at the meeting has a direct or indirect pecuniary interest in the matter, the member must disclose to the other members present at the meeting, as soon as possible after the relevant facts have come to the member's knowledge, that he or she has an interest, and —
 - (a) the disclosure is to be recorded in the minutes of the meeting; and
 - (b) the member must not subsequently be present during any consideration or discussion of, and is not to vote on any determination of, the matter.
- (3) An interest need not be disclosed under subsection (2) if it is an interest common to a significant number of residents of the locality or area for which the committee is established.

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- (4) Subsection (2)(b) does not apply if the committee has, without the presence of the member who has disclosed the interest, at any time passed a resolution that —
- (a) specifies the member, the interest and the matter; and
 - (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.
- (5) A member of a committee must not disclose any information acquired by virtue of the performance of any function under this Act unless the disclosure is made in connection with the carrying out of this Act or under a legal duty.
- (6) A member of a committee must not make use of any information acquired by virtue of the performance of the member's functions to gain, directly or indirectly, an improper advantage for the member or to cause detriment to any person.
- (7) A member of a committee who commits a breach of any provision of this section —
- (a) is liable to the Crown for any profit made by the member as a result of the breach of that provision; and
 - (b) commits an offence and is liable to a fine of \$10 000.
- (8) This section is in addition to and not in derogation of any other law relating to the duty or liability of the holder of a public office.

[Section 26GN inserted by No. 49 of 2000 s.44.]

26GO. Procedure

Subject to this Division, a committee is to determine its own procedure.

[Section 26GO inserted by No. 49 of 2000 s.44.]

26GP. Delegation

- (1) The Commission may, by instrument in writing, delegate to a committee the performance of any function conferred on the Commission by this Act, other than this power of delegation.
- (2) A function performed by a committee as delegate of the Commission is to be taken to be performed by the Commission.
- (3) A committee performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

[Section 26GP inserted by No. 49 of 2000 s.44.]

26GQ. Commission to provide support

The Commission is to provide a committee with such —

- (a) administrative support; and
- (b) facilities,

as it reasonably requires for the performance of its functions.

[Section 26GQ inserted by No. 49 of 2000 s.44.]

26GR. Remuneration

Members of a committee are entitled to such remuneration and allowances as the Minister determines on the recommendation of the Minister for Public Sector Management.

[Section 26GR inserted by No. 49 of 2000 s.44.]

26GS. Protection from liability

- (1) An action in tort does not lie against a member of a committee for anything that the member has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The protection given by this section applies even though the thing done in the performance or purported performance of a

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function of a committee may have been capable of being done whether or not this Act had been enacted.

- (3) Despite subsection (1), neither the Commission nor the State is relieved of any liability that it might have for a member of a committee having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

[Section 26GS inserted by No. 49 of 2000 s.44.]

26GT. Execution of documents by committee

- (1) A committee may, by resolution in writing, authorise a member or members of the committee to sign documents on behalf of the committee, either generally or subject to such conditions or restrictions as are specified in the resolution.
- (2) A document is duly executed by a committee if it is signed on behalf of the committee by a person or persons authorised to do so under subsection (1).
- (3) A document purporting to be executed on behalf of a committee is to be presumed to be duly executed until the contrary is shown.

[Section 26GT inserted by No. 49 of 2000 s.44.]

Division 3D — Plans for management of water resources

[Heading inserted by No. 49 of 2000 s.44.]

Subdivision 1 — Plans and their contents

[Heading inserted by No. 49 of 2000 s.44.]

26GU. Preparation of plans

- (1) A plan for the purposes of this Act —
 - (a) is to be prepared by the Commission if the Minister directs the Commission to do so; and

- (b) may be prepared by the Commission if in the opinion of the Commission it is desirable to do so.
- (2) A plan does not have effect unless it is approved under section 26GZE after the requirements of Subdivision 2 have been complied with.

[Section 26GU inserted by No. 49 of 2000 s.44.]

26GV. Classification of plans

- (1) A plan may be —
 - (a) a regional management plan;
 - (b) a sub-regional management plan; or
 - (c) a local area management plan.
- (2) A regional management plan, a sub-regional management plan and a local area management plan may relate to more than one region, sub-region and local area respectively.
- (3) A regional management plan, sub-regional management plans for that region and local area management plans for the areas in that region may be combined in one document.

[Section 26GV inserted by No. 49 of 2000 s.44.]

26GW. Purposes of regional management plans

- (1) A regional management plan must indicate the region to which it applies.
- (2) The purpose of a regional management plan is to set out the matters that are to guide the general management by the Commission of water resources in the region to which it applies, in relation to —
 - (a) the definition of water resource values, including environmental values, and the protection of those values;
 - (b) the use of water resources; and
 - (c) the integration of water resources planning and management with land use planning and management.

- (3) A regional management plan is to specify the monitoring and reporting (which is to occur at least once in every 7 years) to be carried out by the Commission to ensure, as far as is practicable, that the objects of this Part are achieved in the implementation of the plan.

[Section 26GW inserted by No. 49 of 2000 s.44.]

26GX. Purposes of sub-regional management plans

- (1) A sub-regional management plan must indicate the part of a region to which it applies.
- (2) The purpose of a sub-regional management plan is to set out particular matters that are to guide the management by the Commission of water resources in the sub-region to which it applies, including —
- (a) how the investigation and development of water resources are to be facilitated by the Commission;
 - (b) how rights in respect of water are to be allocated to meet various needs, including the needs of the environment;
 - (c) the matters of sub-regional significance that, consistently with this Act, will be taken into account by the Commission in considering —
 - (i) applications for licences made under Division 2 of Schedule 1;
 - (ii) the exercise of powers to renew, amend, suspend and cancel licences under Divisions 5 and 6 of that Schedule; and
 - (iii) applications for the Commission's approval of transfers of licences and water entitlements, and of agreements, made under Division 7 of that Schedule;
 - (d) the Commission's assessment of —
 - (i) the capacity of water sources to provide water at sustainable levels of use; and

- (ii) the environmental impact of developing those sources;
 - and
 - (e) the strategies that will be adopted or developed to implement the plan.
- (3) A sub-regional management plan is to specify the monitoring and reporting (which is to occur at least once in every 7 years) to be carried out by the Commission to ensure, as far as is practicable, that the objects of this Part are achieved in the implementation of the plan.
- (4) A sub-regional management plan must not be inconsistent with the relevant regional management plan.

[Section 26GX inserted by No. 49 of 2000 s.44.]

26GY. Purposes of local area management plans

- (1) A local area management plan must indicate the area or areas in the relevant sub-region to which it applies.
- (2) The purpose of a local area management plan is to set out particular matters that are to guide the management by the Commission of water resources in the area or areas to which it applies, including —
- (a) how rights in respect of water are to be allocated, and water may be taken and used, to meet various needs including the needs of the environment;
 - (b) the matters that, consistently with this Act, will be taken into account by the Commission in considering —
 - (i) applications for licences made under Division 2 of Schedule 1;
 - (ii) the exercise of powers to renew, amend, suspend and cancel licences under Divisions 5 and 6 of that Schedule; and

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- (iii) applications for the Commission's approval of transfers of licences and water entitlements, and of agreements, made under Division 7 of that Schedule;
 - and
 - (c) the nature and extent of the delegated authority that will be conferred on a relevant water resources management committee under section 26GP, and the conditions and restrictions that will apply to the exercise of that authority.
- (3) A local area management plan is to specify the monitoring and reporting (which is to occur at least once in every 7 years) to be carried out by the Commission to ensure, as far as is practicable, that the objects of this Part are achieved in the implementation of the plan.
- (4) A local area management plan must not be inconsistent with the relevant regional management plan and sub-regional management plan.

[Section 26GY inserted by No. 49 of 2000 s.44.]

26GZ. Consultation with water resources management committees

A plan, or an amendment to a plan, may only be —

- (a) prepared;
- (b) modified under section 26GZC(3)(a) or 26GZD; or
- (c) revoked and a new plan substituted for it under section 26GZG,

after consultation with any water resources management committee under Division 3C that is in existence for the region, sub-region or area to which the plan relates.

[Section 26GZ inserted by No. 49 of 2000 s.44.]

Subdivision 2 — Public consultation and approval of plans

[Heading inserted by No. 49 of 2000 s.44.]

26GZA. Plan to be publicly notified

- (1) Public notification that a proposed plan has been prepared must be given in accordance with subsections (2) and (3).
- (2) A notice complying with subsection (3) must be published —
 - (a) in the *Gazette*; and
 - (b) in 2 issues of a daily newspaper circulating throughout the State.
- (3) The notice must —
 - (a) specify the region, sub-region or area to which the plan relates;
 - (b) describe in general terms the purpose for which the plan is to be made;
 - (c) specify the places at which —
 - (i) a copy of the plan may be inspected; and
 - (ii) copies of the plan may be obtained;and
 - (d) state the effect of section 26GZB and specify the period and the address or addresses referred to in that section.

[Section 26GZA inserted by No. 49 of 2000 s.44.]

26GZB. Public submissions

Written submissions on the proposed plan may be made by any body or person —

- (a) within a period determined by the Commission, which period must be not less than 2 months after the day on which the notice under section 26GZA is published in the *Gazette*; and

- (b) by delivering or posting them, so that they are received within that period at an address designated by the Commission.

[Section 26GZB inserted by No. 49 of 2000 s.44.]

26GZC. Referral of plan to other bodies

- (1) If in the opinion of the Commission the proposed plan may affect the functions of a body that is responsible for the planning for, or management of, a natural resource, the Commission must submit the proposed plan to that body.
- (2) The Commission may submit the proposed plan to any other body or person it thinks appropriate.
- (3) A plan submitted under subsection (1) or (2) —
 - (a) is to be as it may be modified by the Commission after considering submissions made under section 26GZB; and
 - (b) in any case is to be accompanied by a summary of those submissions.
- (4) If any such body or person considers that the Commission should amend the plan, it may within one month after receipt of the proposed plan under subsection (1) or (2), in writing, request the Commission to make the amendment.

[Section 26GZC inserted by No. 49 of 2000 s.44.]

26GZD. Modification of plan

The Commission may modify the proposed plan as it thinks fit to give effect to —

- (a) submissions made under section 26GZB; and
- (b) any request under section 26GZC(4).

[Section 26GZD inserted by No. 49 of 2000 s.44.]

26GZE. Approval of plan

- (1) The Commission must, except where subsection (4) applies, submit the proposed plan, modified as it thinks fit under section 26GZD, to the Minister for approval.
- (2) The plan as so submitted must be accompanied by —
 - (a) a summary of all submissions made under section 26GZB and requests made under section 26GZC(4); and
 - (b) a report of the Commission indicating its opinion of the merits of those submissions and requests.
- (3) The Minister may approve the proposed plan, or approve it with such modifications as the Minister thinks fit.
- (4) The Minister may by instrument delegate to the Commission the exercise of the powers vested in the Minister by subsection (3) in relation to —
 - (a) all plans to which this Division applies; or
 - (b) any particular class or description of plans.
- (5) Anything done by the Commission under such a delegation is to be taken to have been done by the Minister.

[Section 26GZE inserted by No. 49 of 2000 s.44.]

26GZF. Notice and commencement

- (1) Notice that a plan has been approved must be published in the *Gazette*, together with a note showing —
 - (a) whether any modifications were made under section 26GZE(3); and
 - (b) where a copy of the plan may be inspected or obtained.
- (2) A plan has effect from —
 - (a) the day of publication in the *Gazette* of a notice under subsection (1); or

(b) such later day as is specified in the plan.

[Section 26GZF inserted by No. 49 of 2000 s.44.]

26GZG. Review, revocation, amendment and correction of plan

(1) A plan may be amended, or revoked and a new plan substituted for it, subject to compliance with sections 26GZA to 26GZF which are to apply with all necessary changes.

(2) Without limiting when action may be taken under subsection (1), the Commission, within 7 years from the day —

- (a) on which a plan had effect; or
- (b) the Commission last considered whether action under subsection (1) needed to be carried out in respect of a plan,

is to consider whether action needs to be taken in respect of the plan under subsection (1) after taking into account any relevant report or information under section 26GW, 26GX or 26GY regarding the extent to which the objects of this Part have been adhered to in the implementation of the plan.

(3) Notice that the Commission is to consider whether action needs to be taken in respect of a regional management plan under subsection (1) must be published in a newspaper circulating throughout the State, and is to specify —

- (a) the places at which —
 - (i) a copy of the plan may be inspected; and
 - (ii) copies of the plan may be obtained;
- and
- (b) the effect of subsection (4) and the period and the address or addresses referred to in that subsection.

(4) Written submissions on the need for action to be taken under subsection (1) may be made by any body or person —

- (a) within the period determined by the Commission, which must be not less than 2 months after the day on which

the notice under subsection (3) is published in the newspaper; and

- (b) by delivering or posting them, so that they are received within that period at an address designated by the Commission.
- (5) The Commission may —
- (a) correct any clerical mistake, error or inaccuracy in, or accidental omission from, a plan; or
 - (b) replace any factual information set out in a plan if the information has become out of date.
- (6) Notice of any such correction or replacement must be published in the *Gazette* for public information.

[Section 26GZG inserted by No. 49 of 2000 s.44.]

Division 3E — Register of instruments

[Heading inserted by No. 49 of 2000 s.49.]

26GZH. Definition

In this Division —

“instrument” means —

- (a) a licence under section 5C;
- (b) an exemption under section 26C; and
- (c) a direction under section 22, 26G or 26GC;

“security interest” means an interest in a licence (however arising) that secures payment of a debt or other pecuniary obligation or the performance of any other obligation.

[Section 26GZH inserted by No. 49 of 2000 s.49.]

26GZI. Register

- (1) The Commission is to keep a register of instruments.

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Division 3E Register of instruments

s. 26GZJ

- (2) The register may be kept in such form as the Commission thinks fit.
- (3) The register must be available for public inspection, subject to payment of the prescribed fee (if any), during normal office hours at —
 - (a) the Commission's principal office; and
 - (b) at other offices of the Commission determined by the Commission.
- (4) A person may, upon application to the Commission and payment of the prescribed fee, if any, obtain a copy of an entry in, or an extract from, the register.
- (5) The Commission may, subject to payment of the prescribed fee, if any, allow a person access to the register in electronic form.
[Section 26GZI inserted by No. 49 of 2000 s.49.]

26GZJ. Information to be included in register

- (1) The register must set out the following details in respect of each instrument —
 - (a) the nature of the instrument and the provision or provisions of this Act under which it has effect;
 - (b) the period for which it is in force;
 - (c) the name and business address —
 - (i) in the case of a licence under section 5C, of the person who for the time being holds the licence; or
 - (ii) in the case of a direction under section 22, 26G or 26GC, of the person who is bound by the direction;
 - (d) a description of the water resource to which the instrument relates, including the locality in which, and a legal description of the land on which, it is situated;

- (e) in the case of a licence, details relating to any security interest in the licence that the Commission is required to note on the register under section 26GZM;
 - (f) details of any conviction of a person referred to in paragraph (c) for an offence against this Act; and
 - (g) any other details that are prescribed by the regulations.
- (2) In the case of a licence under section 5C held by the holder of an operating licence, the details referred to in subsection (1) are to be set out in a separate part of the register.
- (3) In subsection (2) —
- “operating licence”** means —
- (a) an operating licence (water supply services); or
 - (b) an operating licence (irrigation services),
under the *Water Services Coordination Act 1995*.

[Section 26GZJ inserted by No. 49 of 2000 s.49.]

26GZK. Transfer of licence to be recorded

Where a transfer of a licence or a water entitlement under a licence is approved by the Commission under clause 31 of Schedule 1, the Commission is to amend the Register to accurately reflect the transfer as soon as practicable.

[Section 26GZK inserted by No. 49 of 2000 s.49.]

26GZL. Application for notation of security interest

A licensee may apply to the Commission in a form approved by the Commission to have noted on the register that a specified person has a security interest in the licence.

[Section 26GZL inserted by No. 49 of 2000 s.49.]

26GZM. Notation of security interest

- (1) The Commission must —
 - (a) on application being made under section 26GZL; and
 - (b) payment of the prescribed fee, if any,make a notation on the register that the person specified in the application has a security interest in the relevant licence.
- (2) The notation must set out the following details in respect of the security interest —
 - (a) a general description of the nature of the security interest;
 - (b) the name and business address of the person who has the security interest; and
 - (c) such other details, if any, as are prescribed.

[Section 26GZM inserted by No. 49 of 2000 s.49.]

26GZN. Commission not to be concerned with certain matters

- (1) The Commission is not to be concerned with —
 - (a) the nature of any security interest that is the subject of an application under section 26GZL; or
 - (b) whether or not the person specified in the application as having the security interest actually has that interest.
- (2) A notation on the register that a person has a security interest in a licence does not give the interest any force that it would not have had if this Division had not been enacted.

[Section 26GZN inserted by No. 49 of 2000 s.49.]

26GZO. Person who has security interest to be notified of certain events

If the register contains a notation made under section 26GZM that a person has a security interest in a licence and —

- (a) the licensee is convicted of an offence against this Act;

- (b) application is made to the Commission —
 - (i) under clause 23 of Schedule 1 to amend the licence; or
 - (ii) under clause 32 of that Schedule for approval of the transfer of the licence or a water entitlement under the licence;
 - (c) the Commission proposes —
 - (i) not to renew the licence under clause 22 of Schedule 1;
 - (ii) to amend the licence under clause 24 of that Schedule; or
 - (iii) to cancel or suspend the licence under clause 25 of that Schedule;
- or
- (d) the Commission is notified that the licensee wishes to surrender the licence under clause 27 of Schedule 1,

the Commission must as soon as practicable give or cause to be given to the person specified in the notation written details of that fact.

[Section 26GZO inserted by No. 49 of 2000 s.49.]

26GZP. Coordinator of Water Services to be notified of certain events

- (1) If —
 - (a) a licence is recorded in the part of the register mentioned in section 26GZJ(2); and
 - (b) any of the events described in section 26GZO occurs in relation to the licence,

the Commission must as soon as practicable give or cause to be given to the Coordinator of Water Services written details of that fact.

(2) In subsection (1) —

“Coordinator of Water Services” means the holder of the office referred to in section 4 of the *Water Services Coordination Act 1995*.

[Section 26GZP inserted by No. 49 of 2000 s.49.]

26GZQ. Removal or variation of notation

(1) If the register contains a notation that a person has a security interest in a licence, the licensee may apply to the Commission in a form approved by the Commission to —

- (a) remove the notation from the register; or
- (b) vary any details relating to the security interest.

(2) Where an application is made under subsection (1), the Commission —

- (a) is to give notice of the application to a person noted on the register as having a security interest in the licence; and
- (b) must not remove the notation of the security interest from the register or vary the details in the register (as the case requires) unless —
 - (i) each person noted on the register as having a security interest in the licence consents in writing to it doing so; or
 - (ii) a court authorises or directs the Commission to do so, at the suit of the licensee, a person referred to in subparagraph (i) or some other interested person.

[Section 26GZQ inserted by No. 49 of 2000 s.49.]

26GZR. Register may be amended

The Commission may amend, add to and correct the register in such manner as is necessary to make the register an accurate record of the details it contains.

[Section 26GZR inserted by No. 49 of 2000 s.49.]

26GZS. No compensation payable

No compensation is payable in respect of anything done or omitted to be done in good faith by the Commission in the performance or purported performance of any duty, or the exercise or purported exercise of any power, under this Division.

[Section 26GZS inserted by No. 49 of 2000 s.49.]

26GZT. Regulations relating to register

The regulations may —

- (a) prescribe fees and charges payable in respect of anything done under this Division; and
- (b) provide for any other matter relating to the register.

[Section 26GZT inserted by No. 49 of 2000 s.49.]

Division 4 — Miscellaneous

[Heading inserted by No. 119 of 1984 s.3.]

26H. Right of entry to the Crown

- (1) Subject to subsection (1a), the Commission, any officer of the Commission or any person authorised by the Commission, may in the exercise of the right of the Crown, to the control of the waters in watercourses, wetlands or underground water sources or for any other purpose required by this Act, enter upon any land and inspect that land and any dam, well, or other works thereon or therein and take such measures as may be necessary

or convenient, whether in general or to meet particular cases, to carry out the objects and purposes of this Act and their duties thereunder including measures for the conservation and regulation of such water and for its preservation from pollution, and for the protection of the bed over or within which it flows or is contained, and for removing any obstruction from such bed, and for clearing and deepening and straightening and otherwise altering the channel of any such watercourse, and may intervene summarily to prevent the undue, excessive, or illegal diversion, taking, use, or pollution of such water or interference with such bed.

- (1a) The Commission shall comply with the provisions of Part VI of the *Water Agencies (Powers) Act 1984* in relation to any entry under subsection (1).
- (2) Any person who obstructs, impedes or interferes with the Commission or any person acting in the exercise of an authorisation conferred under subsection (1) by the Commission, in entering upon any land or in taking any measures under subsection (1), is guilty of an offence against this Act.

[Section 26H inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 s.286; No. 73 of 1995 ss.138 and 140; No. 49 of 2000 ss.12, 15 and 41.]

26J. Commission entitled to institute proceedings

- (1) The Commission shall be entitled, in the name and on behalf of the Crown, to institute and maintain by any officer of the Commission authorised for that purpose by the Commission any proceeding in any court whether such proceeding be for any civil remedy or for the recovery or enforcement of any penalty against any person for illegally diverting or taking or for polluting the water of any watercourse, wetland or underground water source, or for unlawfully interfering with the bed thereof.

- (2) In such proceedings it shall not be necessary for the Commission to show that either the Crown or the Commission or any person has sustained damage by such illegal diversion or taking or pollution of water or unlawful interference with such bed; nor that the Crown or the Commission is a riparian owner or otherwise entitled to the use or to the protection of the watercourse, wetland or underground water source from which water is illegally diverted or taken, or the water of which is polluted, or the bed of which is unlawfully interfered with; but the Commission shall be entitled to judgment in the Commission's favour if it be proved that the water has been illegally diverted or taken or polluted, or that the bed has been unlawfully interfered with; and the Commission shall, in the discretion of the court, be entitled to the costs and expenses of the proceedings against the person by whom the court in its discretion shall order such costs and expenses to be paid.

[Section 26J inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 ss.279 and 287; No. 73 of 1995 ss.117 and 138; No. 49 of 2000 ss.14(5) and 15.]

26K. This Part binds the Crown and statutory undertakers

- (1) Except so far as a provision of this Part may be inconsistent with a Government agreement this Part binds the Crown and a statutory undertaker.
- (2) The Governor may by order published in the *Gazette* provide for exemptions for the Crown or a statutory undertaker from any provision of this Part.
- (3) Section 43(4) and (7) to (9) of the *Interpretation Act 1984* applies to an order under subsection (2) as though the order were subsidiary legislation and section 42 of that Act applies to such an order as if the order were a regulation.
- (4) In this section —
“Government agreement” has the same meaning as it has in the *Government Agreements Act 1979*;

“statutory undertaker” means a person performing a function that is authorised or provided for by or under a written law.

[Section 26K inserted by No. 73 of 1995 s.118; amended by No. 49 of 2000 s.45.]

26L. Local by-laws

- (1) The Minister may make by-laws for the purposes of this Act (**“local by-laws”**) that are applicable in a locality or localities in the State specified in the by-laws.
- (2) Local by-laws may be made under subsection (1) prescribing or providing for any matter —
 - (a) that is required or permitted by this Act to be prescribed or provided for by local by-laws; or
 - (b) that is necessary or convenient to be prescribed for the purpose of achieving the objects of this Act.
- (3) Without limiting subsection (2), local by-laws may make provision for and in relation to —
 - (a) the construction, provision, maintenance, repair and removal of works relating to water resources;
 - (b) the manner in which water may be taken;
 - (c) the exemption or exclusion of —
 - (i) acts, persons or things; or
 - (ii) acts, persons or things in a specified area,from the application of particular provisions of this Act, the regulations or the by-laws;
 - (d) the authorisation of persons to take water from a watercourse, wetland or underground source —
 - (i) for particular purposes; or
 - (ii) under particular circumstances,or both of those kinds of cases; and

- (e) the duties of licensees, persons whose names are endorsed on a licence as being a person with whom the holder of a licence has an agreement referred to in clause 30 of Schedule 1 and other persons on whom rights are conferred by or under this Act, including duties in respect of —
 - (i) monitoring and reporting on water resources;
 - (ii) the recording and supply of information; and
 - (iii) the taking and analysis of samples of water.
- (4) If a provision of local by-laws is inconsistent with a provision of the regulations, the latter provision prevails to the extent of the inconsistency.
- (5) If a provision of local by-laws is inconsistent with a provision of by-laws made under section 34 of the *Water Agencies (Powers) Act 1984*, the former provision prevails to the extent of the inconsistency.
- (6) Section 34(3)(a) of the *Water Agencies (Powers) Act 1984* does not apply to any local by-law.

[Section 26L inserted by No. 49 of 2000 s.46.]

26M. Licensing schemes under local by-laws

Local by-laws that provide for the licensing of persons to do anything that is otherwise prohibited may make provision for —

- (a) the matters that are to be, or may be, taken into account in considering applications for licences;
- (b) fees that are to be paid in connection with licences;
- (c) different licences to authorise the doing of different things under the by-laws;
- (d) the conditions and restrictions that may be attached to licences, whether at the time of grant or later, and the cancellation, variation and enforcement of conditions and restrictions;

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- (e) the duration of licences and their renewal;
- (f) the cancellation, suspension, amendment and transfer of licences; and
- (g) appeals against decisions relating to applications made and licences granted under the by-laws.

[Section 26M inserted by No. 49 of 2000 s.46.]

26N. Prerequisites for making local by-laws

- (1) Before the Minister makes, amends or repeals any local by-laws under section 26L the Minister is to be satisfied that the requirements of this section, and where relevant, section 5, have been complied with.
- (2) The requirements are that —
 - (a) a draft of a proposed legislative scheme for the by-laws, or the amendment or the repeal, must have been referred by the Commission to any water resources committee established under Division 3C for the locality or localities in which the by-laws are intended to apply;
 - (b) any such committee must have been given the opportunity to make submissions on the proposal to the Commission;
 - (c) if the Commission is of the opinion that the proposal may affect the functions of a body that is responsible for the planning for, or management of, a natural resource, the Commission is to submit the proposal to that body;
 - (d) the Commission must have called for public comment on the proposal in accordance with subsection (3); and
 - (e) the Commission must have considered any submissions made under this section and given a report on them to the Minister.

- (3) The Commission is taken to comply with subsection (2)(c) by —
- (a) publishing in 2 issues of a daily newspaper circulating in the locality concerned a notice stating the proposal to make, amend or repeal the by-laws; and
 - (b) including in the notice a statement —
 - (i) specifying the places at which a copy of the proposed legislative scheme for the by-laws, or the amendment or repeal, may be inspected or obtained;
 - (ii) indicating that written submissions on the proposed scheme or amendment or repeal may be made by any person within a specified period; and
 - (iii) showing the address to which submissions may be delivered or posted.
- (4) The period specified under subsection (3)(b)(ii) is not to be less than 30 days after both of the notices referred to in paragraph (a) of that subsection have been published.

[Section 26N inserted by No. 49 of 2000 s.46.]

26O. Local by-laws for control of drainage

- (1) Local by-laws may be made to provide for the regulation and control of drainage and dewatering so far as they affect or are likely to affect the use or management of water resources under this Act.
- (2) By-laws referred to in subsection (1) may —
- (a) prohibit the construction, use, alteration or removal of drainage and dewatering works except under and in accordance with a licence; and
 - (b) impose penalties —
 - (i) not exceeding \$5 000 and a daily penalty of \$500 for a breach of any such prohibition; and

- (ii) not exceeding \$2 000 and a daily penalty of \$200 for any other breach of by-laws made under this section.

- (3) In this section —

“dewatering” means removing underground water to facilitate construction or other activity.

[Section 26O inserted by No. 49 of 2000 s.55.]

26P. Local by-laws relating to flood protection works

Local by-laws may be made —

- (a) providing for the regulation and control of flood protection levees so far as they obstruct or interfere with the flow of a watercourse, including the flow of its flood waters;
- (b) imposing penalties —
 - (i) not exceeding \$5 000 and a daily penalty of \$500 for a breach of any prohibition on the construction, alteration, use or removal of a flood protection levee; and
 - (ii) not exceeding \$2 000 and a daily penalty of \$200 for any other breach of by-laws made under this section;

and

- (c) conferring on the Commission powers —
 - (i) to direct that works that contravene the by-laws be removed at the expense of the owner or occupier of the land on which the works are situate; and
 - (ii) if a direction is not complied with to —
 - (I) effect the removal; and
 - (II) recover the cost of doing so from that owner or occupier,

and making provision incidental and supplementary to those powers.

[Section 26P inserted by No. 49 of 2000 s.55.]

26Q. Commission may undertake certain work

- (1) The Commission may, with the approval of the Minister, by agreement with a person or group of persons holding any water entitlement, perform work or supply services relating to the inspection or monitoring of a water resource for the benefit of the person or group of persons.
- (2) An agreement made by the Commission under subsection (1) may provide for the payment to the Commission by the person or persons of an agreed amount for the work performed or the services supplied.
- (3) In this section —
“**water entitlement**” means a right to take water under this Act or under a licence granted under this Act.

[Section 26Q inserted by No. 49 of 2000 s.50.]

27. Regulations

- (1) Without prejudice to the generality of that power, the power conferred by section 37 of the *Water Agencies (Powers) Act 1984* to make regulations may be exercised to make regulations prescribing all matters that are required or permitted by this Part to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Part and, in particular as to —
 - (a) the establishment and functions of advisory committees for the purpose of assisting the Commission in the administration of this Part;

[(b), (c) and (d) deleted]

 - (e) well licences, and artesian and non-artesian wells subject to licensing;

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- (f) the furnishing of information as to wells;
 - (g) the forms to be used and the fees payable in respect of applications and the grant, variation and renewal of licences under section 26D;
 - (ga) charges that are to be paid by the holder of an operating licence (water supply services) or an operating licence (irrigation services) under the *Water Services Coordination Act 1995* in respect of water taken under a licence issued under this Act; and
 - [(h) deleted]*
 - (i) generally, the implementation of the licensing schemes provided for in this Part.
- (2) Without limiting the generality of paragraph (ga) of subsection (1) —
- (a) the charges referred to in that paragraph may be in the form of a royalty for water taken under a licence; and
 - (b) the volume of water so taken may be measured —
 - (i) at the point where it is taken; or
 - (ii) at a point that is as close as is practicable to the point at which it is diverted from its source and where measuring facilities can practicably be located.

[Section 27 inserted by No. 119 of 1984 s.3; amended by No. 25 of 1985 ss.279 and 288; No. 73 of 1995 ss.119, 138 and 140; No. 10 of 1998 s.63; No. 49 of 2000 ss.42 and 66.]

27A. Regulations may require other acts to be licensed

- (1) The regulations may —
 - (a) prohibit a person from engaging in any work or activity to which this section applies unless the person is authorised to do so by a licence granted by the Commission under the regulations;

- (b) impose penalties —
 - (i) not exceeding \$10 000 and a daily penalty of \$1 000 for engaging in any work or activity to which this section applies otherwise than under such a licence; and
 - (ii) not exceeding \$2 000 and a daily penalty of \$200 for any other breach of regulations made under this section;

and

- (c) confer on the Commission powers —
 - (i) to direct that works that contravene regulations so made be removed at the expense of the owner or occupier of the land on which the works are situate; and
 - (ii) if a direction is not complied with to —
 - (I) effect the removal; and
 - (II) recover the cost of doing so from that owner or occupier,

and making provision incidental and supplementary to those powers.

- (2) This section applies to work or activity that —
 - (a) involves the discharge of water that results in a significant increase in the flow or level of water in a watercourse, wetland or underground water source;
 - (b) is likely to cause or result in damage to an aquifer; or
 - (c) consists of the construction or operation of drainage or dewatering works that are likely to affect the water in a watercourse, wetland or underground water source.

[Section 27A inserted by No. 49 of 2000 s.51.]

27B. Regulations as to licences and permits

Where this Act authorises or requires the regulations to provide for the grant of a licence or permit by the Commission, the regulations may make provision for —

- (a) the matters that are to be, or may be, taken into account by the Commission in considering applications for licences or permits;
- (b) fees that are to be paid in connection with licences or permits;
- (c) different licences or permits to authorise the doing of different things under the regulations;
- (d) the conditions and restrictions that may be attached to licences or permits, whether at the time of grant or later, and the cancellation, variation and enforcement of conditions and restrictions;
- (e) the duration of licences or permits and their renewal;
- (f) the cancellation, suspension, amendment and transfer of licences or permits;
- (g) the combination of a licence or permit under the regulations and a licence under section 5C in a single instrument; and
- (h) appeals against decisions relating to applications made and licences or permits granted under the regulations.

[Section 27B inserted by No. 49 of 2000 s.51.]

27C. Minister to review and report on this Part

- (1) The Minister is to carry out a review of the operation and effectiveness of this Part as soon as is practicable after the expiry of 5 years from the commencement of the *Rights in Water and Irrigation Amendment Act 2000*.

- (2) In the course of that review the Minister is to consider and have regard to —
- (a) the effectiveness of the operations of the Commission under this Part;
 - (b) the attainment of the objects of this Part and the need for the continuation of this Part; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Part.
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

[Section 27C inserted by No. 49 of 2000 s.51.]

[Part IIIA repealed by No. 77 of 1986 s.32.]

Part IV — Irrigation Districts

28. Constitution of Irrigation Districts

- (1) The Governor may, on the recommendation of the Minister by Order in Council —
 - (a) constitute any defined part of the State an Irrigation District for the purposes of this Act;
 - (b) specify the boundaries of such District;
 - (c) assign a name to such District;
 - (d) state the particulars of the scheme of local works for the service of such District;
 - (e) state the estimated cost of such scheme.
- (2) Any such Order in Council may contain such provisions not inconsistent with this Act as according to the facts and circumstances of each case the Governor may think fit.

[Section 28 amended by No. 119 of 1984 s.9; No. 49 of 2000 s.43.]

29. Governor may alter boundaries of Districts

The Governor may, at any time, on the recommendation of the Minister by Order in Council, do any of the following things —

- (a) unite any 2 or more Districts so as to form one District;
- (b) subdivide any District and constitute thereout 2 or more Districts;
- (c) excise any portion of a District;
- (d) add any portion excised from a District to any other District;
- (e) extend any District by the addition thereto of any land that has not theretofore formed part of a District;
- (f) apportion, settle, adjust, and determine the extent of the respective interests and obligations of the several parties

in regard to any property, income, assets, rights, or liabilities in any case of the union or subdivision of Districts or of excision from or addition to any District;

- (g) repeal, vary, or amend any of the provisions of any previous order relating to any District;
- (h) divide any District into sub-areas;
- (i) define the boundaries of any sub-area;
- (j) alter the boundaries of any sub-area;
- (k) abolish a sub-area.

[Section 29 amended by No. 9 of 1949 s.3; No. 119 of 1984 s.10.]

[Part V (section 30) repealed by No. 73 of 1995 s.120.]

[31, 32. Repealed by No. 25 of 1985 s.294.]

Part VI — The construction and maintenance of works

33. Works

Subject to this Act, the *Water Agencies (Powers) Act 1984*, and, where required by those Acts, to the approval of the Minister, the Corporation may construct and maintain irrigation works within any irrigation district.

[Section 33 inserted by No. 25 of 1985 s.295; amended by No. 73 of 1995 ss.139 and 140.]

[34. Repealed by No. 25 of 1985 s.296.]

35. No action maintainable for injury to riparian rights or for flooding

Notwithstanding anything in this Act or the *Water Agencies (Powers) Act 1984* contained, from and after the passing of this Act no action, suit, claim, or proceeding whatsoever shall be maintainable against the Crown, the Commission or the Corporation, or against any officer of the Commission or the Corporation, or contractor under the Crown, the Commission or the Corporation, except as hereinafter provided, for or in respect of any of the following matters —

- (a) any injury, loss, or damage caused by any violation or infringement of any right to or easements over any water constantly or intermittently flowing in or through any place whatsoever;
- (b) any injury, loss, or damage to property caused by flooding or by water in any way sent on to such property.

[Section 35 amended by No. 25 of 1985 s.297; No. 73 of 1995 ss.121 and 140.]

36. Compensation

Subject to the provisions of this Act and of the *Water Agencies (Powers) Act 1984* compensation shall be made in respect of any injury to any rights to or easements over any water constantly or intermittently flowing or by flooding as aforesaid if notice in writing stating the nature and extent of the injury complained of has been furnished to the Commission or the Corporation within one year after the alleged injury has occurred of which such notice is given, and after giving such notice the person claiming compensation proceeds without unreasonable delay to obtain such compensation in the manner hereinafter provided.

[Section 36 amended by No. 25 of 1985 s.298; No. 73 of 1995 ss.122 and 140.]

37. Disputes as to compensation

Where any claim is made by any person in respect of any such injury and such person and the Commission or the Corporation do not agree on the questions raised by such claim, the questions whether any, and, if so, what compensation shall be made to such person shall be determined by arbitration under the provisions of the *Commercial Arbitration Act 1985*.

[Section 37 amended by No. 25 of 1985 s.299; No. 109 of 1985 s.3; No. 73 of 1995 s.123.]

38. Principles in awarding compensation

In determining whether any and what compensation is to be made under this Part, the arbitrator shall in each case have regard to and is hereby empowered and directed to apply the following principles —

- (a) no compensation shall be awarded save in respect of some item set forth in the notice in writing stating the nature and extent of the injury complained of furnished to the Commission or the Corporation as hereinbefore provided;

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- (b) no compensation shall be awarded for any diminution or deterioration of the supply of water to which any person may be entitled unless in the opinion of the arbitrator such diminution or deterioration is such as to deprive the claimant of a supply of water previously legally enjoyed by him and which supply was sufficient for domestic purposes, or for watering cattle or other stock, and the irrigation of a garden not exceeding 2 hectares in extent; and unless in the opinion of the arbitrator such diminution or deterioration is the direct and will be the permanent result of the completed works;
- (c) no compensation shall be made for the taking or diverting of any water which the Commission or the Corporation is empowered by or under this Act to take or divert, either permanently or temporarily, from any river, creek, stream, watercourse or wetland;
- (d) there shall be considered, in reduction of all claims for compensation for injury, whether (by reason of the execution of any works by the Commission or the Corporation against which any claim is made) any and, if so, what enhancement in value of any property of the claimant wherever situate has been directly or indirectly caused, and whether any and, if so, what immediate or proximate benefit has been gained by or become available to such claimant by reason of the construction or use of such works or of any other works by the Commission or the Corporation under this Act or the *Water Agencies (Powers) Act 1984*; and a deduction shall be made accordingly from the amount which but for this provision would have been paid or payable as compensation;
- (e) the measure of damages shall in all cases be the direct pecuniary injury to the claimant by the loss of something of substantial benefit accrued or accruing, and shall not include remote, indirect, or speculative damages;

- (f) in any case where the injury complained of may appear to be of a permanent or continuing character or likely to be repeated, a sum may be awarded which the Court may declare to be a compensation for all injury, loss, or damage sustained in respect of the matter complained of to the date of the making of the award, and also for all future injury, loss, or damage in respect of the same matter; and after such award no further compensation shall be made in respect of any such future injury, loss, or damage.

[Section 38 amended by No. 94 of 1972 (as amended) s.4(1); No. 25 of 1985 s.300; No. 73 of 1995 ss.124 and 140; No. 49 of 2000 s.13.]

Part VII — The supply of water and water charges

[Heading amended by No. 25 of 1985 s.301; No. 24 of 1987 s.141.]

39. Appropriation of water for irrigation

Subject to Part III, the Commission may appropriate water for the purposes of this Part.

[Section 39 inserted by No. 49 of 2000 s.47.]

39A. Unlawful taking of water an offence

- (1) If any person shall take water from any irrigation works, in any quantity or in any manner or by any means not authorised or not permitted by this Act or to which he is not entitled he shall be guilty of an offence.

Penalty: For an individual — \$20 000.

For a body corporate — \$50 000.

- (2) If a person is convicted of an offence against subsection (1) or section 39C, the court sentencing the person for the offence may make an order requiring the person to pay to the Corporation the reasonable costs of and incidental to any measurement, testing, analysis or other matter undertaken in connection with the investigation of the offence and the provision of evidence.
- (3) The amount payable under an order —
- (a) is to be fixed by the court; and
 - (b) may be recovered as a debt due in a court of competent jurisdiction.
- (4) An order does not affect any civil remedy the Corporation may have against the person convicted.
- (5) An order is in addition to any compensation order made by the court under Part 16 of the *Sentencing Act 1995*.

(6) For the purposes of making a compensation order under Part 16 of the *Sentencing Act 1995* against a person convicted of an offence against subsection (1) or section 39C the value of any water unlawfully taken is to be determined on the basis of the charge that would have been payable for the water under the *Water Agencies (Powers) Act 1984* if the water had been lawfully taken.

(7) In this section, unless the contrary intention appears —
“**order**” means an order under subsection (2).

[Section 39A inserted by No. 3 of 1945 s.3; amended by No. 113 of 1965 s.8; No. 119 of 1984 s.19; No. 25 of 1985 s.302; No. 73 of 1995 s.126; No. 32 of 1997 s.16.]

39B. Evidentiary provision

In proceedings for an offence against section 39A(1) if it is proved that at a particular time water was unlawfully taken on particular land, it is to be presumed, unless the contrary is proved, that the water was taken by the person who was at that time the owner or occupier of the land.

[Section 39B inserted by No. 32 of 1997 s.17.]

39C. Fraudulent taking of water

Any person who fraudulently takes or causes to be taken any water from irrigation works belonging to or vested in the Corporation, or from any conduit, channel or watercourse leading to or from any such works, commits an offence.

Penalty: For an individual — \$20 000 or imprisonment for 2 years, or both.

For a body corporate — \$50 000.

[Section 39C inserted by No. 32 of 1997 s.17; amended by No. 49 of 2000 s.15.]

[39D. Repealed by No. 24 of 1987 s.142.]

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39E. Objection to entry in rating records

- (1) Any person who is dissatisfied with any entry in the records kept under section 69A of the *Water Agencies (Powers) Act 1984*, and who is liable to a water charge assessed on the basis of that entry, may serve upon the Corporation a written objection to that entry.
- (2) An objection to an entry in the records mentioned in subsection (1) shall —
 - (a) be served within 42 days after the issue of the relevant assessment;
 - (b) describe the relevant land so as to identify it;
 - (c) identify the entry objected to; and
 - (d) set out fully and in detail the grounds of objection.
- (3) The grounds upon which an objection may be made include —
 - (a) that the land is not, according to by-laws made for the purposes of this Act, land in respect of which irrigation is provided under this Act;
 - (b) in the case of any land to which the system of rating on the area applies, that the area set out in the records is in excess of the actual area of the land.
- (4) The Corporation may, for reasonable cause shown by a person entitled to make an objection, extend the time for service of the objection for such period as the Corporation considers reasonable in the circumstances.
- (5) The Corporation shall, with all reasonable despatch, consider any objection and may either disallow it or allow it, wholly or in part.
- (6) The Corporation shall promptly serve upon the person by whom the objection was made written notice of the Corporation's decision on the objection and a brief statement of the Corporation's reasons for that decision.

- (7) If the Corporation decides to allow an objection, wholly or in part, the Corporation shall advise the person by whom the objection was made of any consequent amendment of the relevant entry in the records; and if the Corporation decides to disallow an objection, wholly or in part, the Corporation shall advise the person of the time within which and the manner in which an appeal against the decision may be made.

[Section 39E inserted by No. 25 of 1985 s.304; amended by No. 110 of 1985 ss.123 and 126; No. 24 of 1987 s.143; No. 73 of 1995 ss.127, 139 and 140.]

39F. Appeal against decision of Corporation on objection

- (1) Any person who is dissatisfied with the decision of the Corporation on an objection by that person may, within 42 days (or such further period as the Corporation shall, for reasonable cause shown by the person, allow) after service of notice of the decision of the Corporation, serve on the Corporation a notice requiring that the Corporation treat the objection as an appeal against the relevant entry.
- (2) Upon receipt of such notice the Corporation shall promptly refer the objection to a Land Valuation Tribunal under the *Land Valuation Tribunals Act 1978* as an appeal.

[Section 39F inserted by No. 25 of 1985 s.304; amended by No. 110 of 1985 s.127; No. 24 of 1987 s.144; No. 73 of 1995 s.139.]

39G. Appeal against refusal to extend time for objection on appeal

- (1) A person who is dissatisfied with a decision of the Corporation to refuse to extend the time for service of an objection or for service of a notice requiring the Corporation to treat an objection as an appeal may serve on the Corporation a notice requiring the Corporation to refer such decision to a Land Valuation Tribunal under the *Land Valuation Tribunals Act 1978* as an appeal.

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- (2) Upon receipt of such notice the Corporation shall promptly refer the decision to such a Tribunal as an appeal.

[Section 39G inserted by No. 25 of 1985 s.304; amended by No. 110 of 1985 s.123; No. 24 of 1987 s.145; No. 73 of 1995 s.139.]

39H. Objection or appeal not to affect liability to pay rates

The making of an objection or an appeal shall not affect the liability of a person to pay the charges concerned pending determination of the objection or the appeal.

[Section 39H inserted by No. 25 of 1985 s.304; No. 24 of 1987 s.146.]

39I. Corporation to amend records and assessment consequent on objections

- (1) The Corporation shall make any amendment of an entry in the records which shall be necessary in consequence of the allowance, wholly or in part, of an objection or an appeal under this Act.
- (2) The Corporation shall issue a notice of an amended assessment of a water charge when, in consequence of the allowance, wholly or in part, of an objection or appeal under this Act, amendment of an assessment is necessary.

[Section 39I inserted by No. 25 of 1985 s.304; amended by No. 110 of 1985 s.123; No. 24 of 1987 s.147; No. 73 of 1995 s.139.]

[40, 40A, 40B. Repealed by No. 24 of 1987 s.148.]

40C. Provisions concerning rates and charges

Part VII of the *Country Areas Water Supply Act 1947* applies, with such modifications as are necessary, to water charges and to any other charges made for the purposes of this Act.

[Section 40C inserted by No. 24 of 1987 s.149.]

41. Supply of water for irrigation

- (1) The Corporation may from time to time determine the periods during which a person who is entitled to be supplied by the Corporation with water for irrigation shall, as far as practicable, and subject to this Act, be supplied with water for irrigation and the quantities of water with which he is entitled to be supplied for irrigation during those periods.
- (2) Notice of a determination of the Corporation under subsection (1) shall be published in a newspaper circulating in the irrigation district to which the determination relates.
- (3) The by-laws may prescribe conditions to which the supply of water for irrigation, as mentioned in subsection (1), shall be subject.

[Section 41 inserted by No. 110 of 1985 s.130; amended by No. 24 of 1987 s.150; No. 73 of 1995 s.139.]

42. Persons entitled to water for irrigation

- (1) Subject to this Act the owners or occupiers of land in respect of which an irrigation charge has been made for a period and that is in the Irrigation District shall, in that period, alone be entitled to the supply of water for irrigation purposes:

Provided that the Corporation may, in its discretion, supply water for such purposes within or beyond the boundaries of an irrigation district, to other persons, upon such terms, at such charges, and with such guarantees and securities for payment, and generally upon such conditions, as the Corporation thinks proper and that subject to the provisions of this Act and the by-laws and payment of the prescribed charges, the Corporation may, in its discretion, supply to a person who is entitled to be supplied with water for the purposes of irrigation, water in excess of that to which he is entitled.

- (2) The Corporation may, in its discretion, supply water for domestic purposes, or for the watering of stock, or for any other

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purpose approved by the Governor, on such terms and conditions as may be prescribed.

[Section 42 amended by No. 18 of 1951 s.5; No. 119 of 1984 s.13; No. 25 of 1985 ss.303 and 308; No. 24 of 1987 s.151; No. 73 of 1995 s.139.]

[42AA, 42AB. Repealed by No. 24 of 1987 s.152.]

42A. Installation of measuring instruments

- (1) The Corporation may cause a measuring instrument to be installed on any land to which it supplies water pursuant to the provisions of this Act.
- (2) Where a measuring instrument is so installed the owner or occupier of the land shall not, without the Corporation's consent, receive water on to the land unless it is measured by the measuring instrument except when, in the opinion of the Corporation, the measuring instrument is not functioning properly in which case the owner or occupier of the land shall not receive water on to the land otherwise than as prescribed.

[Section 42A inserted by No. 18 of 1951 s.6; amended by No. 25 of 1985 ss.303 and 309; No. 73 of 1995 ss.127 and 139.]

[42B. Repealed by No. 24 of 1987 s.152.]

43. Where supply of water insufficient, Corporation to supply proportionally

If at any time the supply of water at the disposal of the Corporation is insufficient, in the opinion of the Corporation, to afford to all consumers the supplies which they are respectively entitled to receive, the Corporation may deliver to such consumers such amount of water as is then at the disposal of the Corporation in quantities proportional to the quantities which such consumers would, if sufficient water had been available, have respectively been entitled to receive.

[Section 43 amended by No. 25 of 1985 s.303; No. 73 of 1995 s.139.]

44. Governor may regulate order of supply in cases of deficiency

In the event of the water available to the Corporation for supply falling short of the quantity necessary to supply water in sufficient quantity to be of practical service to all consumers the Governor may, whenever and as often as he is satisfied of the actual or approaching insufficiency of such supply, from time to time make, alter, and repeal Orders in Council regulating the order of priority in which and the quantities with which the various consumers shall be entitled to be supplied.

[Section 44 amended by No. 25 of 1985 s.303; No. 73 of 1995 s.139.]

[45. Repealed by No. 73 of 1995 s.128.]

[Part VIII (sections 46-53) repealed by No. 25 of 1985 s.312.]

[Part IX (sections 54-58) repealed by No. 25 of 1985 s.313.]

Part X — By-laws

59. By-laws

- (1) Without prejudice to the generality of that power, the power conferred by section 34 of the *Water Agencies (Powers) Act 1984* to make by-laws may be exercised for the purposes of this Act with respect to the following matters, that is to say —

[(1)-(6), (6a), (7), (7a), (7b) deleted]

- (8) Specifying the purposes for which, and the persons or classes of persons to whom, water may be supplied under agreement, and the general and special terms and conditions upon which water shall be so supplied.

[(2) and (3) repealed]

[Section 59 amended by No. 18 of 1951 s.7; No. 98 of 1978 s.36; No. 119 of 1984 s.15; No. 25 of 1985 s.314; No. 110 of 1985 s.133; No. 24 of 1987 s.153; No. 73 of 1995 s.140; No. 49 of 2000 s.48.]

[60.] *Repealed by No. 25 of 1985 s.315.]*

[61.] *Repealed by No. 18 of 1951 s.8.]*

Part XI — General provisions

[62. *Repealed by No. 73 of 1995 s.129.*]

63. Corporation may undertake work to render land fit for irrigation

The Corporation may, at the request of the owner or occupier of any land within a district, undertake and carry out any work upon such land that may be necessary to render the land or any portion thereof fit for irrigation, upon the repayment by such owner or occupier to the Corporation of the moneys expended with interest being secured to the satisfaction of the Corporation.

[Section 63 amended by No. 25 of 1985 s.318; No. 73 of 1995 s.139.]

64. Water supply to railways

Nothing in this Act shall take away or prejudicially affect any rights in water lawfully acquired or enjoyed before or after the commencement of this Act for the purposes of supplying water to or in connection with any railway constructed under the authority of a special Act; and, subject only to riparian rights under this Act, water may be lawfully taken for such purposes.

[65. *Repealed by No. 25 of 1985 s.319.*]

66. Service of notices and demands

- (1) Any notice or demand required by this Act to be given to or made upon any person may be served —
 - (a) by delivering the same to such person;
 - (b) by leaving the same at his usual or last known place of abode;

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- (c) by forwarding the same by post in a prepaid letter addressed to such person at his usual or last known place of abode.
- (2) A notice or demand forwarded by post shall be deemed to have been given or made, and to have been received at the time when, by ordinary course of post, the letter would be delivered.
- (3) When a notice of demand under this Act is required to be given or made to any owner or occupier whose name or address is unknown to the Commission or the Corporation, as the case requires, it shall not be necessary to name such owner or occupier, and such notice or demand may be served by placing it on some conspicuous part of the land of such owner or occupier, and by publishing it 3 times, at intervals of not less than a week between any 2 publications in a newspaper usually circulating in the district.
- (4) A notice or demand may be served on a corporation, or incorporated company, or the members of a partnership, by being delivered, left, or posted in a prepaid letter; the notice or demand being addressed in each case to the corporation, company, or partnership at the registered office or principal place of business thereof in the State.

[Section 66 amended by No. 119 of 1984 s.17; No. 25 of 1985 ss.316 and 320; No. 73 of 1995 s.130.]

67. Notices binding on persons claiming under owner or occupier

All notices and demands duly given to or made upon any owner or occupier shall be binding upon all persons claiming by, from, or under such owner or occupier.

[68. Repealed by No. 25 of 1985 s.321.]

69. Saving of civil remedy

The institution of any proceedings, or the conviction of any person for any offence against this Act, shall not affect any remedy which the Commission, the Corporation or any person aggrieved may be entitled to in any civil proceedings.

[Section 69 amended by No. 25 of 1985 s.316; No. 73 of 1995 s.131.]

70. Obstructing authorised persons in performance of duty

Every person who obstructs the Commission, the Corporation, any officer of the Commission or the Corporation or any person authorised by the Commission or the Corporation in the performance of any act or thing which the Commission, the Corporation, that officer or that person is authorised or required to do in the execution of this Act or any by-law made for the purposes of this Act, shall be guilty of an offence and shall be liable to a penalty not exceeding \$5 000.

[Section 70 amended by No. 113 of 1965 s.8; No. 98 of 1978 s.37; No. 119 of 1984 s.19; No. 25 of 1985 s.322; No. 73 of 1995 s.132; No. 49 of 2000 ss.16 and 67.]

71. Penalty for refusing to give up possession of works

Any person having charge of any works vested in or under the control of the Commission or the Corporation, who refuses, on lawful demand, to give up peaceable and quiet possession of the same to any person entitled to possession under the provisions of this Act, shall be guilty of an offence and shall be liable to a penalty not exceeding \$10 000 and to be imprisoned for any period not exceeding 6 months.

[Section 71 amended by No. 113 of 1965 s.8; No. 119 of 1984 s.19; No. 25 of 1985 s.316; No. 73 of 1995 s.133; No. 49 of 2000 s.68.]

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72. General penalty

Any person committing an offence against this Act shall, if no other penalty is imposed, be liable to a penalty not exceeding \$10 000.

[Section 72 amended by No. 113 of 1965 s.8; No. 119 of 1984 s.19; No. 49 of 2000 s.69.]

73. Offender may be arrested

Any officer of the Commission or the Corporation may, without warrant, arrest any person found committing an offence against this Act or any by-law made for the purposes of this Act, if the offender refuses to give his name and address.

[Section 73 amended by No. 25 of 1985 ss.316 and 323; No. 73 of 1995 s.134.]

74. Proceedings for offences

Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

[Section 74 inserted by No. 78 of 1995 s.112.]

75. Any officer of the Commission or the Corporation may represent the Commission or the Corporation

In any proceedings in any Local Court or Court of Petty Sessions, or before any justice, any officer of the Commission or the Corporation may represent the Commission or the Corporation respectively in all respects as if he were the party concerned.

[Section 75 amended by No. 25 of 1985 ss.316 and 325; No. 73 of 1995 s.135.]

[76, 77, 78. Repealed by No. 25 of 1985 s.326.]

79. Proof of ownership or occupancy

In any legal proceedings under the *Water Agencies (Powers) Act 1984* or this Act, in addition to any other method of proof available, —

- (1) Evidence that the person proceeded against has been charged as owner or occupier of any land; or
- (2) Evidence by the certificate, in writing, of —
 - (a) the Registrar of Deeds or his deputy, that any person appears from any memorial of registration of any deed, conveyance or other instrument to be the owner of any land;
 - (b) The Registrar of Titles, or any assistant or deputy registrar, that any person's name appears in the Register under the *Transfer of Land Act 1893*, or the *Transfer of Land Act Amendment Act 1909*, as proprietor of any land; or
 - (c) the chief executive officer of the Department of Land Administration or the chief executive officer of the Department of Minerals and Energy, that any person is registered in the Department of Land Administration or Department of Minerals and Energy as the occupier or lessee of any land,

shall, until the contrary is proved, be evidence that such person is the owner or occupier, as the case may be, of such land.

[Section 79 amended by No. 25 of 1985 s.327; No. 24 of 1987 s.155; No. 73 of 1995 s.140; No. 81 of 1996 s.153(1); No. 57 of 1997 s.105(2).]

79A. Proof of works

A certificate under the hand of the chief executive officer of the Commission or the Corporation, as the case requires, that any specified dam, drain, channel, pipe or other work is included as

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portion thereof, in any works within the meaning of this Act (whether such works were constructed prior or subsequent to the commencement of this section) shall, for all purposes and in all courts be sufficient evidence of the fact as stated in such certificate.

[Section 79A inserted by No. 3 of 1945 s.4; amended by No. 25 of 1985 s.328; No. 73 of 1995 s.136.]

[80. *Repealed by No. 73 of 1995 s.137.]*

Schedule 1 — Licensing and related provisions

[s. 5C(1)(d) and (3)]

Division 1 — Preliminary

1. Definition

In this Schedule, unless the contrary intention appears —

“**licence**” means a licence under section 5C;

“**public interest**” means public interest having regard to any economic, social or recreational benefits to the public, or to a section of the public.

2. Licences for different purposes

- (1) Licences of different descriptions may be granted under section 5C to authorise the doing of different things that come within that section.
- (2) Licences to authorise the doing of different things that come within section 5C may be contained in a single instrument.
- (3) Where a person is granted —
 - (a) a licence under section 5C; and
 - (b) a licence under section 26D,

in respect of a well the licences may be combined in a single instrument.

3. Persons who are eligible to hold licences

A person is eligible to hold a licence if —

- (a) the person is an owner or occupier of the land to which the licence relates;
- (b) the person does not come within paragraph (a) but satisfies the Commission —
 - (i) that the owner and any occupier of the land to which the licence relates have agreed in writing to the person —
 - (I) being on the land; and

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- (II) doing there the things that may be done under the licence;
- and
- (ii) that the agreement is likely to have effect for a sufficient period to enable the licence concerned to operate;
- (c) the person is a public utility that has powers under a written law in relation to water on or under any land, but those powers are exercisable in accordance with a licence;
- (d) the person is —
 - (i) authorised by or under a written law to engage in an activity in relation to land or water; and
 - (ii) satisfies the Commission that the doing of the things that may be done under the licence is recognised by that written law as being related or incidental to that activity;
- or
- (e) the person is within a class or description of persons that is prescribed by local by-laws for the purposes of this clause.

Division 2 — Applications and licensing decisions

4. Applications for licences

- (1) An application for a licence —
 - (a) may only be made by a person who is eligible to hold the licence, or who satisfies the Commission that he or she is interested in being such a person and is likely to do so;
 - (b) must be made in the form specified for the purpose by the Commission;
 - (c) must include, or be accompanied by, any plans or other information that are stated in the form to be required; and
 - (d) must be accompanied by the prescribed fee.
- (2) An applicant for a licence must provide the Commission with any further information that the Commission may require.

- (3) Paragraph (a) of subclause (1) does not prevent an agent from signing an application made by a person referred to in that paragraph.

5. Advertising of applications

The regulations may provide for and in relation to —

- (a) the public notification of —
 - (i) applications, or specified kinds of applications, for the grant or renewal of a licence; or
 - (ii) applications that the Commission determines are to be publicly notified;
- (b) a right to make submissions to the Commission on applications mentioned in paragraph (a); and
- (c) the persons who are to have that right.

6. Right to make representations

- (1) This clause applies where the Commission proposes —
- (a) to refuse an application for a licence; or
 - (b) to grant, or undertake to grant, a licence subject to the inclusion of a term, condition or restriction that it considers is inconsistent with the terms of the application.
- (2) The Commission is to notify the applicant —
- (a) of its proposal; and
 - (b) that the applicant has a right to be heard by, or to make written submissions to, the Commission before the Commission makes a decision on the application.
- (3) Written submissions may be made by the applicant, as mentioned in subclause (2)(b), within 30 days after the applicant is given notice under that subclause.
- (4) The Commission is to have regard to any submissions made by the applicant under subclause (3) before it makes its final decision.

7. Grant or refusal at Commission's discretion

- (1) The grant or refusal of an application for a licence and the terms, conditions and restrictions to be included in the licence are, subject to clause 8, at the discretion of the Commission.

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- (2) In exercising that discretion the Commission is to have regard to all matters that it considers relevant, including whether the proposed taking and use of water —
- (a) are in the public interest;
 - (b) are ecologically sustainable;
 - (c) are environmentally acceptable;
 - (d) may prejudice other current and future needs for water;
 - (e) would, in the opinion of the Commission, have a detrimental effect on another person;
 - (f) could be provided for by another source;
 - (g) are in keeping with —
 - (i) local practices;
 - (ii) a relevant local by-law;
 - (iii) a plan approved under Part III Division 3D Subdivision 2; or
 - (iv) relevant previous decisions of the Commission;or
 - (h) are consistent with —
 - (i) land use planning instruments;
 - (ii) the requirements and policies of other government agencies; or
 - (iii) any intergovernmental agreement or arrangement.
- (3) The Commission may refuse to grant a licence to a person on the ground that the person has been convicted of an offence against this Act.
- (4) The Commission may refuse to grant a licence to a person if it is not satisfied that the person has the resources, including the financial resources, to carry out the activities to which the licence relates.
- (5) Without limiting subclause (1), terms, conditions and restrictions prescribed or imposed for the purposes of that subclause may relate to any matter provided for by the Appendix to this Schedule.

8. When Commission must refuse licence

The Commission must refuse to grant a licence to a person if it considers that the person would not be willing or able to comply with the terms, conditions and restrictions that would be included in the licence.

9. Where applicant is not a person eligible to hold a licence

- (1) The Commission may only grant a licence to a person who is eligible in terms of clause 3 to hold the licence.
- (2) If the Commission would grant a licence to an applicant but for the fact that the applicant is not a person who is eligible in terms of clause 3 to hold the licence, the Commission may undertake to grant the licence to the person if the person becomes eligible to hold the licence within the period of time specified in the undertaking.

10. Commission to give certain information

- (1) The Commission is to notify the outcome of the application, including details of any undertaking given under clause 9 and the terms, conditions and restrictions to be included in the licence —
 - (a) to the applicant for a licence; and
 - (b) if the application was required to be publicly notified under regulations referred to in clause 5, to any person who made a submission under those regulations.
- (2) If the Commission —
 - (a) refuses the application; or
 - (b) grants, or undertakes to grant, the application subject to the inclusion of a term, condition or restriction that the Commission considers is inconsistent with the terms of the application,

the Commission is to notify the applicant of the reasons for the decision.

11. Licences may be combined

A licence may relate to more than one place, facility or well at or from which water may be taken.

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12. Duration of licences

- (1) A licence may be granted or renewed for —
- (a) a fixed period; or
 - (b) an indefinite duration,
- as stated in the licence or the renewal.
- (2) A licence for an indefinite duration continues in force until it is —
- (a) terminated under clause 13(1);
 - (b) suspended or cancelled under clause 25; or
 - (c) surrendered under clause 27.
- (3) If a licence is granted to an owner or occupier of land —
- (a) authorising the continued taking of water —
 - (i) from a water resource which is below the land, or runs through, is contiguous to or partly situated within the land; and
 - (ii) which, before, and at the time of, the application of section 5C to that water resource, was taken periodically or continually from the water resource;and
 - (b) the application for the licence is made within 12 months after the day on which section 5C became applicable to the water resource,
- the licence is to be granted for a period of 10 years from the day on which section 5C became applicable to the water resource.
- (4) In subclause (3) —
- “water resource”** means a watercourse, wetland or underground water source to which section 5C applies.
- (5) Sufficient details to identify a licence granted for a period exceeding —
- (a) a period specified in a relevant plan approved under Part III Division 3D Subdivision 2 in respect of that type of licence; or

- (b) if a period is not specified in such a plan in respect of that type of licence, 10 years or such period as is prescribed in respect of that type of licence,

are to be included in the annual report submitted by the accountable authority of the Commission under section 66 of the *Financial Administration and Audit Act 1985*.

13. Licensee becoming ineligible

- (1) Subject to subclause (2) and clause 14, a licence is terminated if the licensee ceases to be eligible in terms of clause 3 to hold the licence.
- (2) The regulations may make provision applicable to cases other than those referred to in clause 14 —
 - (a) for the time at which termination under subclause (1) has effect; and
 - (b) in relation to the transfer of the licence, or a water entitlement under the licence, under Division 7 where the licensee ceases to be eligible in terms of clause 3 to hold the licence.

14. Licensee ceasing to be owner or occupier of land

- (1) Where —
 - (a) the licensee is the owner or occupier of all of the land to which the licence relates; and
 - (b) another person becomes the owner or occupier of that land in place of the licensee,clause 13(1) applies subject to the following provisions —
 - (c) the licensee and the new owner or occupier are allowed a period of 30 days from the day of change of ownership or occupancy to make an application under Division 7 for approval of the transfer of the licence to the new owner or occupier;
 - (d) the new owner or occupier is taken to be the licensee —
 - (i) during that period; and
 - (ii) if an application referred to in paragraph (c) is made within that period, until the Commission has determined the application;

and

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- (e) the Commission must approve the application for the transfer of the licence to the new owner or occupier if all of the terms, conditions and restrictions included in the licence have been complied with.
- (2) Clause 14(1)(d) does not apply if the new owner or occupier has informed the Commission in writing that an application will not be made under clause 14(1)(c) to transfer the licence to him or her.

Division 3 — Terms, conditions and restrictions

15. Inclusion of terms, conditions and restrictions in licences

- (1) The regulations may prescribe terms, conditions and restrictions that are to be taken to be included in —
 - (a) all licences;
 - (b) licences of a particular kind;
 - (c) licences relating to a particular area; or
 - (d) licences of a particular kind relating to a particular area.
- (2) The Commission may, at its discretion, include in a licence any term, condition or restriction additional to those referred to in subclause (1), but clause 7(2) applies to the exercise of that discretion.
- (3) Without limiting subclause (1) or (2), terms, conditions and restrictions prescribed or imposed for the purposes of those subclauses may relate to any matter provided for by the Appendix to this Schedule.

16. Compliance with condition when licence inoperative

A licence may require that a term, condition or restriction included in the licence must be complied with, or must continue to be complied with, even though the acts or series of acts authorised to be done under the licence have been completed.

17. Condition for payment of money to another licensee

- (1) This clause applies if —
 - (a) the grant of a licence to a person; or
 - (b) the amendment of a licence held by a person,

will, in the opinion of the Commission, result in the quantity of water that any other licensee or person (“**an affected person**”) will be able to take being reduced to less than the water entitlement of that person.

- (2) Where this clause applies, the Commission may, if it considers that equity so requires, include in the licence referred to in paragraph (a) or (b) of subclause (1) a condition that the person referred to in that paragraph (“**the benefiting licensee**”) pay an amount of money, or periodical amounts of money, to an affected person for or towards —
 - (a) direct pecuniary loss; or
 - (b) loss of profits,or both (if any), suffered by that person as a result of the reduction.
- (3) A condition may be in terms that an amount is to be —
 - (a) as agreed between an affected person and the benefiting licensee; or
 - (b) failing agreement within a specified period, as determined —
 - (i) by the Commission; or
 - (ii) by arbitration under the *Commercial Arbitration Act 1985*.
- (4) In this clause —

“**water entitlement**” means the quantity of water that a person is entitled to take under this Act or under a licence.

18. Commission may direct compliance with licence condition

- (1) If a licensee fails to comply with any term, condition or restriction included in a licence, the Commission may direct the licensee to comply with that term, condition or restriction.
- (2) A direction under subclause (1) must —
 - (a) be given by notice in writing served on the licensee; and
 - (b) specify the time within which the direction is to be complied with.
- (3) If a licensee to whom a direction has been given does not comply with the direction within the specified time, or any additional time allowed by the Commission —
 - (a) the licensee commits an offence and is liable to a fine of \$2 500 and a daily penalty of \$250; and

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- (b) the Commission may —
 - (i) do all or part of whatever the direction requires to be done; and
 - (ii) recover the costs and expenses incurred by it as a debt due by the licensee.
- (4) In this clause —

“licensee” in relation to a licence, includes a person whose name is endorsed on the licence as a person with whom the holder of the licence has an agreement referred to in clause 30 relating to the taking of water under the licence by that person.
- (5) The Commission may give a direction to a person included as a licensee due to subclause (4) only if the Commission —
 - (a) is of the opinion that it is the responsibility, and within the power, of that person to comply with the term, condition or restriction included in the licence; and
 - (b) gave that person sufficient written notice of that term, condition or restriction for the person to comply with it.

Division 4 — Notation on licence of interest of third party

19. When clause 20 applies

Clause 20 applies where —

- (a) the Commission is satisfied that —
 - (i) a licensee is obliged by an agreement with any person (**“the third party”**) in relation to the whole or a part of the water taken under the licence or in relation to the taking of water under the licence by that person; and
 - (ii) it is appropriate for the Commission to recognise that obligation;
- and
- (b) the licence has been endorsed by the Commission with a notation showing that the licence is subject to clause 20.

20. Restrictions on dealing with licence

If this clause applies the following things cannot be done without the consent in writing of the third party —

- (a) an application which, if granted, will affect matters to which the agreement relates cannot be made under —
 - (i) clause 23 to amend the licence; or
 - (ii) clause 32 for approval of the transfer of the licence;
- and
- (b) the licence cannot be surrendered under clause 27.

21. Further provisions as to notation

A notation referred to in clause 19(b) —

- (a) must identify the agreement and the third party concerned; and
- (b) does not give the agreement to which it relates any force it would not otherwise have had.

Division 5 — Renewal of licences

22. Renewal of licences

- (1) An application for the renewal of a licence that is in force for a fixed period —
 - (a) must be made in the form specified for the purpose by the Commission; and
 - (b) must be accompanied by the prescribed fee.
- (2) On an application for renewal of a licence, the licence is to be renewed unless —
 - (a) the renewal would be inconsistent with —
 - (i) a relevant local by-law; or
 - (ii) a plan approved under Part III Division 3D Subdivision 2;
 - (b) the Commission is of the opinion that, if the application for renewal was an application for the grant of a licence, it would

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- exercise its discretion under clause 7(2) to refuse to grant the licence;
- (c) it is a term of the licence that it is not renewable;
 - (d) a term, condition or restriction included in the licence has not been complied with; or
 - (e) in the opinion of the Commission there are sufficient grounds for the exercise of the power to cancel the licence under clause 25.
- (3) Clause 6(2), (3) and (4) apply where the Commission proposes —
- (a) to refuse an application for renewal of a licence; or
 - (b) to renew a licence subject to the inclusion of a term, restriction or condition that it considers is inconsistent with the terms of the application for renewal,
- in the same way as they apply to an application for a licence.
- (4) Clauses 8 and 10(2) apply to an application for renewal in the same way as they apply to an application for a licence.
- (5) A licence which would otherwise expire after application has been made for its renewal but before the Commission has made a decision as to that renewal remains in force until that decision is made.

Division 6 — Amendment, suspension, cancellation and surrender of licences

23. Application by licensee for amendment of licence

- (1) A licensee may apply to the Commission at any time for amendment of the licence.
- (2) Clauses 4, 6, 7, 10 and 12 and Division 3 apply, with all necessary modifications, to an application under subclause (1) as if it were an application for the grant of a licence.
- (3) Despite subclause (2), a fee may be prescribed for an application under subclause (1) that is different from that prescribed for the purposes of clause 4(1)(d).

24. Commission may amend licence

- (1) The Commission may, subject to this clause and clause 26, by notice in writing given to the licensee —
- (a) vary the duration of a licence;
 - (b) vary, add to or remove any term, condition or restriction included in the licence; or
 - (c) include any new term, condition or restriction in the licence.
- (2) The Commission may only exercise a power described in subclause (1) in relation to a licence if —
- (a) the licensee consents to the Commission doing so;
 - (b) in the opinion of the Commission, the exercise of the power is necessary or desirable —
 - (i) due to the detrimental effect of actions authorised by the licence on another person;
 - (ii) to protect the water resource to which the licence relates from unacceptable damage; or
 - (iii) to protect the associated environment from unacceptable damage;
 - (c) in the opinion of the Commission, the exercise of the power is necessary to prevent serious damage to life or property;
 - (d) in the opinion of the Commission, the quantity of water that may be taken under the licence has consistently not been taken;
 - (e) in the opinion of the Commission, the exercise of the power is necessary or desirable —
 - (i) in the public interest;
 - (ii) because the water resource to which the licence relates is insufficient to meet demand or expected demand; or
 - (iii) otherwise to more effectively regulate the use of that water resource;

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- (f) in the opinion of the Commission, the exercise of the power is necessary to prevent a serious inconsistency arising as a result of —
 - (i) the approval of a plan, or the alteration, revocation or substitution of a plan, under Part III Division 3D Subdivision 2; or
 - (ii) the making, amendment or repeal of relevant local by-laws;
- (g) the licensee, or a person whose name is endorsed on the licence as a person with whom the licensee has an agreement referred to in clause 30, is convicted of an offence against this Act;
- (h) in the opinion of the Commission, the exercise of the power is necessary to comply with another written law of the State or a law of the Commonwealth;
- (i) the licensee has applied under clause 32 for approval of the transfer of the licence or a water entitlement under the licence or of an agreement referred to in clause 30, and the exercise of the power is necessary or desirable to give effect to the transfer or agreement; or
- (j) the licence confers authority for the Commission to do so.

25. Commission may suspend or cancel licence

- (1) The Commission may, subject to this clause and clause 26, by notice in writing given to the licensee —
 - (a) suspend a licence —
 - (i) for a fixed period specified in the notice; or
 - (ii) until such time as the licensee is notified by the Commission that the suspension no longer applies;
 - or
 - (b) cancel a licence.

- (2) The Commission may only exercise a power described in subclause (1) in relation to a licence if —
- (a) in the opinion of the Commission, the exercise of the power is necessary or desirable —
 - (i) due to the detrimental effect of actions authorised by the licence on another person;
 - (ii) to protect the water resource to which the licence relates from unacceptable damage; or
 - (iii) to protect the associated environment from unacceptable damage;
 - (b) in the opinion of the Commission, the exercise of the power is necessary due to a serious inconsistency, which cannot be resolved by an amendment under clause 24, arising as a result of —
 - (i) the approval of a plan, or the alteration, revocation or substitution of a plan, under Part III Division 3D Subdivision 2; or
 - (ii) the making, amendment or repeal of relevant local by-laws;
 - (c) the licensee or a person whose name is endorsed on the licence as a person with whom the licensee has an agreement referred to in clause 30 —
 - (i) is convicted of an offence against this Act; or
 - (ii) has contravened or failed to comply with any term, condition or restriction included in the licence;
 - (d) in the opinion of the Commission, the exercise of the power is necessary to comply with another written law of the State or a law of the Commonwealth;
 - (e) in the opinion of the Commission, the exercise of the power is necessary or desirable in the public interest;
 - (f) the licence confers authority for the Commission to do so; or
 - (g) prescribed circumstances apply.
- (3) The suspension or cancellation of a licence has effect to suspend or cancel the rights and privileges conferred by the licence but does not affect the duties imposed by the licence.

26. Licensee's rights before licence amended, suspended or cancelled

- (1) Except as provided by subclauses (2) and (3), this clause applies where the Commission proposes to exercise a power conferred by clause 24 or 25.
- (2) This clause does not apply to the proposed exercise of a power conferred by clause 24 or 25 —
 - (a) if the Commission is of the opinion that the exercise of the power is necessary to prevent loss of life or property or serious injury to persons or property; or
 - (b) if the power is to be exercised in circumstances prescribed by the regulations.
- (3) This clause does not apply to the proposed exercise of a power conferred by —
 - (a) clause 24 in the circumstances mentioned in subclause (2)(a) of that clause; or
 - (b) clause 25 in the circumstances mentioned in subclause (2)(c)(i) of that clause.
- (4) Where this clause applies, the Commission is to notify the licensee —
 - (a) of its proposal; and
 - (b) that the applicant has a right to be heard by, or to make written submissions to, the Commission before the Commission makes a decision to exercise the power.
- (5) Written submissions may be made by the licensee, as mentioned in subclause (4)(b), within such period after the applicant is given notice under that subclause as is specified in the notice.
- (6) The Commission is to have regard to any submissions made by the licensee under subclause (5) before it makes its final decision.

27. Surrender of licences

A licence may be surrendered at any time to the Commission if the licensee has complied with any terms, conditions or restrictions included in the licence relating to its surrender.

Division 7 — Transfers of licences and water entitlements and agreements with licensees to take water

28. Definition

In this Division —

“water entitlement”, in relation to a licence, means the quantity of water that the licensee is entitled to take under the licence, and includes part of a water entitlement.

29. Transfers of licences and entitlements

- (1) Subject to this Division, the holder of a licence may transfer —
 - (a) the licence; or
 - (b) the licensee’s water entitlement under the licenceto a person who holds, or is eligible in terms of clause 3 to hold, a licence of the same kind.
- (2) Subclause (1) does not apply to a licence of a particular kind to the extent that a relevant local by-law prohibits the transfer of licences, or water entitlements under licences, of that kind.
- (3) A transfer of a water entitlement under a licence between licensees may be made by the Commission amending the transferring and receiving licences.

30. Agreements with licensees to take water

- (1) Subject to this Division, the holder of a licence may enter into an agreement with another person (**“the third party”**) relating to the taking of water under the licence by the third party for a limited period of time.
- (2) An agreement referred to in subclause (1) is of no effect to the extent that a relevant local by-law prohibits such agreements in relation to licences, licences of a particular kind or in particular circumstances.
- (3) An agreement referred to in subclause (1) is of no effect unless —
 - (a) it is entered into with a person who holds, or is eligible in terms of clause 3 to hold, a licence of the same kind;
 - (b) it has been approved by the Commission; and

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- (c) the licence is endorsed in accordance with clause 36(d).
- (4) Subject to clauses (2) and (3)(a), the grant or undertaking to grant approval under clause (3)(b) is at the discretion of the Commission.
- (5) In exercising that discretion the Commission is to have regard to all matters it considers relevant, including those set out in clause (7)(2).
- (6) If the Commission would approve an agreement referred to in subclause (1) but for the fact that the third party is not a person who is eligible in terms of clause 3 to hold such a licence, the Commission may undertake to approve the agreement if the third party becomes a person who is eligible to hold the licence within the period of time specified in the undertaking.
- (7) Without limiting subclause (4), the Commission may refuse to approve an agreement, or to undertake to approve an agreement, if the third party is a person who has committed an offence against this Act.

31. Approval of Commission required

- (1) A transfer of a licence or a water entitlement cannot be made without the approval of the Commission.
- (2) The Commission must refuse to approve the transfer of a licence to a person who is not eligible under clause 3 to hold the licence.
- (3) If the Commission would approve the transfer of a licence to a person but for the fact that the person is not a person who is eligible in terms of clause 3 to hold the licence, the Commission may undertake to approve the transfer of the licence to the person if the person becomes eligible to hold the licence within the period of time specified in the undertaking.
- (4) Subject to subclause (2), the grant, or undertaking to grant, approval to the transfer of a licence or water entitlement or the refusal to do so is at the discretion of the Commission.
- (5) In exercising that discretion the Commission is to have regard to all matters that it considers relevant, including those set out in clause 7(2).
- (6) Without limiting subclause (4), the Commission may refuse to approve the transfer of a water licence or a water entitlement, or to

undertake to approve any such transfer, to a person who has committed an offence against this Act.

32. Application for Commission's approval

- (1) An application for approval of the transfer of a licence or a water entitlement or of an agreement referred to in clause 30 —
 - (a) must be made in the form specified for the purpose by the Commission;
 - (b) must include information that is stated in the form to be required; and
 - (c) must be accompanied by the prescribed fee.
- (2) An applicant must provide the Commission with any further information that the Commission may require.

33. Commission may direct that assessment be made

Before determining an application made under clause 32 the Commission may direct that an assessment of the effect of granting the application be made, at the expense of the applicant, by an expert appointed or approved by the Commission.

34. Consent of persons having a security interest

Where a person is noted on the register referred to in section 26GZI as having a security interest (as defined in Part III Division 3E) in a licence, the Commission must not approve the transfer of the licence or the water entitlement under the licence, or of an agreement referred to in clause 30, without the written consent of that person.

35. Requirement for notice of application in certain cases

- (1) This clause applies to applications under clause 32 of a kind prescribed by local by-laws for the purposes of this clause.
- (2) Notice of the application must be given by the Commission to any person required by local by-laws to be notified.
- (3) A person to whom notice has been given may, in accordance with the regulations, make submissions in writing to the Commission in relation to the grant or refusal of the application.

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- (4) The Commission must give the applicant a copy of any submissions made and allow the applicant an opportunity to respond in writing to the submissions.
- (5) The response referred to in subclause (4) must be made within the number of days prescribed by the regulations after the relevant material is given to the applicant.
- (6) The Commission may allow a person, who, in submissions made, requested an appearance before the Commission, a reasonable opportunity to appear personally or by representative before and make submissions to —
 - (a) the Commission; or
 - (b) a water resources management committee established for the area under Part III Division 3C.
- (7) If a person so appears, the Commission must also allow the applicant a reasonable opportunity, on request, to appear personally or by representative in order to respond to any relevant matter.
- (8) The Commission must give to each person who made submissions notice of —
 - (a) its decision on the application; and
 - (b) the date of the decision.
- (9) A notice under subclause (8) must be given not later than 7 days after the date of the decision.

36. Endorsement and record of dealings

The Commission must —

- (a) in the case of the transfer of a licence, endorse on the licence as licensee the name of the person to whom the licence has been transferred;
- (b) in the case of the transfer of a water entitlement under a licence to a person who does not hold a licence of the same kind, issue a licence to the person to whom a water entitlement has been transferred endorsed with such particulars as the Commission thinks fit relating to the transfer;

- (c) in the case of the transfer of a water entitlement under a licence to a person who holds a licence of the same kind, endorse on the licences affected such particulars as it thinks fit relating to the transfer; and
- (d) in the case of an agreement referred to in clause 30 between the holder of a licence and a third party relating to the taking of water under the licence by the third party, endorse on the licence the name of the third party, the period of the agreement and any other particulars it thinks fit relating to the agreement.

Division 8 — Transfer of licences and water entitlements to the Commission

37. Definition

In this Division —

“water entitlement”, in relation to a licence, means the quantity of water that the licensee is entitled to take under the licence, and includes part of a water entitlement.

38. Authority of Commission to receive transfers

- (1) This clause applies in relation to a licence if —
 - (a) the regulations authorise the Commission to enter into an agreement under this clause in relation to licences of the class to which the licence belongs;
 - (b) the Commission considers that the water entitlement under the licence is not being used in whole or in part;
 - (c) the purpose for which water taken under the licence is being used is no longer a purpose for which a licence would be granted by the Commission; or
 - (d) the Commission considers that it would be in the public interest for it to enter into an agreement under this clause in relation to the licence.

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- (2) Where this clause applies in relation to a licence, the Commission may enter into and give effect to an agreement with the licensee under which —
- (a) the licensee is to transfer —
 - (i) the licence; or
 - (ii) a water entitlement,to the Commission; and
 - (b) the Commission is to pay an agreed amount to the licensee as consideration for the transfer.
- (3) An agreement under subclause (2) may also contain provisions incidental and supplementary to the matters mentioned in that subclause.
- (4) Where a person is noted on the register referred to in section 26GZI as having a security interest (as defined in Part III Division 3E) in a licence, the Commission must not enter into an agreement under subclause (2) in respect of the licence without the written consent of that person.

Division 9 — Compensation

39. Compensation

- (1) If a person suffers damage, including loss of profit —
- (a) due to the exercise of a power under clause 24(2)(e)(i) in relation to a licence held by the person;
 - (b) due to the exercise of a power under clause 25(2)(e) in relation to a licence held by the person;
 - (c) due to the exercise of a power under —
 - (i) clause 24(2)(b), (e)(ii) or (iii), (f) or (h);
 - (ii) clause 25(2)(a), (b) or (d); or
 - (iii) if so prescribed for the purposes of this paragraph, in particular circumstances prescribed under clause 25(2)(g) in relation to a licence held by the person;

- (d) due to the exercise of a power under clause 7(1) to refuse an application for a licence, as a result of which the continued taking of water from a water resource to which section 5C applies is not authorised, where, before, and at the time of, the application of section 5C to that water resource, water was taken periodically or continually from the water resource; or
- (e) in circumstances prescribed by a local by-law,

the Commission is, in accordance with this clause, to compensate that person for the damage, to the extent that it was due solely to the exercise of a power referred to in paragraph (a), (b), (c) or (d) or is in a circumstance prescribed under paragraph (e), if the person requests compensation.

- (2) Damage may be compensated for only if —
 - (a) it is due to the loss of a use which was —
 - (i) reasonable;
 - (ii) authorised by the relevant licence, or not inconsistent with this Act; and
 - (iii) consistent with the objects of Part III;
 - and
 - (b) the person requesting compensation is not responsible for the damage and has attempted to offset or mitigate the damage as far as is practicable.
- (3) Local by-laws may prescribe —
 - (a) the time within which compensation may be claimed and the procedures for making claims;
 - (b) the types of damage for which compensation is to be made; and
 - (c) how compensation is to be assessed.
- (4) The Commission may require the person requesting compensation to provide information to it to enable it to make a decision with respect to compensation, and may require that person to verify that information by statutory declaration.

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- (5) Compensation is not payable in respect of an exercise of power referred to in subclause (1)(c) to a person who has requested compensation, unless —
 - (a) the effect of the exercise of the power on the person is permanent; and
 - (b) the Commission is of the opinion that the effect of the exercise of the power on the person is not fair and reasonable having regard to the exercise of the power in respect of other licence holders in the surrounding area.

- (6) Compensation is not payable in respect of an exercise of power referred to in subclause (1)(d) to a person who has requested compensation, unless —
 - (a) the effect of the exercise of the power on the person is permanent;
 - (b) the Commission is of the opinion that the effect of the exercise of the power on the person is not fair and reasonable having regard to the exercise of the power in respect of other applications for a licence in the surrounding area; and
 - (c) the Commission is of the opinion that the damage suffered by the person is in respect of the lawful taking and use of water by that person since 1 July 1999 or before.

- (7) The Commission is to notify the person who made the request for compensation of the outcome of the request and, if the request is refused, the Commission is to notify that person of the reasons for that decision.

- (8) A dispute about the amount of compensation is to be determined by arbitration under the provisions of the *Commercial Arbitration Act 1985*, unless the parties agree on some other method of determination.

- (9) Compensation under this clause, and any costs incurred by the Commission under subclause (8), are to be charged to the Consolidated Fund, which this section appropriates to the necessary extent.

Division 10 — Issue of licences and transfer of licences and water entitlements by the Commission for a premium

40. Authority of Commission to issue licences at a premium

- (1) This clause applies in relation to the grant of a licence if —
 - (a) the regulations authorise the Commission to enter into an agreement under this clause in relation to the grant of licences of the class to which the licence belongs; or
 - (b) the Commission has established the facilities by the use of which water may be taken under the licence.
- (2) Where this clause applies in relation to the grant of a licence, the Commission may enter into and give effect to an agreement with a person under which —
 - (a) the Commission is to grant a licence to the person; and
 - (b) the person is to pay an agreed amount to the Commission as a premium for the grant of the licence.
- (3) An agreement under subclause (2) may also contain provisions incidental and supplementary to the matters mentioned in that subclause.

41. Authority of Commission to transfer licences etc. for a premium

- (1) This clause applies in relation to a licence or a water entitlement if —
 - (a) the regulations authorise the Commission to enter into an agreement under this clause in relation to licences or water entitlements of the class to which the licence belongs; or
 - (b) the licence or water entitlement has been transferred to the Commission by an agreement made under clause 38.
- (2) Where this clause applies in relation to a licence or a water entitlement, the Commission may enter into and give effect to an agreement with a person who is eligible to hold a licence under which —
 - (a) the Commission is to transfer —
 - (i) the licence; or
 - (ii) the water entitlement,to the person; and

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- (b) the person is to pay an agreed amount to the Commission as consideration for the transfer.
- (3) The amount to be paid as consideration may be established by public auction or tender or by private treaty.
- (4) An agreement under subclause (2) may also contain provisions incidental and supplementary to the matters mentioned in that subclause.

Division 11 — Miscellaneous

42. Notification to be given to Registrars

- (1) If —
 - (a) a licence under section 5C is —
 - (i) granted;
 - (ii) renewed under clause 22;
 - (iii) amended under clause 24;
 - (iv) suspended or cancelled under clause 25;
 - (v) surrendered under clause 27; or
 - (vi) transferred under clause 29, 38 or 41;
 - or
 - (b) a security interest (as defined in Part III Division 3E) in a licence —
 - (i) is noted on the register referred to in section 26GZI;
or
 - (ii) the notation referring to such a security interest is removed from the register or any details of the notation in the register are varied, under section 26GZQ,

the Commission is to give notice of the event to the Registrar in the form approved by the Registrar.

- (2) The Registrar is to record the notification, or remove a record relating to the notification, as is appropriate, in the relevant documents relating to the land in the appropriate manner.

- (3) In this clause —
“**Registrar**” means the Registrar of Titles under the *Transfer of Land Act 1893* or the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*, as the case requires.

43. Licensee to maintain facilities

A licensee and a person whose name is endorsed on a licence as a person with whom the licensee has an agreement referred to in clause 30 must, to the extent that it is under his or her power to do so, maintain works, facilities and equipment to which the licence refers in good order and condition.

Penalty: \$2 000.

44. Licensee to notify change of circumstances

A licensee must without delay inform the Commission in writing of any material change to the facts or circumstances stated by the licensee in an application for the grant or renewal of the licence.

Penalty: \$2 000.

45. Duplicate licences

If the Commission is satisfied that a licence has been lost or destroyed the Commission may issue a duplicate licence on payment of the prescribed fee.

46. Meters

- (1) The Commission may —
- (a) cause a meter or meters to be placed or otherwise installed; or
 - (b) require a licensee, or a person whose name is endorsed on a licence as a person with whom a licensee has an agreement referred to in clause 30, to provide and place or otherwise install a meter or meters,

on any well or other facility that is the subject of a licence for taking water.

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- (2) A person who is required to provide a meter under subclause (1) must —
- (a) maintain the meter in good condition; and
 - (b) use every reasonable endeavour to ensure that the meter is operating accurately.

Penalty: \$2 000.

- (3) The Commission may at any time —
- (a) cause a meter placed or installed by a person under subclause (1) to be tested; or
 - (b) require the testing of such a meter by a person approved by the Commission.
- (4) The regulations may prescribe fees —
- (a) for the cost and installation of a meter by the Commission;
 - (b) for the maintenance, testing and replacement of a meter provided by the Commission; or
 - (c) for the reading of a meter,

and may combine a fee authorised under this subclause with the fee under clause 4(1)(d).

- (5) In this clause —
- “meter”** means any device for measuring or estimating the volume or flow of water that is approved, or is of a description that is approved, by the Commission by order published in the *Gazette*.

47. Meter reading to be presumed correct

The quantity of water shown by a meter placed or installed under clause 46 as having passed through the meter is to be presumed, in the absence of evidence to the contrary, to be the amount of water that has actually been taken by the licensee.

Appendix to Schedule 1

Matters to which licence terms, conditions or restrictions may relate

[cls. 7(5) and 15(3) of Sch. 1]

1. The taking, use or disposal of water, including —
 - (a) arrangements for water, whether from one source or different sources, to be shared by a licensee with, or supplied by a licensee to, other persons; and
 - (b) requirements to be met in relation to the taking, use or disposal of water by a licensee who is the holder of an operating licence under the *Water Services Coordination Act 1995*.
2. The use, management, protection and enhancement of —
 - (a) any water resource and its ecosystem; or
 - (b) the environment in which the water resource is situated.
3. The amendment, renewal or surrender of a licence.
4. The transfer of a licence or water entitlement (as defined in Division 7) by the licensee to another person, including a prohibition or restriction on any such transfer of a licence or water entitlement.
5. The transfer of a licence or water entitlement (as defined in Division 7) that relates to any place so that it relates to another place of the same kind, including a prohibition or restriction on any such transfer of a licence or water entitlement.
6. An agreement referred to in clause 30, including a prohibition or restriction on any such agreement.
7. The construction, alteration, maintenance or operation of works, structures and equipment including the qualifications of persons who are responsible for any of those things.

Schedule 1 Licensing and related provisions

8. The removal of works, structures and equipment, the making good of land or premises, or the condition in which works, structures, equipment, land or premises are to be left.
9. The monitoring of —
 - (a) any water resource and its ecosystem; or
 - (b) the environment in which the water resource is situated.
10. The provision of information to the Commission including information by way of periodical returns at specified times.

[Schedule 1 inserted by No. 49 of 2000 s.52.]

Schedule 2 — Appeal provisions

[s. 26GJ]

1. Definition

In this Schedule —

“**appeal**” means an appeal under Part III Division 3B;

“**decision**” means a decision, direction or variation of a direction against which an appeal may be brought;

“**tribunal**” means a tribunal established under clause 5.

2. Bringing an appeal

- (1) A person who is entitled to bring an appeal against a decision may do so by lodging a written notice of appeal with the Minister within 21 days of being given notice of the decision.
- (2) The Minister may accept a notice of appeal after the expiry of the period of 21 days referred to in subclause (1) if the Minister considers it would be equitable to do so.
- (3) An agent may bring an appeal on behalf of a person entitled to bring the appeal, but the agent must, if required by the Minister, satisfy the Minister of the agent’s authority.

3. Notice of appeal

A notice of appeal must —

- (a) state the name and address of the appellant;
- (b) set out or otherwise identify sufficiently the decision appealed against;
- (c) set out the grounds of the appeal and state briefly the facts on which the appellant relies; and
- (d) indicate whether the appellant wishes the Minister to exercise the power conferred on the Minister by clause 4.

4. Decision may be suspended

The Minister may suspend the operation of the decision appealed against during the period when the appeal is pending, but otherwise

Schedule 2 Appeal provisions

the bringing of an appeal does not affect the decision during that period.

5. Referral of appeals to tribunal

- (1) If a notice of appeal is lodged with the Minister under clause 2 the Minister, with as much speed as possible, is to —
 - (a) establish a tribunal consisting of not less than one person and not more than 3 persons appointed by the Minister —
 - (i) from a panel of names submitted to the Minister in accordance with the regulations; and
 - (ii) who in the Minister’s opinion have suitable expertise to hear and determine the matter;
 - and
 - (b) refer the notice of appeal and any other relevant materials to the tribunal for the hearing of the matter.
- (2) Subject to subclause (3), the tribunal is to hear and determine the matter and is to make such decision as it thinks fit.
- (3) Before taking action under subclause (2), the tribunal may appoint a person to assist the Commission and the appellant to resolve the issues on which the appeal is brought with a view to the appeal being withdrawn in whole or in part.
- (4) The Minister may —
 - (a) direct that any person who is appointed under subclause (1) or (3) is to be paid remuneration or allowances, or both; and
 - (b) determine the amount of any such payments on the recommendation of the Minister for Public Sector Management.
- (5) A decision of the tribunal on an appeal is final and must be given effect to by the Commission.
- (6) The tribunal is to give notice of the decision on an appeal and of the reasons for the decision in writing, or in such other manner as is prescribed, to —
 - (a) the appellant;

- (b) the Commission; and
- (c) any water resources management committee established under Part III Division 3C for a locality to which the subject matter of the appeal relates.

6. Hearings

- (1) A tribunal may sit at such place and time as it considers appropriate or the Minister directs.
- (2) The tribunal is to afford —
 - (a) every person who has appealed; and
 - (b) any other person who, in the tribunal's opinion, should be given the opportunity to respond to any appeal,a reasonable opportunity to call or give evidence and to make submissions (whether written or oral) to the tribunal.
- (3) A person may appear before the tribunal personally or be represented by counsel or, with the leave of the tribunal, by any other person.
- (4) The chief executive officer of the Commission, counsel for the Commission, or a person employed or engaged in the Commission and authorised by the chief executive officer to do so, may appear before the tribunal to represent the Commission.

7. Proceedings at hearing

- (1) The tribunal is to act according to equity and good conscience and the substantial merits of the case without regard to technicalities and legal forms and with as much speed as possible.
- (2) The tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.
- (3) To the extent that it is not prescribed by the regulations the tribunal is to determine its own procedure.

8. Case stated

- (1) If a question of law arises in proceedings before the tribunal, the tribunal may, in accordance with the rules of court, state a case for the opinion of the District Court upon the question.

Schedule 2 Appeal provisions

- (2) The District Court has jurisdiction to consider and determine any case stated and to make such orders as it thinks fit with regard to the case and to the costs of and incidental to the consideration and determination of the case.

9. Costs

The tribunal may make such orders for costs as it thinks fit.

10. Tribunal may dismiss frivolous or vexatious appeals

The tribunal may dismiss any appeal if in the tribunal's opinion the appeal has been made frivolously, vexatiously or for an improper purpose.

11. Powers of tribunal

The tribunal may —

- (a) by summons require any person —
 - (i) to attend before the tribunal; or
 - (ii) to produce any document before the tribunal;
- (b) inspect any document produced before it, and retain it for such reasonable period as is required, and make copies of the document or any of its contents;
- (c) require any person to swear to answer truly any relevant question put to that person by the tribunal or any person appearing before the tribunal (and for that purpose may administer any oath or affirmation); or
- (d) require any person attending before the tribunal (whether that person has been summoned to appear or not) to answer any relevant question put to that person by the tribunal or any person appearing before the tribunal.

12. Offences

- (1) A person who —
- (a) having been served with a summons to attend before a tribunal, fails without reasonable excuse to attend in obedience to the summons;

- (b) having been served with a summons to produce before a tribunal any document, fails without reasonable excuse to comply with the summons;
- (c) misbehaves before a tribunal, wilfully insults a tribunal or a member of the tribunal, or interrupts the proceedings of a tribunal;
- (d) refuses or fails without reasonable excuse to swear, or to answer any question, when required to do so by a tribunal; or
- (e) makes, before a tribunal, a statement that —
 - (i) the person knows to be false or misleading in a material particular; or
 - (ii) omits anything without which the statement is, to the person's knowledge, misleading in a material particular,

commits an offence and is liable to a fine not exceeding \$2 000.

- (2) For the purposes of subclause (1)(d), it is not a reasonable excuse for a person to refuse or fail to answer any question, on the ground that the answer to the question might incriminate the person or render the person liable to a penalty.
- (3) Despite subclause (2), an answer given by a person pursuant to a requirement under clause 11 is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence against this clause.

13. Staff of tribunals

There are to be appointed under Part 3 of the *Public Sector Management Act 1994* such officers as are necessary to assist tribunals to perform their functions under this Act.

14. Regulations relating to tribunals

- (1) The regulations may provide for any matter necessary or convenient to give effect to this Schedule.
- (2) Without limiting subclause (1), the regulations may —
 - (a) provide for the procedure for selecting a panel of names with relevant expertise for submission to the Minister under

Schedule 2 Appeal provisions

clause 5(1)(a)(i), including, but not limited to, the persons who are to select the panel, the number of persons in the panel, and the collective expertise of the panel;

- (b) prescribe matters relating to the practice and procedure of tribunals;
- (c) provide for the enforcement of orders of tribunals; and
- (d) prescribe fees payable in respect of anything done under this Schedule.

[Schedule 2 inserted by No. 49 of 2000 s.70.]



Notes

¹ This reprint is a compilation as at 10 January 2001 of the *Rights in Water and Irrigation Act 1914* and includes the amendments effected by the other Acts referred to in the following Table ^{1a}.

Table of Amendments

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Rights in Water and Irrigation Act 1914</i>	19 of 1914	22 September 1914	22 September 1914	
<i>Ministers' Titles Act 1925</i>	8 of 1925	24 September 1925	24 September 1925	
<i>Limitation Act 1935, section 48A</i>	35 of 1935 (as amended by No. 73 of 1954 section 8)	7 January 1936	Proclaimed 1 March 1955 (see section 2 of Act No. 73 of 1954 and <i>Gazette</i> 18 February 1955 p.343)	
<i>Rights in Water and Irrigation Act Amendment Act 1939</i>	16 of 1939	22 November 1939	22 November 1939	
<i>Rights in Water and Irrigation Act Amendment Act 1941</i>	32 of 1941	16 December 1941	16 December 1941	
<i>Rights in Water and Irrigation Act Amendment Act 1945</i>	3 of 1945	18 October 1945	18 October 1945	
<i>Rights in Water and Irrigation Act Amendment Act 1949</i>	9 of 1949	14 September 1949	14 September 1949	

Rights in Water and Irrigation Act 1914

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Rights in Water and Irrigation Act Amendment Act 1951</i>	18 of 1951	26 November 1951	26 November 1951	
<i>Rights in Water and Irrigation Act Amendment Act 1962</i>	70 of 1962	30 November 1962	Proclaimed 1 March 1963 (see section 2 and <i>Gazette</i> 1 March 1963 p.748)	
<i>Rights in Water and Irrigation Act Amendment Act 1964</i>	31 of 1964	4 November 1964	4 November 1964	
<i>Decimal Currency Act 1965</i> , sections 4-9	113 of 1965	21 December 1965	14 February 1966 (see section 2(2)); balance: 21 December 1965	
<i>Rights in Water and Irrigation Act Amendment Act 1971</i>	46 of 1971	10 December 1971	10 December 1971	
<i>Metric Conversion Act 1972</i>	94 of 1972 (The Second Schedule was inserted by No. 19 of 1973)	4 December 1972	The relevant amendments as set out in the Second Schedule, took effect on 1 May 1974 (see section 4(2) and <i>Gazette</i> 26 April 1974 p.1393)	
<i>Rights in Water and Irrigation Act Amendment Act 1974</i>	48 of 1974 (as amended by No. 100 of 1976)	26 November 1974	Proclaimed 18 February 1977 (see section 2 and <i>Gazette</i> 18 February 1977 p.468)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment and Repeal (Valuation of Land) Act 1978, Part XII</i>	76 of 1978	20 October 1978	Proclaimed 1 July 1979 (see section 2 and <i>Gazette</i> 11 May 1979 p.1211)	
<i>Rights in Water and Irrigation Act Amendment Act 1978</i>	98 of 1978 (as amended by No. 119 of 1984 ss. 20-22)	17 November 1978	Sections 1, 2, 8, 9, 14, 36 and 37 proclaimed 19 January 1979 (see section 2 and <i>Gazette</i> 19 January 1979 p.114); sections 3, 15-35 to be proclaimed ^{1a}	
<i>Acts Amendment (Statutory Designations) and Validation Act 1981, section 4</i>	63 of 1981	13 October 1981	13 October 1981	Section 5: validation
<i>Rights in Water and Irrigation Amendment Act 1984</i>	119 of 1984	27 December 1984	Proclaimed 15 February 1985 (see section 2 and <i>Gazette</i> 15 February 1985 p.574)	
<i>Acts Amendment and Repeal (Water Authorities) Act 1985, Part IX</i>	25 of 1985	6 May 1985	Proclaimed 1 July 1985 (see section 2 and <i>Gazette</i> 7 June 1985 p.1931)	
<i>Commercial Arbitration Act 1985, section 3</i>	109 of 1985	7 January 1986	Proclaimed 1 April 1986 (see section 2 and <i>Gazette</i> 28 February 1986 p.605)	

Rights in Water and Irrigation Act 1914

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Water Authorities) Act 1985, Part VIII</i>	110 of 1985	17 December 1985	Sections 119-129, 131-133(b), and 134 proclaimed 14 March 1986; balance: 1 July 1986 (see section 2 and <i>Gazette</i> 14 March 1986 p.726)	
<i>Acts Amendment and Repeal (Environmental Protection) Act 1986, Part VI</i>	77 of 1986	4 December 1986	Proclaimed 20 February 1987 (see section 2 and <i>Gazette</i> 20 February 1987 p.440)	
<i>Acts Amendment (Water Authority Rates and Charges) Act 1987, Part VI</i>	24 of 1987	25 June 1987	Proclaimed 14 July 1987 (see section 2 and <i>Gazette</i> 14 July 1987 p.2647)	Section 167 savings and transitional
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2(1))	
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995, Part 8</i>	73 of 1995	27 December 1995	Proclaimed 1 January 1996 (see section 2 and <i>Gazette</i> 29 December 1995 p.6291)	Part 14 transitional
<i>Sentencing (Consequential Provisions) Act 1995, section 112</i>	78 of 1995	16 January 1996	Proclaimed 4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	

Rights in Water and Irrigation Act 1914

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2(1))	
<i>Transfer of Land Amendment Act 1996, section 153(1)</i>	81 of 1996	14 November 1996	14 November 1996 (see section 2(1))	
<i>Acts Amendment (Land Administration) Act 1997, Part 52</i>	31 of 1997	3 October 1997	30 March 1998 (see section 2 and <i>Gazette</i> 27 March 1998 p.1765)	
<i>Water Legislation Amendment Act 1997, Part 4</i>	32 of 1997	3 October 1997	Proclaimed 15 April 1998 (see section 2 and <i>Gazette</i> 15 April 1998 p.2041)	
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 105</i>	57 of 1997	15 December 1997	15 December 1997 (see section 2)	
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998, section 63</i>	10 of 1998	30 April 1998	30 April 1998 (see section 2(1))	
<i>Rights in Water and Irrigation Amendment Act 2000</i>	49 of 2000	28 November 2000	Proclaimed 10 January 2001 (see section 2 and <i>Gazette</i> 10 January 2001 p.163)	Part 8: transitional ⁶

NB. The *Rights in Water and Irrigation Act 1914* is affected by the *Soil and Land Conservation Act 1945* section 3, and the *Water Agencies (Powers) Act 1984* section 5.

^{1a} At the date of this reprint sections 3 and 15 to 35 of the *Rights in Water and Irrigation Act Amendment Act 1978* (No. 98 of 1978) had not commenced. They read as follows —

“

3. Long title amended

The long title of the principal Act is amended by inserting after the passage “Effluent,” the passage “the licensing and control of certain dams,”.

”.

“

15. Part VIIA heading added

The principal Act is amended by inserting after section 45 a new heading as follows —

“

**Part VIIA — The licensing and control
of referable dams**

”.

16. Section 45A added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45A, as follows —

“

45A. Interpretation

In this Part of this Act —

“**alteration**” means an alteration determined by the Department as being likely to affect the safety of a dam or reservoir;

“**appurtenant works**” include, but are not limited to, such structures as spillways whether in the dam or separate therefrom, a reservoir and its rim, outlet works, and water conduits such as tunnels, pipelines, or penstocks either through the dam or its

abutments, appurtenant to or used in connection with a dam;

“dam” includes any artificial barrier or levee, whether temporary or permanent, which does or could impound, divert or control water, silt, debris or other liquid borne materials, together with its appurtenant works;

“height” means the difference in level from the top of the dam and —

- (a) the natural bed of a stream or water course at the downstream toe of the barrier; or
- (b) where the barrier is not across a stream or water course, the lowest elevation of the outside limit of the barrier;

“normal top water level” means —

- (a) when used in relation to a dam with a fixed overflow sill, the lowest crest level of that sill; and
- (b) when used in relation to a dam the overflow of which is controlled wholly or partly by movable gates, siphons, or other means, the maximum level to which water is ordinarily intended to be stored except in times of flood or other abnormal conditions;

“owner”, when used in relation to a dam or referable works, includes any person who has an estate or interest in the land on which the referable works are constructed or the land on which the dam is constructed, is being, or is proposed to be, constructed, and any person who by himself, his servants, or his agents has the control or management of the dam or referable works;

“referable dam” means a dam which pursuant to subsection (1) of section 45B of this Act is a referable dam by reason of its size, or

which is determined to be such pursuant to subsection (2) of that section;

“referable works” means a referable dam, and all its appurtenant works;

“repairs” means repairs determined by the Department as being likely to affect the safety of a dam or reservoir;

“reservoir” means any artificial lake, pond, basin or tank for the storage, regulation or control of water, silt, debris or liquid borne material;

“reservoir capacity” means the total storage capacity of a reservoir up to normal top or retention water level but not up to flood level,

and cognate expressions shall be construed accordingly.

”.

17. Section 45B added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45B, as follows —

“

45B. Referable dams

- (1) A dam is a referable dam if —
- (a) it is or will be 10 metres or more in height and has a reservoir storage capacity of more than 20 000 cubic metres; or
 - (b) it is or will be 5 metres or more in height and has a reservoir storage capacity of 50 000 cubic metres or more,

and the Department may thereupon issue a certificate that the dam is a referable dam by reason of its size.

- (2) Irrespective of the height or reservoir capacity of a dam, where the Minister determines that a dam, or the reservoir created thereby, may constitute a danger to life or property in the event of its failure the Department may issue a certificate that the dam is a referable dam, but the Department shall cancel

a certificate issued by it under this subsection where the Minister is satisfied that the dam or the reservoir created thereby is no longer likely to be of danger to life or property.

- (3) Where, in the opinion of the Minister, the failure of a referable dam would not endanger life or property due to remoteness of location or other reason the Minister may, in writing, exempt that dam from such of the provisions of this Part of this Act as the Minister may therein specify for such period as is therein specified and any provision so specified shall not then apply thereto.
- (4) An obstruction in a canal used to raise or lower the water therein or to divert water therefrom, or a tank constructed of steel or of concrete or of steel and concrete, shall not be a referable dam.
- (5) Where the Department issues or cancels a certificate under this section it shall serve notice on an owner of the dam.

”

18. Section 45C added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45C, as follows —

“

45C. Determinations, as to referable dams

- (1) An owner of a dam or a person who is constructing or proposing to construct a dam may apply to the Department for a determination whether or not the dam is a referable dam.
- (2) An application may be made under subsection (1) of this section in respect of a dam that is proposed to be constructed or completed at a specified place in accordance with the plans and specifications accompanying the application.
- (3) The Department may cancel a certificate issued by it under this section.
- (4) Where the Department issues or cancels a certificate under this section it shall serve notice on an owner of the dam and, where the certificate

relates to a dam being, or proposed to be, constructed, on the person constructing or proposing to construct the dam.

”.

19. Section 45D added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45D, as follows —

“

45D. Effect of certificates, and registration

- (1) A dam in respect of which a certificate issued under this Part of this Act is in force is a referable dam.
- (2) A certificate issued under this Part of this Act is conclusive evidence of the matter stated therein.
- (3) The Department shall cause to be maintained in such form as the Minister approves records of the certificates and licenses issued under this Part of this Act and the cancellations of any such certificates or licenses, and the records so maintained are in this section referred to as “the register”.
- (4) On making application to the Department and on payment of such fee (if any) as may be prescribed any person is entitled to inspect the register.
- (5) A document purporting to be an extract from the register, certified correct by an officer of the Department on its behalf, is conclusive evidence of the matter contained therein.

”.

20. Section 45E added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45E, as follows —

“

45E. Delegated authority

- (1) The Department may by instrument in writing delegate to —
 - (a) a Board;

- (b) the Metropolitan Water Supply, Sewerage, and Drainage Board;
- (c) an officer of the Department of Mines;
- (d) an officer of the Department of Agriculture; or
- (e) any other prescribed authority,

any of its functions under this Part of this Act subject to such terms and conditions as may be agreed between the Department and the authority or person to whom the functions are delegated.

- (2) The Governor may by Order published in the *Gazette* prescribe an authority for the purposes of subsection (1) of this section.
- (3) Any functions delegated under subsection (1) of this section shall be performed on behalf of the Department.
- (4) In relation to any functions delegated to an authority or person under subsection (1) of this section any reference in this Part of this Act to the Department shall, subject to the terms of the delegation and so far as the context does not otherwise require, be construed as including a reference to that authority or person.
- (5) The Department, and any person to whom any function is delegated under subsection (1) of this section, shall submit such reports and information to the Minister as the Minister may require.

”.

21. Section 45F added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45F, as follows —

“

45F. Referable dams to be subject to licensing

- (1) In this section “**the appointed day**” means such day as is for the purposes of this section fixed by proclamation.
- (2) On and after the appointed day no referable dam shall be commenced, no referable dam then in being or thereafter constructed shall be altered, repaired, abandoned or removed and no

operations affecting referable works shall be carried out, except pursuant to and in compliance in every respect with the provisions, terms and conditions contained or referred to in a license issued by the Department.

- (3) No referable dam, whether constructed prior to or on or after the appointed day, shall be maintained or operated after the expiry of a period of 12 months from the appointed day except pursuant to and in compliance in every respect with the provisions, terms and conditions contained or referred to in a license issued by the Department.
- (4) Any person who contravenes, or causes or permits any person to contravene, the provisions of subsection (2) or subsection (3) of this section commits an offence.
Penalty: \$2 000.
- (5) A license issued pursuant to this Part of this Act may make provision in respect of, and may contain or refer to terms and conditions relating to —
 - (a) the designs, plans, and specifications of the construction, alteration, repair, enlargement, maintenance or operation of the dam or any referable works;
 - (b) the supervision, direction and control of the construction, alteration, repair, enlargement, maintenance or operation of the dam or any referable works;
 - (c) the making of reports of inspections and the notification to the Department of those reports;
 - (d) the prohibiting of the carrying out of any operation without the approval of the Department;
 - (e) the giving of information to the Department concerning the referable works;
 - (f) the notification to the Department of the intention to carry out any operation; and

- (g) such other requirements as the Department may determine in relation thereto.
- (6) For the purposes of subsection (2) of this section —
 - (a) the alteration, repair or enlargement of any referable works; and
 - (b) operations likely to endanger the referable works,shall be deemed to be operations affecting referable works.

”.

22. Section 45G added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45G, as follows —

“

45G. Power of Minister to require measures to be taken for ensuring safety of referable works

- (1) If the Minister is of the opinion that measures should be taken to ensure the safety of any referable works, he may by notice in writing served on an owner of the referable works require the owner to take, within such time as may be specified in the notice, such measures as may be specified in that notice for ensuring the safety of the referable works.
- (2) Without prejudice to the provisions of subsection (1) of this section the measures that may be required to be taken under that subsection may be measures requiring the discontinuance or abandonment of the use, or the reconstruction, alteration, emptying, or repair of the referable works, and any notice served under this section may specify alternative measures that may be taken for ensuring the safety of the referable works.
- (3) Any person on whom a notice is served under this section who fails to take any measures required to be taken under this section within the time specified commits an offence.
Penalty: \$2 000.

- (4) Where the requirements of a notice under this section are not complied with within the time specified in the notice the Department may cause to be taken such measures as the Minister considers necessary to give effect to the requirements of the notice.
- (5) The expenses reasonably incurred in taking measures under subsection (4) of this section may be recovered from any owner of the referable works as a debt due to the Department.

”

23. Section 45H added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45H, as follows —

“

45H. Powers of Department in emergency, etc.

- (1) Where, in the opinion of the Minister, an emergency or other special circumstances may endanger any referable works and time does not permit of the service and enforcement of a notice under section 45G of this Act the Department may, without any such notice being served, require the owner to take, or may itself take, such measures as it considers should immediately be taken to ensure the safety thereof.
- (2) The expenses reasonably incurred in taking measures under subsection (1) of this section may be recovered from any owner of the referable works as a debt due to the Department.

”

24. Section 45J added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45J, as follows —

“

45J. Licenses

- (1) An application for the grant of a license under this Part of this Act shall be made to the

Department in the prescribed manner accompanied by such fee, if any, as is prescribed.

- (2) An application for the variation or transfer of a license shall be endorsed to show clearly the particulars of the license to which it relates, but in all other respects shall be dealt with as though it were an application for the grant of a license.
- (3) An application shall be made in the name of the occupier for the time being of the land on which the referable works are or are to be situate.
- (4) Where an application for a license or for the transfer of a license is refused, the applicant shall be notified in writing setting out the reasons for the refusal.
- (5) A license shall be in the form prescribed.
- (6) Where a license is lost or destroyed, a duplicate license may be issued on payment of the prescribed fee.
- (7) Unless previously cancelled, a license has effect for so long as the holder of the license is the occupier of the land to which it relates.
- (8) Where in the opinion of the Minister it is necessary in the public interest in consequence of a change of circumstance (which may include a change in the information available, or arise by reason of deterioration in any ground or structures or otherwise in any manner that was not foreseen at the time the license was granted) the Minister may, by notice in writing served on the licensee —
 - (a) vary or add to the conditions of a license; or
 - (b) in the case of an unconditional license, provide that it shall be subject to reasonable conditions specified in that notice.
- (9) The Minister, on being satisfied —
 - (a) that the provisions of any license or of any term or condition contained or referred to in the license have not been complied with; or

(b) that any danger to life or property exists, may cancel the license by notice in writing to the holder of that license setting out the reasons for so doing.

”

25. Section 45K added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45K, as follows —

“

45K. Appeals

- (1) A person who is aggrieved —
- (a) by a refusal to grant, vary or transfer a license;
 - (b) by any provision of, or term or condition contained or referred to in, a license or any condition subsequently imposed in relation to a license;
 - (c) by the cancellation of a license;
 - (d) by measures required by the Minister, or taken by the Department, pursuant to section 45G of this Act; or
 - (e) by measures taken by the Department pursuant to section 45H of this Act,
- may, within 30 days after notice of the decision appealed against is received, give to the Minister notice of his wish to be heard.
- (2) Where the Minister receives a notice under subsection (1) of this section, the Minister shall cause an enquiry to be conducted by a tribunal consisting of —
- (a) a chairman, appointed by the Minister with the agreement of the person aggrieved or in default of agreement on the nomination of the President for the time being of the body known as the Institution of Engineers, Australia;
 - (b) a person nominated by the permanent head of the Department; and

- (c) a person nominated by the person aggrieved,

and the person aggrieved shall be heard at the enquiry and the Minister shall thereafter give such decision as he thinks fit and effect shall be given thereto.

- (3) A person who is aggrieved by a decision of the Minister made pursuant to subsection (2) of this section may, within the time and in the manner prescribed by rules of court, appeal against such decision to a Judge who may make such order in the matter as he thinks fit and the decision of the Judge shall be final and conclusive.
- (4) Any appeal under subsection (3) of this section shall, unless the Judge otherwise orders, be heard by a Judge sitting in chambers.

”.

26. Section 45L added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45L, as follows —

“

45L. Information

- (1) The Department may, by notice in writing served on the owner of a dam or a person who is constructing, or proposing to construct, a dam, require within such time as may be specified in the notice such information concerning the dam as it considers necessary to determine whether the dam is, or will be, a referable dam.
- (2) In respect of any application made under this Part of this Act the Department may, by notice in writing, require the applicant to furnish such data, design analyses, drawings, specifications, reports, and other information as may be needed for a proper review of the safety, adequacy and suitability of the proposal.
- (3) A person who in relation to any application for the purposes of this Part of this Act wilfully conceals or omits to furnish any information which he is required to furnish under this Act or who

knowingly makes or publishes or causes to be made or published any representation or statement which he knows or reasonably ought to know —

- (a) is false or misleading in a material particular; or
- (b) is likely to deceive in a material way, commits an offence.

Penalty: \$500.

”

27. Section 45M added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45M, as follows —

“

45M. Safety

- (1) For the purpose of ensuring the continued safety of referable dams the Department may, by notice in writing, require the owner of a referable dam —
 - (a) to furnish reports of periodical inspections of the dam and reservoir carried out by suitably qualified and experienced engineers in accordance with procedures and at intervals of time determined by the Department;
 - (b) to instal, maintain and utilise instruments and measuring devices for observing and monitoring the performance and conditions of the dam and its foundations, and to keep records of the readings of the instruments and measuring devices and make regular reports in accordance with procedures determined by the Department; and
 - (c) to undertake a review of the design, construction or operation of a referable dam and reservoir when warranted by advances in technical knowledge or changes in local conditions.
- (2) An officer authorised in writing for the purpose by the Department may carry out, or cause to be carried out by independent or consulting

engineers or specialists, inspections from time to time of any referable works, or of any dam and its appurtenant works whether or not a referable dam, or of any works of construction related thereto or intended for the purposes of a proposed dam, and of any mining or other works adjacent thereto and a potential source of danger, and for that purpose may —

- (a) enter and re-enter upon the land pursuant to the provisions of section 11 of this Act;
 - (b) be accompanied by such persons, vehicles, equipment or machinery as he may require; and
 - (c) require the owner or any person authorised by the owner in charge of such dam or works to give to him such information as he may require for the purpose of such inspection.
- (3) Any referable dam which is —
- (a) situate on a farming property;
 - (b) used for domestic purposes or for stock or irrigation; and
 - (c) does not exceed 15 metres in height,
- shall, if requested by the owner, be inspected by the Department at no cost to the owner.
- (4) Any person who, without just cause, refuses to give any information or gives information that is false or misleading to a person authorised by the Department to make an inspection commits an offence.
Penalty: \$500.

28. Section 45N added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45N, as follows —

45N. Injunctions

- (1) The Supreme Court or The District Court of Western Australia may, on the application of the Minister, grant an injunction restraining a person

from engaging in any course of conduct, or doing any act, whether or not authorised by any other Act, that constitutes or would be likely to constitute a source of danger whereby the safety of any referable works may be imperilled.

- (2) The Court may grant an interim injunction pending determination of an application made under subsection (1) of this section, and may rescind or vary any interim injunction or injunctions granted pursuant to this section.

”

29. Section 45P added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45P, as follows —

“

45P. Functions of the Department, etc.

- (1) The Department is charged with the function of —
- (a) determining whether or not any dam is, or is likely to be, works to which the provisions of this Part of this Act will apply;
 - (b) recording all referable works; and
 - (c) ensuring that adequate measures are adopted for the safe design, construction, maintenance, and operation of referable works, and in respect of their alteration, repair, abandonment, or removal.
- (2) No license shall be issued pursuant to this Part of this Act unless or until the Minister is satisfied that the preparation of designs, plans and specifications for the initial construction or subsequent alteration, repair, abandonment or removal of any referable works and the supervision of such works in progress is directed by a suitably qualified engineer adequately experienced in dam design and construction, assisted by qualified engineering geologists and other specialists where necessary.

- (3) Where the Minister is satisfied that a body has access to, or is comprised of, engineers and other specialists with adequate knowledge and experience that body may be authorised by the Minister to design, construct, alter, repair, maintain or operate referable works, or to remove any such works, notwithstanding the provisions of subsection (1) of this section, and any such body may be required to furnish only such data, drawings, reports and other information as is sufficient to enable the Department to maintain adequate records and to ensure that all requirements as to safety, inspections and reports are observed.

”

30. Section 45Q added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45Q, as follows —

“

45Q. Advisory committee

The Minister, on such terms and conditions as he thinks fit, may establish an advisory committee or committees of suitably qualified and experienced engineers and specialists for the purpose of —

- (a) inquiring into, reporting upon and making recommendations concerning such aspects of the investigation, design, proposed construction and operating procedure or other proposals submitted in relation to any referable dam or proposed referable dam as the Minister may require in each particular case; and
- (b) inquiring into, reporting upon and making recommendations concerning the implementation of the provisions of this Part of this Act.

”

31. Section 45R added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45R, as follows —

“

45R. Relationship with Crown instrumentalities, etc.

- (1) This Part of this Act binds the Crown.
- (2) To the extent that a power conferred or requirement imposed by this Part of this Act is inconsistent with —
 - (a) the operation of any other Act;
 - (b) the implementation of any Agreement to which the State is a party and which, or the execution of which, is or has been ratified, authorised or approved by an Act; or
 - (c) proposals made by the council of a municipality, or any instrumentality or agency of the Crown, established pursuant to any Act,

and gives rise, or may give rise, to a question, difference or dispute the Minister shall thereupon consult with the Minister charged with the administration of that other Act and thereafter shall direct the Department as to the matter.

”

32. Section 45S added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45S, as follows —

“

45S. Fees and costs

Subject to the provisions of subsection (3) of section 45M of this Act, the Minister may charge fees and recover from the owner all costs reasonably incurred in the making of inspections, the preparation and obtaining of reports and otherwise implementing the provisions of this Part of this Act insofar as they relate to the safety and surveillance of the referable works.

”

33. Section 45T added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45T, as follows —

“

45T. Liability etc.

- (1) No claim shall lie against the Crown, the Minister, the Department, or any person lawfully acting pursuant to a power conferred or duty imposed under the provisions of this Part of this Act, for compensation or damages for any loss howsoever caused or arising as a consequence of —
 - (a) the partial or total failure of any referable works;
 - (b) the operation of any referable works;
 - (c) any failure to supervise or control any referable works or the design, construction, alteration, operation, maintenance, abandonment, or removal thereof;
 - (d) any approval, direction, or notice given or omitted, or the carrying out of any works or the exercise of any function under the provisions of this Part of this Act.
- (2) Nothing in this Part of this Act shall be construed to relieve an owner of any referable works of the legal duties, obligations, or liabilities incident to the ownership or operation of those works.
- (3) No person is precluded by any agreement from doing such acts as are necessary for complying with any of the provisions of this Part of this Act, or is liable under any agreement to any penalty, damages, or forfeiture for doing such acts as are necessary for complying with this Part of this Act.

”

34. Section 45U added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45U, as follows —

“

45U. Damage to works, etc.

Any person who, without lawful excuse —

- (a) wilfully damages, or wilfully interferes with the construction, maintenance, alteration, or operation of, any referable works; or
- (b) wilfully damages or wilfully interferes with any survey mark or peg required in connection with the construction, maintenance, alteration, or operation of any referable works,

commits an offence.

Penalty: \$500 or 6 months' imprisonment, or both.

”

35. Section 45V added

The principal Act is amended by inserting after section 45 a new section, to stand as section 45V, as follows —

“

45V. Regulations

- (1) The Governor may make regulations for the purposes of this Part of this Act.
- (2) Without prejudice to the generality of subsection (1) of this section, the Governor may make regulations for or with respect to any of the following matters —
 - (a) the alteration, enlargement, repair, management, inspection, maintenance, and control of referable works;
 - (b) the removal and abandonment of referable works;
 - (c) the powers, duties, responsibilities, and practices of owners of referable works; and

- (d) the procedures to apply in the event of an emergency affecting the safety of referable works.
- (3) Regulations under this Part of this Act may —
 - (a) prescribe the form of any certificate, license or notice issued or served under this Part; and
 - (b) provide for the payment of fees in respect of the making of an application, the issue of any certificate or license, the making of any inspection, examination, or report under this Act.
- (4) Regulations under this Part of this Act may provide for the imposition of penalties, not exceeding in any case \$500, in respect of any breach or non-observance thereof.
- (5) The regulations made under this Part of this Act may incorporate or adopt by reference, either wholly or in part, any of the standard codes, rules, or specifications of the Standards Association of Australia, the Australian Committee on Large Dams, or any other specified body.

”
”

- ² Now cited as the *Water Agencies (Powers) Act 1984*.
- ³ Part II of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* (No. 73 of 1995) commenced 1 January 1996.
- ⁴ Now known as the Department of Minerals and Energy (see *Alteration of Statutory Designations Order (No. 2) 1992* in *Gazette* 30 June 1992 p.2924).
- ⁵ Marginal notes in the *Rights in Water and Irrigation Act 1914* referring to earlier Western Australian legislation and to legislation of other jurisdictions have been omitted from this reprint.

⁶ Part 8 of the *Rights in Water and Irrigation Amendment Act 2000* (No. 49 of 2000) reads as follows —

“

Part 8 — Transitional provisions

71. Definitions

In this Part, unless the contrary intention appears —

“**principal Act**” means the *Rights in Water and Irrigation Act 1914*.

72. Interpretation Act 1984 not affected

The provisions of this Part do not affect the application of the *Interpretation Act 1984*, so far as it is consistent with those provisions, to the amendments made by this Act.

73. Appeals in progress

(1) If —

(a) before —

- (i) the commencement of section 56 of this Act notice has been given to the Minister under section 14(1) of the principal Act;
- (ii) the commencement of section 58 of this Act notice has been given to the Minister under section 23(1) of the principal Act; or
- (iii) the commencement of section 61 of this Act notice has been given to the Minister under section 26D(4) of the principal Act;

but

(b) the steps and procedures under section 14(2), 23(2) or 26D(5) of the principal Act, as the case may be, have not been completed,

the notice does not lapse on that commencement but the relevant repealed provision mentioned in paragraph (b) continues to have effect in respect of the notice as if the repeal had not occurred.

(2) After the commencement of this Act but before regulations under Schedule 2 of the Principal Act regarding a panel of names from which a tribunal is to be appointed are made, an appeal to which that Schedule applies —

(a) if the appellant so agrees, is to be heard and determined as if clause 5(1)(a)(i) of that Schedule were deleted; or

- (b) if the appellant does not so agree, is to be heard and determined as soon as is practicable after those regulations are made.

74. Applications made for licences to take water

- (1) This clause applies to an application for —
 - (a) a special licence under section 12 of the principal Act that was made before the commencement of section 25 of this Act; and
 - (b) a licence under section 13 of the principal Act that was made before the commencement of section 26 of this Act,
but that was not before the relevant commencement finally disposed of by the grant or refusal of a licence or withdrawn.
- (2) An application to which this clause applies is to continue to be governed by the principal Act, including section 14, as if this Act had not been enacted.
- (3) However, if a licence is granted on the application —
 - (a) it is to be treated after the grant as if it were a licence under section 5C of the principal Act; and
 - (b) after the grant, the provisions of the principal Act apply to it in the same way as they apply to a licence under section 5C granted under the principal Act as amended by this Act.

75. Applications made for licences in respect of wells

- (1) This clause applies to an application for a licence under section 26D of the principal Act that —
 - (a) was made before the commencement of section 37 of this Act; but
 - (b) was not before that commencement finally disposed of by the grant or refusal of a licence or withdrawn.
- (2) An application to which this clause applies is to continue to be governed by the principal Act, including section 26D(4) and (5), as if this Act had not been enacted.
- (3) However, if a licence is granted on the application —
 - (a) it is to be treated after the grant as if it were —
 - (i) so far as it relates to the taking of water, a licence under section 5C of the principal Act authorizing that taking; and

- (ii) so far as it relates to the carrying out of work, a licence under section 26D of the principal Act authorizing the carrying out of that work;
- (b) those licences may be combined in a single instrument; and
- (c) after the grant, the provisions of the principal Act apply to the licences in the same way as they apply to a licence under section 5C or 26D, as the case may be, granted under the principal Act as amended by this Act.

76. Licences under section 12 or 13

- (1) This section applies to a licence that —
 - (a) immediately before the commencement of section 25 of this Act was in force under section 12 of the principal Act; or
 - (b) immediately before the commencement of section 26 of this Act was in force under section 13 of the principal Act.
- (2) A licence referred to in subsection (1) —
 - (a) is taken on the commencement of section 25 or 26 as the case may be, to be a licence under section 5C of the principal Act; and
 - (b) subject to subsection (3), continues in force for the remainder of its term.
- (3) After the commencement of section 25 or 26, as the case may be, the provisions of the principal Act as amended by this Act apply to a licence referred to in subsection (1) in the same way as they apply to a licence under section 5C of the principal Act granted after that commencement.

77. Licences under section 26D

- (1) This section applies to a licence that immediately before the commencement of section 37 of this Act was in force under section 26D of the principal Act.
- (2) A licence referred to in subsection (1) is taken on the commencement of section 37 —
 - (a) so far as it relates to the taking of water (and whether it refers to taking or to drawing), to be a licence under section 5C of the principal Act authorizing that taking; and

- (b) so far as it relates to the carrying out of work, to be a licence under section 26D of the principal Act authorizing the carrying out of that work,

and those licences are taken to be licences combined in a single instrument as mentioned in clause 2(3) of Schedule 1 to the principal Act.

- (3) Subject to subsection (4), a licence referred to in subsection (2)(a) continues in force for the remainder of its term.
- (4) After the commencement of section 37 of this Act, the provisions of the principal Act as amended by this Act apply to a licence referred to in subsection (2)(a) in the same way as they apply to a licence under section 5C of the principal Act granted after that commencement.

78. Civil remedy under section 5E

The right of action created by section 5E inserted in the principal Act by section 18 of this Act does not apply to a contravention of section 5C of the principal Act that occurred before the commencement of section 18.

79. Time running for purposes of section 26B(4) or (5)

If at the commencement of section 35(1) of this Act time is running in respect of the period of 2 months mentioned in repealed section 26B(4) or (5) of the principal Act, the time is to be treated as running for the purpose of subsection (4)(c) or (5)(c) of that section as inserted in the principal Act by section 35(1).

80. Existing augmentations of water volumes

The application of section 26GA inserted in the principal Act by section 40 of this Act extends to a situation where —

- (a) at or after the commencement of section 40 the volume of water in a watercourse or wetland is augmented by the introduction of water by artificial means, whether the augmentation is of the kind referred to in section 9(3) of the principal Act repealed by section 22 of this Act or otherwise; and
- (b) the augmentation is caused by things done before that commencement.

81. Orders under section 26C

An order under section 26C of the principal Act that was in force immediately before the commencement of section 36 of this Act is taken on that commencement to declare that section 5C, as well as

section 26B(3) to (6), is not to apply in relation to the non-artesian well or wells specified in the order and on and after that commencement has effect accordingly.

82. Powers in relation to transitional provisions

- (1) If there is no sufficient provision in this Part for any matter or thing necessary or convenient to give effect to the transition from the principal Act, as in force before the commencement of any provision of this Act, to the principal Act as in force after that commencement, the Governor may make that provision by order published in the *Gazette*.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision of this Part the Governor may by order published in the *Gazette* —
 - (a) modify that provision to remove the anomaly; and
 - (b) make such provision as is necessary or expedient to carry out the intention of that provision.
- (3) An order under this section in relation to an amendment made to the principal Act by this Act may be made so as to have effect from the commencement of that amendment.
- (4) To the extent that a provision of any such order has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of its publication; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of publication.

”

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
a licence	26GG(1)(a)
an affected person	Sch.1 cl.17(1)
appeal	Sch.2 cl.1
artesian well	2(1)
bed.....	2(1)
Commission	2(1)
committee.....	26GK(1)
Coordinator of Water Services.....	26GZP(2)
Corporation	2(1)
Crown land.....	2(1)
dam.....	17(8)
decision	Sch.2 cl.1
degradation.....	2(1)
dewatering.....	26O(3)
diminished.....	5B(2)
District	2(1)
former Authority	2(1)
former Minister	2(1)
Government agreement.....	26K(4)
instrument	26GZH
intensive conditions	21(4)
irrigation charge	2(1)
licence	Sch.1 cl.1
licensee.....	Sch.1 cl.18(4)
local by-laws	2(1), 26L(1)
meter	Sch.1 cl.46(5)
non-artesian well	2(1)
operating licence	26GZJ(3)
order	39A(7)
prescribed.....	2(1)
proclaimed area.....	26C(1)
public interest.....	Sch.1 cl.1
Registrar	Sch.1 cl.42(3)
riparian land	20(1)
security interest	26GZH
spring	2(1)
statutory undertaker	26K(4)
take.....	2(1)
the benefiting licensee.....	Sch.1 cl.17(2)

Rights in Water and Irrigation Act 1914

Defined Terms

the commencement day	17A(1)
the regulations	2(1)
the relevant day	9(2)(a)
the third party	Sch.1 cl.19(a)(i), Sch.1 cl.30(1)
tribunal	Sch.2 cl.1
underground water	2(1)
underground water source	2(1)
use and development	4(2)
water charge	2(1)
water entitlement	26Q(3), Sch.1 cl.17(4), Sch.1 cl.28, Sch.1 cl.37
water resource	26GB, Sch.1 cl.12(4)
water resources	2(1)
watercourse	2(1), 3(1), 4A
well	2(1)
wetland	2(1)