

Western Australia

Country Areas Water Supply Act 1947

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CONTENTS

1.	Short title and commencement	1
Part I — Preliminary		
5.	Interpretation	2
6.	Application	6
7.	Administration	6
Part II — Country water areas, and water reserves		
8.	Governor may constitute country water areas	8
9.	Governor may constitute catchment areas and water reserves	8
11.	Power to divert, intercept and store water	9
12.	Commission may exercise powers of a local government under the <i>Health Act 1911</i>	10
Part IIA — Control of catchment areas		
12A.	Application	11
12AA.	Interpretation	11
12B.	Clearing to be controlled	12
12BA.	Memorials as to unlawful clearing	13
12BB.	Memorials of restoration orders	14
12BC.	Removal of memorials	15
12BD.	Default under restoration order	15
12BE.	Injunctions	16
12C.	Clearing licences	17
12D.	Review	20
12E.	Compensation	21

Contents

12EA.	Memorials as to injurious affection	24
12EB.	Dealing with land	24
12EC.	Adjudication on claims	26
12ED.	Power of entry	27
12EE.	Evidentiary provisions	28
12F.	Regulations	29
12G.	Validation	30

**Part IV — Construction and
maintenance of water works**

14.	Corporation may construct works	31
19.	Local governments not liable for maintenance cost of certain water works	31

Part V — Water supply

Division 1 — Supply and distribution of water

28.	Supply to rated land	33
29.	Request for supply to rated land	33
30.	Supply to land not rated	34
31.	Corporation may supply meter and charge by measure	34
32.	Record of meter to be <i>prima facie</i> evidence of water supplied	34
33.	Water supply may be discontinued in certain circumstances	36
35.	Supply to persons outside country water area	37
36.	Application to fire districts	38
37.	Installation, etc., of fire hydrants	38
38.	Corporation may supply water by contract	41
39A.	Acquisition by agreement of water works from person or local government	42

**Division 2 — Protection of works and
prevention of waste**

40.	Duty to keep fittings in repair	42
42.	Power to enter and examine whether water is wasted, etc.	43
43.	Protection of fittings	43
43A.	Notification of building or alteration	44
43B.	Construction over water mains prohibited without consent of Corporation	45

44.	Power to enter on land and fix fittings	46
45.	Penalty for using unauthorised, and failing to repair, fittings	47
46.	Fraudulent taking of water	49
46A.	Evidentiary provision	49
Part VI — Water rates		
Division 1 — Mining leases		
49.	Rating of persons residing on mining leases	51
Division 2 — Objections and review		
58.	Objection to entry in rate book	51
59.	Review of decision of Corporation on objection	53
60.	Review of refusal to extend time for objection or review	53
60A.	New matters raised on review	54
60B.	Written reasons for certain determinations to be given and published	55
61.	Objections against, and review of, valuations	55
62.	Objection not to affect liability to pay rates	55
62A.	Corporation to amend rate book and assessment consequent on objections or review	56
Part VII — Payment of water supply charges		
Division 1 — General		
73.	Recovery of rates	57
74.	In action on owner proof of demand on occupier not necessary	57
75.	Persons liable to be resorted to in succession	57
76.	Records to be evidence	58
77.	Recovery of rates and charges paid by owner from occupier	58
78.	Apportionment of rates between successive owners or occupiers	59
79.	Payment by mortgagee	60
81.	How rates may be recovered	60
83.	Application and expiry of this Division	60

Contents

	Division 2 — Power to lease	
84.	Power to lease land on which arrears of rates are due	61
85.	Procedure	62
86.	Release of property after demand and payment of arrears	63
87.	Appropriation of rents received	64
88.	Land when vested in the Corporation	65
	Division 3 — Power of sale	
88A.	Application and expiry of this Division	65
89.	Land may be sold for arrears of rates etc., remaining unpaid for 5 years	66
90.	Conditions for exercise of power of sale	66
91.	Contents of notice	67
92.	Fixing of time for sale by auction	68
93.	Advertisement for sale	68
94.	Right to pay rates	69
95.	Power to transfer or convey land	69
96.	Statutory declaration	70
97.	Functions of Corporation and Registrar relating to transfer or conveyance	71
98.	Combination of all lands of same owner	72
99.	Application of purchase money	72
100.	Receipt a discharge	74
101.	Power to sell after advertisement lapses if sale not made within a year	74
102.	Power to transfer land to Crown	74
103.	Discharge of liability on sale of land	76
104.	Saving provision	77
	Part VIII — By-laws and regulations	
105.	Minister may make by-laws	78
	Part IX — Miscellaneous	
108.	Notice when name of owner or occupier is unknown	79
109.	Notices binding on persons claiming under owner or occupier	79
111.	Saving of civil remedy	79

112.	Obstructing Commission or the Corporation or officers in performance of duty	79
113.	Penalty for refusing to give up possession of works	80
114.	Offender may be arrested	80
115.	Proceedings	80
116.	Commission or the Corporation may be represented by officer	81
120.	Proof of ownership or occupancy	82
121.	Certificate of chief executive officer of the Commission or the Corporation evidence of certain facts	83
122.	Power to suspend certain provisions of local government Acts	83
Second Schedule		
Controlled land		
Notes		
	Compilation table	85

Country Areas Water Supply Act 1947

An Act to make provision for the construction, maintenance and administration of reticulated supplies of water to country areas, to safeguard water supplies, to repeal the *Goldfields Water Supply Act 1902-1942*², and for other incidental purposes.

[Long title amended by No. 81 of 1976 s. 3.]

1. Short title and commencement

This Act may be cited as the *Country Areas Water Supply Act 1947*, and shall come into operation on a date to be fixed by Proclamation¹.

[2. Repealed by No. 41 of 1984 s. 3.]

Part I — Preliminary

[3. *Repealed by No. 25 of 1985 s. 85.*]

[4. *Omitted under the Reprints Act 1984 s. 7(4)(f).*]

5. Interpretation

(1) In this Act, unless the context requires otherwise —

“**by-laws**” means by-laws made under or for the purposes of this Act;

“**catchment area**” means all land over, through, or under which any water flows, runs or percolates directly or indirectly into any reservoir erected or used in connection with any water works;

“**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*;

“**country water area**” means any part of the State for which part a scheme for a reticulated supply of water is prepared and which part is constituted a country water area under the provisions of this Act;

“**district**” in relation to a local government means the district of that local government and any land (including privately owned subdivided land) which the Governor may declare by Proclamation to be deemed to be included in a district for purposes of this Act;

“**farm land**” means land within a country water area that is used, or primarily used, for agricultural, pastoral, grazing or dairying purposes or any combination of them; but does not include land that —

(a) is used or primarily used for the purposes of a market garden, orchard, piggery, poultry farm, or horse stud

farm, or the purposes of the agistment or grazing of horses, or for any combination of those purposes;

- (b) is comprised in a holding that is wholly within the boundaries of a townsite (and for the purposes of this paragraph “**townsite**” means an area that has been, or is to be regarded as having been, constituted a townsite, and given a name, under section 10 of the *Land Act 1933*³);
- (c) is comprised in a holding the area of which is less than 4 hectares; or
- (d) is supplied from a main or other pipe the construction of which was not specified under section 15(b)(iii) as being for farm land purposes,

unless the land was, immediately before the coming into operation of the *Country Areas Water Supply Amendment Act 1981*¹, rated under this Act as farm land and the purposes for which the land is used or primarily used are the same as when it was so rated;

“**former Authority**” means the Water Authority of Western Australia under the *Water Authority Act 1984* before the commencement of Part 2 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995*¹;

“**former Minister**” means a Minister administering this Act before, pursuant to the *Water Authority Act 1984*, 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;

“**Goldfields Water Supply Act**” means the *Goldfields Water Supply Act 1902-1942*⁴;

“**holding**” means any piece or parcel of land which is held —

- (a) in fee simple;

s. 5

(b) on conditional purchase lease, pastoral lease, or otherwise under the *Land Administration Act 1997*, or any prior Act repealed by that Act or under any regulation made under, or repealed by, any prior Act, or by the *Land Administration Act 1997*; or

(c) on a perpetual lease granted under the *War Service Land Settlement Scheme Act 1954* or for such other estate or interest as is granted under that Act,

and which is constituted, owned, or occupied as one property;

“metropolitan area” means the Metropolitan Water, Sewerage and Drainage Area as constituted under and for the purposes of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*;

“officer”, in relation to —

(a) the Commission, means a member of staff as defined in section 3 of the *Water and Rivers Commission Act 1995*;

(b) the Corporation, means a member of the staff of the Corporation engaged under section 15 of the *Water Corporation Act 1995*;

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

“Registrar of Deeds” means the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*;

“the former Department” means the Public Works Department of the Public Service of the State;

“water board” means a water board constituted under the Water Boards Act;

“Water Boards Act” means the *Water Boards Act 1904*;

“watercourse” means —

- (a) any river, creek, stream or brook, whether artificially improved or altered or not;
 - (b) any conduit that wholly or partially diverts a river, creek, stream or brook from its natural course and forms part of that river, creek, stream or brook; or
 - (c) any natural collection of water into, through, or out of which any thing referred to in paragraph (a) or (b) flows, whether artificially improved or altered or not,
- in which water flows or is contained whether permanently, intermittently or occasionally, together with the bed and banks of any thing referred to in paragraph (a), (b) or (c);

“water reserve” means a portion of the State which the Governor by Order in Council declares to be a water reserve for the purposes of this Act;

“Water Supply Act” means the *Water Supply, Sewerage, and Drainage Act 1912*;

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

“water works” means all works for the supply, storage and distribution of water.

- (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.
- (3) Anything done before the amendment effected to the definition of the term “holding” by section 4 of the *Country Areas Water Supply Amendment Act 1984*¹ that would have been valid if that section had then been in operation shall be taken to have been as validly and effectively done as if that section had then been in operation.

s. 6

[Section 5 amended by No. 14 of 1957 s. 2; No. 56 of 1960 s. 2; No. 66 of 1964 s. 3; No. 81 of 1976 s. 5; No. 76 of 1978 s. 11; No. 63 of 1981 s. 4; No. 97 of 1981 s. 2; No. 14 of 1982 s. 4; No. 41 of 1984 s. 4; No. 25 of 1985 s. 86; No. 110 of 1985 s. 37; No. 24 of 1987 s. 62; No. 73 of 1995 s. 44 and 65; No. 14 of 1996 s. 4; No. 31 of 1997 s. 141; No. 25 of 2005 s. 4.]

6. Application

This Act shall apply and have effect in all parts of the State except that the provisions of Division 1 of Part V, Part VI, and Part VII shall not apply and have effect in that part of the State which is comprised within the Metropolitan Area.

[Section 6 amended by No. 14 of 1982 s. 5.]

7. Administration

[(1) repealed]

- (2) The Minister may, in relation to any matters or class of matters, or in relation to the whole or any particular part of the State to which this Act applies, by writing signed by him, delegate all or any of his powers and functions under this Act or any by-law or regulation in force by virtue of this Act (except this power of delegation), so that the delegated powers or functions may be exercised by the delegate with respect to the matters or class of matters, or the whole of that part of the State, specified in the instrument of delegation.
- (3) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Minister.
- (4) Where, by any of the provisions of this Act or any by-law or regulation in force by virtue of this Act, the exercise of any power or function by the Minister, or the operation of any provisions of the Act or of that by-law or regulation, is dependent on the opinion, belief, satisfaction or other state of mind of the Minister in relation to any matter, that power or

function may be exercised by the person to whom that power or function has been delegated by the Minister, or that provision may operate, as the case may be, upon the opinion, belief, satisfaction or other state of mind of that person in relation to that matter.

- (5) A delegate exercising power in pursuance of the provisions of this section shall have and enjoy in respect of that exercise all the immunities from personal liability as the Minister would have and enjoy if the Minister had exercised the power.

[Section 7 amended by No. 22 of 1950 s. 3; No. 25 of 1985 s. 87; No. 73 of 1995 s. 45.]

Part II — Country water areas, and water reserves

[Heading amended by No. 66 of 1964 s. 4.]

8. Governor may constitute country water areas

- (1) For the purposes of this Act, the Governor may by Order in Council —
- (a) constitute any defined portion of the State to be a country water area under such name or designation as may be directed by the Order in Council;
 - (b) alter or extend the boundaries of a country water area;
 - (c) unite 2 or more country water areas;
 - (d) divide a country water area and reconstitute the several parts thereof as new country water areas with or without the inclusion of part or parts of another country area or other country water areas, or any adjacent land;
 - (e) include within a country water area any adjacent land;
 - (f) alter the name of any country water area;
 - (g) abolish a country water area.

- (2)(a) Each portion of the State which immediately prior to the commencement of this Act constituted a water area within the meaning of that expression as used in the Goldfields Water Supply Act is, subject to amendment under subsection (1), hereby constituted a country water area.

[(b) deleted]

[Section 8 amended by No. 66 of 1964 s. 5.]

9. Governor may constitute catchment areas and water reserves

- (1) For the purposes of this Act, the Governor may, by Order in Council —
- (a) constitute and define the boundaries of any catchment area or water reserve and give to the catchment area or

- water reserve such name or designation as may be directed by the Order in Council;
- (b) alter or extend the boundaries of a catchment area or water reserve;
 - (c) unite 2 or more catchment areas or 2 or more water reserves;
 - (ca) alter the name or designation of a catchment area or water reserve;
 - (d) abolish any catchment area or any water reserve.
- (2) Until the Governor shall otherwise order, every catchment area and every water reserve constituted under the Goldfields Water Supply Act for the purposes thereof and still so constituted at the commencement of this Act shall be and continue until amended under subsection (1) a catchment area or a water reserve for the purposes of this Act.

[Section 9 amended by No. 95 of 1978 s. 5.]

[10. Repealed by No. 24 of 1987 s. 63.]

11. Power to divert, intercept and store water

- (1) Notwithstanding anything to the contrary contained in the *Land Drainage Act 1925*, or in any other Act, but subject to subsection (2), the Corporation may divert, intercept, and store all water coming from the watercourses and other sources within the boundaries of any catchment area or water reserve, and may take any water found on or under the land situated within any such catchment area or water reserve.
- (2) The Corporation shall not exercise the powers conferred by subsection (1) —
 - (a) in relation to water to which Division 1B of Part III of the *Rights in Water and Irrigation Act 1914* applies, except in accordance with that Division;

s. 12

- (b) in relation to water from —
- (i) an artesian well (as defined in the *Rights in Water and Irrigation Act 1914*); or
 - (ii) a non-artesian well (as defined in that Act) within an area proclaimed under section 26B of that Act,
- except under the authority of a licence issued under section 26D of that Act.

[Section 11 amended by No. 25 of 1985 s. 88; No. 73 of 1995 s. 46; No. 49 of 2000 s. 83.]

12. Commission may exercise powers of a local government under the *Health Act 1911*

For preventing the pollution of water within a catchment area or water reserve, the Commission shall have all the powers and authority of a local government within the meaning of and under the *Health Act 1911*, including power to make and enforce local laws under that Act, as if the catchment area or water reserve were a health district constituted under that Act, and the Commission were the local government for such district under that Act.

[Section 12 amended by No. 25 of 1985 s. 88; No. 73 of 1995 s. 62; No. 14 of 1996 s. 4; No. 57 of 1997 s. 43(1).]

Part IIA — Control of catchment areas

[Heading inserted by No. 81 of 1976 s. 6.]

12A. Application

[(1) repealed]

- (1a) The Minister may from time to time by notice published in the *Government Gazette* add to or amend the Second Schedule.
- (1b) A notice made under subsection (1a) adding to or amending the Second Schedule shall be laid before each House of Parliament within the 6 sitting days of that House next following the date of publication of that notice in the *Government Gazette*, and the provisions of sections 41 and 42 of the *Interpretation Act 1984* shall apply to that notice as if it had been a regulation.
- (2) Where the exercise of the powers conferred by this Part would be inconsistent with the provisions of any Agreement to which the State is a party and which, or the execution of which, is or has been ratified or approved by an Act, the Governor, by Order in Council published in the *Gazette*, may declare that any or all the provisions of this Part —
 - (a) shall not apply; or
 - (b) shall apply subject to the restrictions, limitations or conditions specified in that Order,

in respect of any land to which that agreement relates and effect shall be given to that Order.

[Section 12A inserted by No. 81 of 1976 s. 7; amended by No. 95 of 1976 s. 6; No. 75 of 1980 s. 3; No. 41 of 1984 s. 5; No. 110 of 1985 s. 38.]

12AA. Interpretation

In this Part, unless the contrary intention appears —

s. 12B

“controlled land” means land comprised within the boundaries of such of the catchment areas or water reserves defined under section 9 as are specified in the Second Schedule;

“the land in question” means that part of a holding that is controlled land;

“the subject land”, in relation to an application for the grant or transfer of a clearing licence, means the land for the clearing or partial clearing of which the licence is sought;

“to clear”, in relation to land to which this Part applies, means to cause or permit the indigenous undergrowth, bush, or trees on the land to be removed or destroyed, or so damaged as to eventually be destroyed, or to cause the removal from the land of vegetation not under cultivation, and cognate expressions have corresponding meanings.

[Section 12AA inserted by No. 75 of 1980 s. 4; amended by No. 41 of 1984 s. 6.]

12B. Clearing to be controlled

(1) Subject to —

- (a) any Order made pursuant to section 12A(2); and
- (b) section 12C,

a person who clears controlled land commits an offence.

(2) A person guilty of an offence against subsection (1) shall be liable to a fine not exceeding \$2 000 and, if the Commission so requests and having regard to the recommendations of the Commission, the court before which a person is convicted shall, unless the court thinks that having regard to the special circumstances of the case it would be inappropriate to do so, by order direct —

- (a) that either —
 - (i) the land on which the clearing was carried out; or
 - (ii) such other controlled land in the same ownership as may be agreed between the Commission, the

person convicted, and, where the person
convicted is not the owner of the land, the owner
of the land,

be restored by establishing on that land a tree cover in
accordance with the order; and

- (b) what measures are to be taken for the purpose of
restoring the land and the time within which any such
measure shall be taken,

and any such order shall, subject to the registration of an
appropriate memorial under section 12BB, run with the land and
may be made and have effect notwithstanding any change in the
ownership of the land subsequent to the time the offence was
committed.

- (3) The court by which an order is made under subsection (2) may,
upon a subsequent application made by any person affected by
the order and with the consent of all such persons and of the
Minister, vary that order, and a reference in this Part to an order
under subsection (2) includes a reference to an order as varied
under this subsection.

*[Section 12B inserted by No. 75 of 1980 s. 5; amended by
No. 63 of 1981 s. 4; No. 41 of 1984 s. 7 and 18; No. 25 of 1985
s. 89; No. 73 of 1995 s. 62.]*

12BA. Memorials as to unlawful clearing

- (1) Where clearing is carried out on any land contrary to this Part
and, although no person has yet been convicted of an offence
against section 12B(1) by reason of the clearing —
 - (a) the time for commencing a prosecution for such an
offence has not elapsed; or
 - (b) the time for commencing a prosecution for such an
offence has elapsed but a prosecution for such an
offence that was commenced within time has not been
disposed of,

s. 12BB

the Minister may deliver a memorial in the prescribed form to the Registrar of Titles, or the Registrar of Deeds (as the relevant category of title may require), who shall, without payment of a fee, register the memorial and endorse or note the title and land register or record in respect of the land in such manner as will ensure that a person searching the title to that land receives notice that the land may become the subject of an order under section 12B(2).

- (2) A memorial delivered under subsection (1) shall specify the land cleared and contain a warning that if a person is convicted of an offence by reason of the clearing an order for the restoration of the land is liable to be made.
- (3) Where in respect of land no memorial is registered and recorded under subsection (1) a person may apply to the Commission in writing for a certificate to the effect that up to a date specified in the certificate no clearing in respect of which an order under section 12B(2) will be requested by the Commission has been carried out on the land, and the Commission shall be bound by any certificate given by the Commission, the former Authority, the former Department or the Under Secretary of the former Department in response to an application under this subsection.

[Section 12BA inserted by No. 75 of 1980 s. 5; amended by No. 63 of 1981 s. 4; No. 41 of 1984 s. 8; No. 25 of 1985 s. 89 and 90; No. 73 of 1995 s. 47; No. 31 of 1997 s. 18(1); No. 84 of 2004 s. 80.]

12BB. Memorials of restoration orders

- (1) Where a person is convicted of an offence against section 12B(1) and the court before which he is convicted orders the restoration of any land the Minister may, within 14 days of the making of that order, deliver a memorial of the order in the prescribed form, specifying the land to which the order relates, to the Registrar of Titles, or the Registrar of Deeds (as the relevant category of title may require), who shall, without payment of a fee, register the memorial and endorse or note the

title and land register or record in respect of that land accordingly.

- (2) Where under subsection (1) the Minister causes a memorial of an order for the restoration of any land to be registered and recorded, the Minister shall forthwith give to the owner of the land notice in writing that he has done so.

[Section 12BB inserted by No. 75 of 1980 s. 5; amended by No. 31 of 1997 s. 18(1).]

12BC. Removal of memorials

Where a memorial is registered under section 12BA or section 12BB the Minister may, at any time thereafter, deliver a notice in writing directing that the memorial cease to have effect, to the Registrar of Titles, or the Registrar of Deeds (as the relevant category of title may require), who shall, without payment of a fee, endorse or note the title and land register or record in respect of that land accordingly and thereupon the memorial shall have no further effect.

[Section 12BC inserted by No. 75 of 1980 s. 5; amended by No. 31 of 1997 s. 18(1).]

12BD. Default under restoration order

- (1) Where an order is made under section 12B(2) for the restoration of any land and —
- (a) the order is not complied with within the time or in the manner specified in the order; or
 - (b) the order is complied with but the tree cover is subsequently destroyed, or is not maintained to the satisfaction of the Minister,

any officer of the Commission may, where the ownership of the land has not changed since the order was made or a memorial of the order was registered and recorded under section 12BB, enter upon the land with such persons and things as may be necessary to ensure that the land is restored and may thereon carry out

s. 12BE

such works as are necessary for that purpose, and the Commission may recover any expenses thereby reasonably incurred as a debt due from any person who is then the owner of the land.

- (2) Where a person who is an owner of the land reasonably incurs expense in complying with an order made under section 12B(2), or where the Commission recovers expenses from a person under subsection (1), that person may, if he is not the person on the conviction of whom the order was made, recover as a debt due from the person so convicted the amount —
- (a) reasonably incurred in complying with the order; or
 - (b) where expenses are recovered from him by the Commission under subsection (1), which is attributable to the act or default in respect of which the person was so convicted.

[Section 12BD inserted by No. 75 of 1980 s. 5; amended by No. 25 of 1985 s. 91; No. 73 of 1995 s. 62.]

12BE. Injunctions

- (1) On the application of the Minister the Supreme Court may, without regard to whether or not proceedings have been, or may be, taken against any person for an offence against section 12B, grant an injunction —
- (a) restraining a person from doing or causing or permitting to be done any thing that constitutes or would constitute a contravention of, or an attempt to contravene, section 12B;
 - (b) requiring a person to take or cause to be taken, such reasonable steps as the Supreme Court considers necessary to prevent the doing of any thing that constitutes or would constitute a contravention of, or an attempt to contravene, section 12B; or
 - (c) restraining a person from doing or causing or permitting the doing of any thing on land that has been cleared contrary to this Part, or using or causing or permitting

the use of such land in any way, if the doing of the thing on the land or the use of the land in that way would or may impair or delay the establishing or natural regeneration on the land of a tree cover,

notwithstanding that an application under section 12D for a review may lie or be pending in respect of a licence relating to the matter.

- (2) The Supreme Court shall not, as a condition of granting an interim injunction, require any undertaking as to damages.
- (3) An injunction granted for the purposes of this section —
 - (a) shall have effect for such period as is specified therein; and
 - (b) may be varied or rescinded by the Supreme Court.
- (4) This section does not limit any right of the Minister or of the Commission that would exist but for this section to apply for an injunction, and the grant, refusal, variation, rescission, or expiry of an injunction shall not affect the taking of proceedings against any person for an offence against section 12B nor the making of an order under that section.

[Section 12BE inserted by No. 75 of 1980 s. 5; amended by No. 25 of 1985 s. 92; No. 73 of 1995 s. 62; No. 55 of 2004 s. 152.]

12C. Clearing licences

- (1) A person who clears controlled land does not contravene section 12B if the clearing is carried out —
 - (a) under, and in accordance with the conditions of, a clearing licence granted under this Part;
 - (b) as a reasonably necessary emergency measure in order to avoid danger to persons or property, where, as soon as is reasonably practicable, the land is restored to the satisfaction of the Minister;

s. 12C

- (c) as an essential measure in performing an obligation or carrying out a duty under the *Agriculture and Related Resources Protection Act 1976* or the *Bush Fires Act 1954*; or
- (d) under, and in accordance with, a regulation made under this Part permitting the clearing of land by reference to the location of the land, the circumstances in which, the purposes for which, or the extent to which, the land is proposed to be cleared, or any of those matters,

or is attributable to events none of which that person could reasonably have been expected to prevent.

- (2) The owner or occupier of controlled land proposed to be cleared, or any person proposing to clear controlled land in the course of exercising any statutory function, may, in the prescribed manner, if any, apply to the Commission for a clearing licence and on payment of such fees as may be prescribed the Commission may grant or transfer any such licence, but where such an application is made and no decision is given within 6 months thereafter, or within such further period as the applicant may agree, then the Commission is deemed to have decided to refuse the application.
- (3) The Commission may refuse any application for the grant or transfer of a clearing licence and, unless the Commission is satisfied that there are exceptional reasons for not refusing an application, shall do so where, in the opinion of the Commission after the clearing that would otherwise be authorised there would be less than one-tenth part of the land in question left under tree cover including the indigenous undergrowth.
- (4) The grant or transfer of a licence may be in respect of —
 - (a) the whole or a part of the land; and
 - (b) the whole or a part of the clearing,

in respect of which application was made and may be made subject to such reasonable conditions as the Commission thinks

fit, which conditions shall be endorsed upon or referred to in the licence when granted or, as the case may be, transferred.

- (5) A person who, in connection with an application for, or an application for a review relating to, a licence, knowingly makes any statement that is false or misleading in any material particular commits an offence, and where the person convicted of an offence against this subsection is the holder of the licence to which the offence relates the Commission may, whether or not any penalty is imposed by the court for the offence, by notice in writing given to that person, revoke the licence.
- (6) A licence takes and shall have effect according to its tenor, but —
- (a) the Commission may, by notice in writing given to the holder of the licence, from time to time after the licence is granted —
 - (i) vary or add to the conditions of a licence; or
 - (ii) provide that an unconditional licence shall be subject to the conditions specified in the notice, or that a conditional licence shall cease to be subject to any condition;
- and
- (b) where a licence was granted before the coming into operation of the *Country Areas Water Supply Amendment Act 1980*¹ for a period specified in the licence, that licence shall have effect for that period notwithstanding paragraph (a).
- (7) Where the holder of a licence contravenes or fails to comply with any condition endorsed on or referred to in the licence —
- (a) he commits an offence and is liable for his act or omission to the extent that it was not authorised by the licence;
 - (b) whether or not any other penalty is imposed or order made, the court may cancel that licence, and no

s. 12D

compensation shall be payable in respect of any such cancellation; and

- (c) the Commission may, by notice in writing given to the holder of the licence, revoke the licence or suspend the operation of it for such period as the Commission thinks fit.

[Section 12C inserted by No. 75 of 1980 s. 5; amended by No. 41 of 1984 s. 9; No. 25 of 1985 s. 89 and 93; No. 24 of 1987 s. 64; No. 73 of 1995 s. 62; No. 55 of 2004 s. 153.]

12D. Review

- (1) Where —

- (a) an application to grant or transfer a clearing licence is refused;
- (b) a clearing licence is granted or transferred in respect of only a part of the subject land, or a part of the clearing in respect of which application was made;
- (c) a clearing licence is revoked or its operation is suspended;
- (d) a condition is imposed in relation to a clearing licence,

the applicant in the case of paragraph (a) or (b), or the holder of the licence in the case of paragraph (c) or (d), may apply to the State Administrative Tribunal for a review of the decision of the Commission.

- (2) For the purposes of ascertaining when any claim for compensation arises under this Part a decision which is the subject of an application under subsection (1) for a review shall have effect as from the day on which the application is determined.

[Section 12D inserted by No. 75 of 1980 s. 5; amended by No. 25 of 1985 s. 89; No. 73 of 1995 s. 62; No. 55 of 2004 s. 154.]

12E. Compensation

- (1) In assessing any claim for compensation under this Part regard shall be had to the requirement that not less than one-tenth part of the land in question should, in the interests of good agricultural and conservation practice, be left under tree cover including the indigenous undergrowth and in so far as the land in question has been, or is proposed to be, cleared of trees or the indigenous undergrowth to any greater extent no claim for compensation arises in respect of that excess.
- (2) A claim for compensation under this Part may extend not only to the land the subject of the application for a clearing licence but also to any other land in the same occupation or ownership which is shown to have been rendered unproductive, or uneconomic, or to have been otherwise injuriously affected, by the operation of the provisions of this Part, whether or not that land is controlled land.
- (3) The amount to be paid under this Part as compensation for injurious affection shall be assessed on the basis of values applying at the time at which the claim for compensation is made in accordance with this Part, and, subject to subsection (8), shall include interest computed from 60 days after the date of the making of that claim on the balance of compensation outstanding from time to time at the rate determined at the time at which the claim for compensation is made in respect of judgment debts pursuant to section 142 of the *Supreme Court Act 1935*.
- (4) Subject to section 12D, upon an application for the grant or transfer of a clearing licence in respect of land being refused, or deemed to be refused, or granted subject to conditions that are unacceptable to the applicant, or granted in respect of only a part of the subject land, or part of the clearing in respect of which application was made, any owner or occupier of the subject land, or other person having an estate or interest in the subject land, may claim compensation for injurious affection in accordance with the provisions of this Part.

s. 12E

- (5) A claim for compensation shall be made in the prescribed manner to the Commission not later than 12 months, or such further time as the Minister may in a particular case allow, after the claim for compensation arises under this Act, and shall not (other than with the consent of the Minister) be capable of being withdrawn, and if compensation for injurious affection has previously been paid under this Part to any person in respect of any land, or any estate or interest in land, no further compensation shall be paid under this Part to that or any other person in respect of injurious affection to the same estate or interest in that land notwithstanding any subsequent applications or decisions under this Part affecting that land, except to the extent that further injurious affection to that land results after the date of previous payment by reason of the operation of the provisions of this Part and is injurious affection of a kind or degree not taken into account in the computation of the previous payment.
- (6) Subject to subsection (5), where a claim is made under and in accordance with this section for compensation for injurious affection to land, or any estate or interest in land, the Commission may —
- (a) purchase by agreement the estate or interest of the claimant in the whole or part of the land injuriously affected, whether or not that land is controlled land; or
 - (b) if the Commission gives written notice within 3 months of the receipt of the claim that the Commission intends to do so, compulsorily take or resume pursuant to Part 9 of the *Land Administration Act 1997* the whole or part of the subject land,
- and the Commission shall pay compensation for injurious affection only in respect of land, or an estate or interest in land, that is not purchased, taken or resumed in accordance with this subsection.
- (7) Where, under and in accordance with this Part, a claim for compensation has been made and compensation is payable, the

Commission may, if the claimant agrees, and, where applicable, subject to section 12EB(2), transfer to the claimant in full or partial satisfaction of the claim such estate or interest as is agreed between the claimant and the Commission in —

- (a) any land taken or acquired by the former Minister under section 20 as in force prior to the coming into operation of section 103 of the *Acts Amendment and Repeal (Water Authorities) Act 1985*¹ or by the former Minister, the former Authority or the Commission pursuant to the *Public Works Act 1902*, as in force prior to the coming into operation of the *Land Administration Act 1997*, or the *Water Agencies (Powers) Act 1984* or under Part 9 of the *Land Administration Act 1997* for that purpose or so taken or acquired for any other purpose and no longer required for that other purpose; or
- (b) any land purchased, taken, or resumed or otherwise acquired by a former Minister, the former Authority or the Commission under this Part,

and thereupon compensation shall be taken to have been paid in satisfaction of the claim to the extent agreed between the claimant and the Commission and the provisions of this Part shall be construed accordingly.

- (8) Where, under and in accordance with this Part, a claim for compensation has been made and compensation is payable, the Commission may offer and pay to the claimant, as and by way of an advance or interim payment on account of the compensation payable, such amount or amounts of money as the Commission thinks fit and any such payment may be received and retained by the claimant without prejudice to any of his rights under this Part but, where any amount of money is offered to the claimant under this subsection and the offer is not accepted by the claimant within 30 days of the day on which the offer was made, no interest shall thereafter be payable under this Part in respect to the amount so offered.

s. 12EA

[Section 12E inserted by No. 81 of 1976 s. 11; amended by No. 75 of 1980 s. 6; No. 41 of 1984 s. 10; No. 25 of 1985 s. 94; No. 73 of 1995 s. 48, 62 and 65; No. 31 of 1997 s. 18(2) and 142.]

12EA. Memorials as to injurious affection

- (1) Where compensation has been paid under this Part for injurious affection to any land, or any estate or interest in land, the Minister may deliver a memorial to that effect in the prescribed form, specifying the land, estate, or interest in respect of which, and the date on which, compensation has been paid, to the Registrar of Titles, or the Registrar of Deeds (as the relevant category of title may require), who shall, without payment of a fee, register the memorial and endorse or note the title and land register or record in respect of that land accordingly.
- (2) Where the Minister is satisfied that a memorial that is registered under subsection (1) in respect of land serves no further purpose he may deliver a notice in writing to that effect to the Registrar of Titles, or the Registrar of Deeds (as the relevant category of title may require), who shall, without payment of a fee, thereupon cancel the registration of that memorial and endorse or note the title and land register or record in respect of that land accordingly.

[Section 12EA inserted by No. 75 of 1980 s. 7; amended by No. 31 of 1997 s. 18(1).]

12EB. Dealing with land

- (1) Where any land, estate, or interest is, or is to be, taken or resumed pursuant to section 12E(6) that land shall thereafter be so dealt with, by restoration if necessary, as to conserve the water resources, and for the purposes of Part 9 of the *Land Administration Act 1997* that use shall be regarded as a public work for the conservation of water notwithstanding that the object of conserving water resources may be achieved without

- any restoration or other works being required or carried out, and that Act shall apply to such taking or resumption.
- (2) Notwithstanding subsection (1) or anything in Part 9 of the *Land Administration Act 1997*, where it is consistent with the achievement of the object of conserving the water resources the Commission may lawfully sell, exchange, or otherwise deal with the whole or any part of any land, or any estate or interest in land purchased, taken, or resumed or otherwise acquired by a former Minister, the former Authority or the Commission pursuant to this Part.
- (3) Where a former Minister or the former Authority exercised or the Commission exercises in respect of land a power conferred by section 12E(7) or subsection (2) —
- (a) the provisions of Division 5 of Part 9 of the *Land Administration Act 1997* shall not apply in respect of any dealing in relation to that land; and
 - (b) no claim for compensation for injurious affection in respect of that land shall thereafter lie under this Part in relation to any use of that land by a person deriving title through a former Minister, the former Authority or the Commission.
- (4) Where under this section or section 12E(7) a former Minister or the former Authority transferred or the Commission transfers any estate or interest in land to any person, and the parties, so far as the estate or interest transferred enables the land to be bound, agreed or agree that the land or any part of it shall thereafter, either permanently or for a specified period, be held subject to a covenant in favour of a former Minister, the former Authority or the Commission, as the case requires, prohibiting any use of, or dealing with, the land which would have an effect detrimental to the conservation of the water resources that covenant may be enforced by the Commission as if the Commission were possessed of or entitled to or interested in adjacent land and as if the covenant had been and had been expressed to be entered into for the benefit of that adjacent land.

s. 12EC

- (5) Where land to which a covenant given for the purposes of this Part relates is held under the operation of the *Transfer of Land Act 1893*, the provisions of Division 3A of Part IV of that Act apply to and in relation to the registration, discharge, modification, and dealing with that covenant and any restriction arising therefrom.
- (6) Where the land to which a covenant given for the purposes of this Part relates is not land held under the operation of the *Transfer of Land Act 1893* —
- (a) the provisions of sections 129B and 129C of that Act apply, so far as they are capable of being applied, to and in relation to the discharge, modification and dealing with that covenant and any restriction arising therefrom as if the land were land under that Act; and
 - (b) the Registrar of Deeds shall, upon the production of the memorial required under the *Registration of Deeds Act 1856*, give due effect to any agreement duly made under section 129B of the *Transfer of Land Act 1893*, as so applied, and any order of a judge made under section 129C of that Act as so applied.
- (7) A covenant to which any land is made subject pursuant to this section shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself, his successors in title (including the owners and occupiers for the time being of the land) and the persons deriving title under him or them and unless a contrary intention is expressed, shall have effect as if such successors and other persons were expressed.

[Section 12EB inserted by No. 75 of 1980 s. 7; amended by No. 41 of 1984 s. 11; No. 25 of 1985 s. 95; No. 73 of 1995 s. 49; No. 31 of 1997 s. 18(3) and 142.]

12EC. Adjudication on claims

- (1) Where the parties do not agree upon any question as to whether any land, or any estate or interest in land, is injuriously affected or as to the amount or manner of payment of the sum which is to

be paid as compensation for such injurious affection either party may cause the question to be determined in the same manner as if it were a question required to be determined under Part 10 of the *Land Administration Act 1997* as to compensation payable and, subject to this Part, the provisions of Part 10 of the *Land Administration Act 1997* apply for the purposes of the determination of the question, with such modifications as the circumstances require but the principles to be applied in determining the question shall be derived from this Part.

- (2) In any proceedings under this section for the determination of a question each party shall bear his own costs except that nothing in this subsection prevents the court from making an order as to the payment of fees payable to the court or a member thereof.

[Section 12EC inserted by No. 75 of 1980 s. 7; amended by No. 41 of 1984 s. 12; No. 31 of 1997 s. 18(4).]

12ED. Power of entry

- (1) Where in this section a power to enter upon land is conferred it shall, where appropriate, include the power to conduct tests on, and take samples from, the land for the purposes of this Part.
- (2) Where due notice has been served upon the owner or occupier of that land any officer of the Commission or other person authorised by the Commission or the Minister may for the purposes of this Part lawfully enter on to any land notwithstanding that the consent of the owner or occupier has not been obtained, but except as is otherwise provided in this Part such an entry shall not be lawful unless notice has been served or such consent has been obtained.
- (3) A notice required by this Part to be given in relation to an entry shall specify the purposes for which entry is required and shall continue to have effect for so long as that requirement subsists, and successive entries for that purpose shall be taken to be entries to which the notice relates.

s. 12EE

- (4) Where it is shown to the satisfaction of a Justice of the Peace that entry on or into any land is reasonably required for a purpose contemplated by this Part but that entry has been refused or is opposed or prevented, or in any case where such land is unoccupied and consent cannot be obtained or a notice required by this Part cannot be served without undue delay or difficulty, the Justice may, by warrant in the prescribed form, authorise any officer of the Commission or other person authorised by the Commission or the Minister to enter upon the land, using such force as may be necessary, for the purpose therein specified and any such warrant shall continue to have effect until the purpose for which it was granted has been satisfied.
- (5) Where it appears to the Minister or the Commission or a person acting with the authority of the Minister or of the Commission that an offence against this Part is being, or is about to be, committed on any land and the circumstances are such that immediate intervention is appropriate and compliance with the normal requirements of this Part is impractical or unreasonable, the Minister, the Commission or any such person may, without any requirement for a notice or warrant and by force of this subsection, lawfully effect immediate entry on or into any land to intervene in the commission of the offence and endeavour to ensure compliance with the provisions of this Part.
- (6) A person exercising in respect of land a power of entry under this section or section 12BD shall conform so far as is practicable to such reasonable requirements of the owner or occupier of the land as are necessary to prevent the lawful use of the land being obstructed.

[Section 12ED inserted by No. 75 of 1980 s. 7; amended by No. 25 of 1985 s. 96; No. 110 of 1985 s. 39; No. 73 of 1995 s. 62.]

12EE. Evidentiary provisions

- (1) In proceedings under this Part a document purporting to be —

- (a) a true copy of an aerial photograph marked so as to identify, and show the boundaries of, land according to official survey; and
- (b) signed and certified by the Surveyor General as being a true copy of a photograph taken under the authority of the Surveyor General on the date specified in the certificate and as correctly identifying, and showing the boundaries of, the land according to official survey,

is, without proof of the signature of the Surveyor General, admissible as evidence of the matters so certified and of the condition, on the date so specified, of the vegetation on the land so identified.

- (2) A document shall not be admitted pursuant to subsection (1) as evidence that the land has been cleared contrary to this Part unless the court is satisfied that the Minister, the Commission or a person acting with the authority of the Minister or of the Commission has entered upon and inspected the land for the purposes of ascertaining whether the land has been so cleared.
- (3) Where, in proceedings for an offence against this Part, it is proved that land has been cleared, the person who was, at the time the land was cleared —
 - (a) the occupier of the land is, in the absence of evidence to the contrary, deemed to have so cleared the land; and
 - (b) the owner of the land is, unless the contrary is proved, deemed to have permitted the land to be so cleared.

[Section 12EE inserted by No. 97 of 1981 s. 3; amended by No. 25 of 1985 s. 97; No. 73 of 1995 s. 62.]

12F. Regulations

The Governor may make such regulations as may be necessary to give effect to the provisions of this Part.

[Section 12F inserted by No. 81 of 1976 s. 12.]

s. 12G

12G. Validation

Where before the coming into operation of the *Country Areas Water Supply Amendment Act 1980*¹ an agreement was entered into by or on behalf of a former Minister or of the Crown for the purposes of, but not in accordance with, this Part, that agreement shall, in its entirety, be deemed to have been validly entered into and to have effect according to its tenor, and any act, matter, or thing done pursuant thereto shall be deemed to have been done pursuant to an agreement validly entered into under and in accordance with this Part.

[Section 12G inserted by No. 75 of 1980 s. 8; amended by No. 25 of 1985 s. 98.]

[Part III (s. 13) repealed by No. 73 of 1995 s. 50.]

Part IV — Construction and maintenance of water works

[Heading amended by No. 75 of 1980 s. 9.]

14. Corporation may construct works

- (1) 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 extend water works, and from time to time may maintain, improve, alter, and repair the same, and for such purpose shall have and may exercise, in addition to the powers conferred by those Acts, the powers conferred by the *Public Works Act 1902* except that the *Public Works Act 1902* is to be read and construed as though —
- (a) a reference in it to the Minister administering that Act were a reference to the Corporation; and
 - (b) the provisions of the *Water Agencies (Powers) Act 1984* relating to entry onto land and the giving of notice had effect in substitution for the provisions of Part 9 of the *Land Administration Act 1997* relating to those matters, in relation to the construction of public works under the *Public Works Act 1902*.

[(2) repealed]

[Section 14 amended by No. 95 of 1978 s. 7; No. 14 of 1982 s. 7; No. 25 of 1985 s. 100; No. 73 of 1995 s. 63 and 65; No. 31 of 1997 s. 18(5); No. 25 of 2005 s. 5.]

[15-18A. Repealed by No. 25 of 1985 s. 101.]

19. Local governments not liable for maintenance cost of certain water works

No local government shall be liable for the cost of maintenance of water works constructed on, through, over, under or adjacent to any road controlled by it and, without affecting any liability for payment of water supply charges and subject to the

s. 19

provisions of Division 2 of Part V, no owner or occupier of land shall be liable for the maintenance or cost of maintenance of water works constructed on, through, over, under or adjacent to such land.

[Section 19 amended by No. 25 of 1985 s. 102; No. 24 of 1987 s. 65; No. 14 of 1996 s. 4.]

[20-25. Repealed by No. 25 of 1985 s. 103.]

Part V — Water supply

Division 1 — Supply and distribution of water

[26-27. Repealed by No. 24 of 1987 s. 66.]

28. Supply to rated land

- (1) The owner or occupier of land in respect of which a water supply charge has been made for a period is entitled, as far as practicable and subject to this Act and the *Water Agencies (Powers) Act 1984*, to have water supplied to the land in that period by the Corporation.
- (2) If so requested by a majority of occupiers of holdings in any portion of a country water area in which the construction of a reticulated system is not complete, the Corporation may erect standpipes or other prescribed fittings from which occupiers may cart water to such holdings. The Corporation by agreement with the occupiers or any of them, may specify the quantities of water to be taken at any standpipe or fitting, and the conditions under which the water may be taken.

[Section 28 amended by No. 94 of 1972 s. 4 (as amended by No. 19 of 1973); No. 25 of 1985 s. 104 and 105; No. 110 of 1985 s. 40; No. 24 of 1987 s. 67; No. 73 of 1995 s. 63 and 65.]

29. Request for supply to rated land

Subject as hereinafter provided, and to section 28(2) and Part IV of the *Water Agencies (Powers) Act 1984* the Corporation, on receiving from the owner or occupier any land referred to in section 28(1) a written request for a supply of water, shall as soon as conveniently may be, provide, lay down to the nearest point on the boundary of the land and fix the communication pipe and fittings necessary for complying with the request.

[Section 29 amended by No. 14 of 1982 s. 9; No. 25 of 1985 s. 104; No. 110 of 1985 s. 41; No. 24 of 1987 s. 68; No. 73 of 1995 s. 63 and 65.]

30. Supply to land not rated

- (1) The owner or occupier of land within a country water area not being land referred to in section 28(1) may in writing request the Corporation to supply water.
- (2) On receiving a request made under subsection (1), the Corporation may —
 - (a) comply with that request on and subject to such terms and conditions as may be mutually agreed; or
 - (b) refuse that request.

[Section 30 amended by No. 95 of 1978 s. 12; No. 25 of 1985 s. 104 and 106; No. 24 of 1987 s. 69; No. 73 of 1995 s. 63.]

31. Corporation may supply meter and charge by measure

- (1) The Corporation may cause a meter to be attached to any pipe on land supplied with water under this Act.
- (2) When a meter is so attached, the owner or occupier shall not receive a supply of water except by means of the meter, unless the Corporation consents to its removal or to a supply of water to a part of the land otherwise than by means of the meter.
- (3) The Corporation may levy the prescribed service charge for the use of the meter, and the cost of fixing, removing or replacing it and its fittings whenever in the opinion of the Corporation necessary.

[Section 31 amended by No. 25 of 1985 s. 104; No. 73 of 1995 s. 63.]

32. Record of meter to be *prima facie* evidence of water supplied

- (1) Whenever a meter is used —
 - (a) the quantity of water shown by the index or register shall be taken *prima facie* to be the quantity of water which has actually passed through the meter and been supplied; and

- (b) a certificate purporting to be signed by an officer of the Corporation stating the quantities so shown shall in any proceedings in which the quantity of water is in question be *prima facie* evidence of the quantity of water supplied,

but this subsection does not apply where the meter is found not to be in proper order.

- (2) The Corporation may at any time, and, where requested in writing by the person who will be liable to pay for water supplied through the meter, shall, cause a test of a meter to which subsection (1) applies to be made by an officer of the Corporation or a person appointed by the Corporation.
- (3) Where, pursuant to a request under subsection (2), the Corporation causes a meter to be tested and upon being so tested the meter is found to register not more than the quantity of water actually passed through it, the person upon whose request the test was made shall pay to the Corporation —
 - (a) the amount of the prescribed meter testing fee; or
 - (b) such greater amount as in the opinion of the Corporation approximates the actual cost of testing the meter,as the Corporation may in each case specify.
- (4) A meter shall be deemed not to be in proper order if —
 - (a) on being tested or otherwise, the meter is found not to register within the limits of error prescribed;
 - (b) the meter is found by an officer of the Corporation or a person appointed by the Corporation to be so damaged or otherwise in such a condition that, in the opinion of that officer or other person, the meter is likely to inaccurately show the quantity of water passing through it; or
 - (c) the register of the meter is found to be unreadable.

- (5) Notwithstanding by-laws under section 41(1)(l) of the *Water Agencies (Powers) Act 1984*, the Corporation may, where a meter is found to register less than the quantity of water actually passed through it, deem the quantity registered to be the quantity actually passed through the meter and supplied, and a certificate purporting to be signed by an officer of the Corporation stating the quantity so registered shall, in any proceedings in which the quantity of water is in question, be sufficient evidence of the matters stated.

[Section 32 amended by No. 97 of 1981 s. 4; No. 25 of 1985 s. 104 and 107; No. 24 of 1987 s. 70; No. 73 of 1995 s. 63 and 65.]

33. Water supply may be discontinued in certain circumstances

- (1) The Corporation may turn or cut off or reduce the available rate of flow of the supply of water to any land —
- (a) if such land is unoccupied; or
 - (b) when any water supply charges remain unpaid for 30 days after they become due; or
 - (c) when any person refuses or neglects, after demand, to pay all water supply charges due and payable by that person to the Corporation; or
 - (d) if the occupier refuses to permit a meter to be attached to any pipe on his land; or
 - (da) if a person or local government (being the owner or occupier of that land) fails to comply with the requirements of, or his or its obligations under, section 67 of the *Water Agencies (Powers) Act 1984*; or
 - (e) if the owner or occupier commits or permits any breach of any of the provisions of this Act or the by-laws thereunder.
- (2) Turning or cutting off or reducing the available rate of flow of the supply of water shall be a cumulative remedy for enforcing payment of moneys referred to in subsection (1) and shall not

relieve the owner or occupier from liability in respect thereof and the failure of the Corporation to supply water where supply has been turned or cut off, or the available rate of flow has been reduced, for any of the reasons set out in subsection (1) does not entitle any person to a rebate under section 39.

- (3) Where under this section the Corporation has turned or cut off or reduced the available rate of flow of the supply of water to land, the Corporation may, before restoring the water supply to the land —
- (a) require the payment of —
 - (i) such fees as may be prescribed in respect of the turning or cutting off or reduction of the water supply and the restoration of the water supply; or
 - (ii) such greater amount as in the opinion of the Corporation approximates the actual cost of turning or cutting off or reduction and the restoration of the water supply,as the Corporation may in each case specify; or
 - (b) require arrangements satisfactory to the Corporation to be made for the payment of the amount specified under paragraph (a).

[Section 33 amended by No. 97 of 1981 s. 5; No. 14 of 1982 s. 10; No. 25 of 1985 s. 104; No. 110 of 1985 s. 42; No. 24 of 1987 s. 71; No. 73 of 1995 s. 63 and 65; No. 14 of 1996 s. 4.]

[34. Repealed by No. 25 of 1985 s. 108.]

35. Supply to persons outside country water area

- (1) The owner or occupier of land not situated within a country water area may request the Corporation to supply water to the land.

Country Areas Water Supply Act 1947

Part V Water supply

Division 1 Supply and distribution of water

s. 36

- (2) On receiving a request made under subsection (1), the Corporation may —
- (a) comply with that request on and subject to such terms and conditions as the Corporation thinks fit; or
 - (b) refuse that request.
- (3) Whenever the Corporation complies with a request made under subsection (1), the Corporation may construct all necessary water works for supplying water to the land concerned.

[(4) repealed]

- (5) The Corporation may, for the purpose of supplying the land concerned with water, employ water works and fittings of such nature, size and description as he thinks fit.

[Section 35 amended by No. 95 of 1978 s. 13; No. 25 of 1985 s. 104 and 109; No. 73 of 1995 s. 63.]

[35A-35C. Repealed by No. 85 of 1985 s. 110.]

36. Application to fire districts

When a fire district referred to in the next succeeding section, or the district of a local government is wholly or partly in a country water area, the provisions of that section shall apply in respect of the fire district or district of the local government.

[Section 36 inserted by No. 41 of 1951 s. 6; amended by No. 14 of 1996 s. 4.]

37. Installation, etc., of fire hydrants

- (1) In this section, unless the context requires otherwise —
- “**Authority**” means the Fire and Emergency Services Authority of Western Australia established by section 4 of the *Fire and Emergency Services Authority of Western Australia Act 1998*;
- “**Fire Brigades Act**” means the *Fire Brigades Act 1942*;

“fire district” means a fire district constituted as such by or pursuant to the provisions of the Fire Brigades Act;

“fire hydrant” means a fire-plug or fixed pillar hydrant;

“proclaimed day” means the day fixed by Proclamation for the coming into operation of the *Acts Amendment (Fire Brigades Board and Fire Hydrants) Act 1951*¹;

“re-instatement” means the filling in of ground opened up and the re-instating and making good of the paving of any street broken up in the course of installing or abolishing a fire hydrant, or keeping a fire hydrant in effective order.

- (2) Subject to the provisions of the succeeding subsections, the Corporation shall fix hydrants upon the main or other pipes within the area, or abolish fire hydrants.
- (3) The Authority may request the Corporation to install or abolish a fire hydrant at such location in a fire district as the Authority specifies.
- (4) A local government may request the Corporation to install or abolish a fire hydrant at such location in the district of the local government elsewhere than in a fire district as the local government specifies.
- (5) So soon after receiving the request as is reasonably practicable, the Corporation shall comply with the request.
- (6) The Corporation shall keep all fire hydrants in the area in effective order.
- (7) The Corporation on installing, abolishing, or keeping a fire hydrant in effective order, may render to the Authority, where the fire hydrant is in a fire district, a statement of account of the cost to the Corporation of the labour and materials incurred in doing so, except the cost of re-instatement, and may render to the local government in whose district the work is done a statement of account of the cost to the Corporation of the labour and materials incurred in re-instatement.

- (8) The Corporation on installing, abolishing or keeping a fire hydrant in effective order, may render to the local government, where the fire hydrant is in the district of the local government but elsewhere than in a fire district, a statement of the cost to the Corporation of the labour and materials in doing so, including that of re-instatement.
- (9) In the event of non-payment of the amount shown in a statement of account rendered pursuant to the provisions of the last 2 preceding sections, it shall be recoverable from the Authority or the local government to whom the statement is rendered at the suit of the Corporation in a court of competent jurisdiction as a debt due.
- (10) The property in fire hydrants, whether installed before, on, or after the proclaimed day, shall —
- if the fire hydrant is in a fire district, whether constituted wholly or partly before, on, or after the proclaimed day, vest in the Authority as owner;
 - if the fire hydrant is in the district of a local government but elsewhere than in a fire district, vest in the local government as owner.
- (11) The Corporation shall on installing, abolishing or keeping a fire hydrant in effective order deposit the keys of the fire hydrant at such station as shall be specified —
- by the Authority where the fire hydrant is in a fire district;
 - by the local government where the fire hydrant is in the district of the local government elsewhere than in a fire district.
- (12) A person having the possession or control of the keys to a fire hydrant shall at the request of the Corporation deliver them to such person at such times as the Corporation specifies.
- (13) A local government or any person authorised in that behalf by a local government may, for the purpose of extinguishing any fire,

or for the purpose of drills, competitions, and practice conducted under the authority of the local government, take water free of charge from a fire hydrant that is in the district of the local government elsewhere than in a fire district.

- (14) Subsection (13) does not affect any right conferred by section 61 of the Fire Brigades Act.
- (15) Notwithstanding that the property in a fire hydrant is, under subsection (10), vested in the Authority or a local government, the Corporation may, in writing, permit a person to take water from a fire hydrant subject to such conditions as the Corporation specifies in the permit but shall, upon request, provide to the Authority or the local government, as the case may be, in which the property in the fire hydrant is vested particulars of the person to whom, and conditions subject to which, any such permit has been given.
- (16) A person shall not take water from a fire hydrant unless —
- (a) he is authorised so to do by section 61 of the Fire Brigades Act or subsection (13); or
 - (b) he takes the water pursuant to and in accordance with the conditions specified in a permit given under subsection (15).

Penalty: \$1 000.

[Section 37 inserted by No. 14 of 1982 s. 13; amended by No. 41 of 1984 s. 13; No. 25 of 1985 s. 104; No. 73 of 1995 s. 63; No. 14 of 1996 s. 4; No. 42 of 1998 s. 38.]

38. Corporation may supply water by contract

- (1) The Corporation may contract with any company, person, firm, association of companies or other undertaking, hereinafter called the purchaser, for the sale of water by measure on such terms and conditions as to the Corporation may seem fit.

[(2) repealed]

[Section 38 amended by No. 25 of 1985 s. 104 and 111; No. 24 of 1987 s. 72; No. 73 of 1995 s. 51, 63 and 65; No. 25 of 2005 s. 6.]

[39. Repealed by No. 73 of 1995 s. 52.]

39A. Acquisition by agreement of water works from person or local government

- (1) The Corporation may, at the request of a person or local government and with the approval of the Minister, acquire from the person or local government the whole or part of any water works of the person or local government and all or any property used in connection with those water works on and subject to such terms and conditions as may be mutually agreed.
- (2) The Corporation shall cause notice of the fact of any acquisition made under subsection (1) to be published in the *Government Gazette*.
- (3) As and from the date of the publication referred to in subsection (2), the water works and property concerned shall, by force of this subsection and without any conveyance, transfer or assignment, be transferred to and vested in the Corporation and shall be deemed to be water works under and for the purposes of this Act.

[Section 39A inserted by No. 95 of 1978 s. 15; amended by No. 25 of 1985 s. 104 and 112; No. 73 of 1995 s. 63; No. 14 of 1996 s. 4.]

Division 2 — Protection of works and prevention of waste

40. Duty to keep fittings in repair

Every person supplied with water under this Act shall keep all pipes and all fittings within or attached to his land and connected to the Corporation's service or communication pipe or meter in good repair so as to prevent effectually the water from running to waste.

[Section 40 amended by No. 25 of 1985 s. 113; No. 73 of 1995 s. 53.]

[41. Repealed by No. 110 of 1985 s. 43.]

42. Power to enter and examine whether water is wasted, etc.

- (1) Any officer of the Corporation may at all reasonable times, enter upon any land to which water is supplied under this Act, and do all things necessary to ascertain —
 - (a) what quantity of water has been consumed there;
 - (b) whether there has been or is any waste, misuse, fouling or contamination of the water; and
 - (c) whether all fittings with the materials and mode of arrangement thereof used or intended to be used are in accordance with the by-laws and in proper order and repair.
- (2) When a fitting is not in accordance with the by-laws, or is out of order and repair —
 - (a) the officer of the Corporation may repair or remove it, and if necessary, substitute another in its stead, or may alter the mode of arrangement, as the case requires; and
 - (b) any expense incurred by the Corporation in doing so shall, on demand, be paid by the owner or occupier of the land, and if not paid on demand, may be recoverable by the Corporation in the manner in which water supply charges may be recovered.

[Section 42 amended by No. 25 of 1985 s. 104; No. 24 of 1987 s. 74; No. 73 of 1995 s. 63.]

43. Protection of fittings

- (1) No person shall remove, alter, repair, renew or uncover any pipe or other fitting which is the property of the Corporation until the prescribed notice has been given to the Corporation and the consent of the Corporation in writing has been obtained.

- (2) No pipe or fitting referred to in the next preceding subsection shall be subject to, or liable to be seized or taken in, execution by process of law, or under any distraint.

[Section 43 amended by No. 25 of 1985 s. 104; No. 73 of 1995 s. 63.]

43A. Notification of building or alteration

- (1) Subject to subsection (7), this section applies to land in a country water area other than land which is farm land.
- (2) The owner or occupier of any land to which this section applies in or on which it is proposed to construct or alter any building shall give to the Corporation the prescribed notice thereof and submit to the Corporation plans of the proposed construction or alteration, together with the prescribed fee for examining the plans and for making or modifying connections to the water supply services provided by the Corporation.
- (3) The Corporation shall, within 7 days after the receipt of the plan and prescribed fee, return a copy of the plan with such written directions in relation to water services as may be thought fit.
- (4) If the owner or occupier of any land —
- (a) commences or causes to be commenced the construction or alteration of any building without giving the notice or without furnishing the plan referred to in subsection (2);
 - (b) having given the notice and furnished the plan commences or causes to be commenced the construction or alteration of the building before the expiration of the 7 days mentioned in subsection (3) or before the plan has been returned by the Corporation whichever is the earlier; or
 - (c) fails to follow the directions given by the Corporation under subsection (3),

he shall be liable to a penalty of \$2 000.

- (5) Where any building has been or is being constructed or altered in contravention of subsection (2) or contrary to or not in accordance with the directions given by the Corporation under subsection (3) the Corporation may by notice in writing served on the owner or occupier, as the case requires, of the land direct him within a specified time and in any specified manner to —
- (a) cease any construction or alteration being carried out;
 - (b) remove, pull down, take up or alter the building or part thereof.
- (6) If a person on whom a notice is served under subsection (5) fails or refuses to comply with the notice the Corporation may —
- (a) in accordance with the notice, remove, pull down, take up or alter the building or the part which has been constructed or altered; and
 - (b) recover the expenses of so doing from the owner or occupier of the land.
- (7) This section shall not apply in a case where the Corporation declares, in writing, that it is satisfied that an emergency had arisen which rendered it necessary or desirable that the building should be constructed or altered before the directions of the Corporation could be obtained, and that notice was given, the fee paid and a plan was furnished as soon as practicable.
- (8) The fee referred to in subsection (2) may be prescribed by reference to the cost of the construction or alteration of the building concerned as assessed by the Corporation.

[Section 43A inserted by No. 110 of 1985 s. 44; amended by No. 73 of 1995 s. 63.]

43B. Construction over water mains prohibited without consent of Corporation

- (1) A person shall not, without the prior consent of the Corporation, erect, construct or place any building, wall, fence or obstruction in, upon, under or within the prescribed proximity to a main or

reticulation pipe of the Corporation used for the purposes of water supply and then only upon and subject to such terms and conditions as the Corporation thinks fit to impose for the protection of the pipe from interference or damage.

Penalty: \$2 000 and in the case of a continuing offence, a further penalty not exceeding \$200 for each day the offence continues after the Corporation serves notice of the offence on the offender.

- (2) The Corporation may demolish and remove any building, wall, fence or obstruction which is erected, constructed or placed in contravention of subsection (1) and which interferes with or injuriously affects a pipe in the supply of water and perform any works necessary for restoring or reinstating the pipe.
- (3) In addition to any penalty that may be imposed on an offender under subsection (1) the offender shall also pay to the Corporation the expense incurred by it in removing any building, wall, fence or obstruction or in re-opening, restoring, repairing or reinstating a pipe pursuant to subsection (2).

[Section 43B inserted by No. 110 of 1985 s. 44; amended by No. 73 of 1995 s. 63.]

44. Power to enter on land and fix fittings

- (1) Any person authorised by the Corporation may, at all reasonable times, enter upon any land to which water is supplied or is intended to be supplied under this Act, and may place and fix thereon and attach thereto, wherever the Corporation thinks proper, such fittings as the Corporation may think expedient, and may do all other acts and execute all other water works which the Corporation may think fit.
- (2) Any person so authorised may at all reasonable times enter upon land and examine and remove, repair, alter or replace all or any of the fittings aforesaid on the land.

[Section 44 amended by No. 25 of 1985 s. 104; No. 73 of 1995 s. 63.]

45. Penalty for using unauthorised, and failing to repair, fittings

- (1) Any person who —
- (a) for the purpose of taking water in a manner not authorised by this Act —
 - (i) uses in, places upon or attaches to the land or permits or suffers to be so used, placed, or attached any fitting, instrument or thing not authorised by this Act or by the Corporation; or
 - (ii) alters, misuses, injures or removes any authorised fitting, except for the purpose of necessary repair;
 - (b) causes or permits or suffers any pipe, receptacle, fitting or other apparatus used in connection with the supply of water to him by the Corporation to be out of repair without repairing it within a reasonable time, or to be so used or contrived that the water supplied is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to allow the return of foul air or any noisome or impure matter into a pipe belonging to the Corporation or connected with any such pipe;
 - (c) not being authorised by the Corporation —
 - (i) wilfully or carelessly breaks, injures, opens or shuts or wilfully permits or suffers to be broken, injured, open or shut, any lock, sluice, cock, valve, meter, pipe or other authorised fitting or any work belonging to the Corporation; or
 - (ii) flushes or draws off water from any water works of the Corporation; or
 - (iii) does any other wilful act, or permits or suffers to be done any act whereby the water is wasted;
 - (ca) not being authorised by the Commission, diverts water from any watercourse or source of supply within any catchment area or water reserve or does any act whereby

Country Areas Water Supply Act 1947

Part V Water supply

Division 2 Protection of works and prevention of waste

s. 45

the watercourse or source of supply may be diverted or diminished in quantity or injured in quality or purity;

- (d) uses or consumes or permits or suffers to be used or consumed any water contrary to the provisions of this Act or the by-laws thereunder,

shall be guilty of an offence.

Penalty: For an individual — \$10 000.

For a body corporate — \$20 000.

- (2) If a person is convicted of an offence against this section or section 46, the court sentencing the person for the offence may make an order requiring the person to pay to the Corporation or the Commission, as the case requires, 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.
- (3a) An order does not affect any civil remedy the Corporation or Commission may have against the person convicted.
- (3b) An order is in addition to any compensation order made by the court under Part 16 of the *Sentencing Act 1995*.
- (3c) For the purposes of making a compensation order under Part 16 of the *Sentencing Act 1995* against a person convicted of an offence against this section or section 46, the value of any water unlawfully taken, wasted, misused, unduly consumed, contaminated or diverted 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 or used.

(4) When any water supplied under this Act has been wasted, misused or unduly consumed, the Corporation may recover the value thereof as a debt due to him by the person who wasted, misused or unduly consumed the water, and the remedy given by this section shall be additional to any other remedy which the Corporation may have under this or any other Act or law, and shall not affect the liability to any penalty which the person has incurred.

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

[Section 45 amended by No. 41 of 1984 s. 18; No. 25 of 1985 s. 104 and 114; No. 110 of 1985 s. 45; No. 73 of 1995 s. 54 and 63; No. 32 of 1997 s. 4.]

46. Fraudulent taking of water

(1) Any person who fraudulently takes or causes to be taken any water from a reservoir, main or pipe belonging to or vested in the Corporation or from any pipe leading to or from any water works shall be guilty of an offence.

Penalty: For an individual — \$10 000 or imprisonment for 2 years, or both.

For a body corporate — \$20 000.

(2) A court of summary jurisdiction dealing with an offence under this section is to be constituted by a magistrate.

[Section 46 amended by No. 25 of 1985 s. 104; No. 110 of 1985 s. 46; No. 73 of 1995 s. 63; No. 32 of 1997 s. 5; No. 59 of 2004 s. 141.]

46A. Evidentiary provision

In proceedings for an offence against section 45 if it is proved that at a particular time —

Country Areas Water Supply Act 1947

Part V Water supply

Division 2 Protection of works and prevention of waste

s. 46A

- (a) any act or thing was done on particular land for the purpose of taking water or with the result that water was wasted;
- (b) water was taken, used or consumed on particular land; or
- (c) water was diverted to particular land,

it is to be presumed, unless the contrary is proved, that the owner or occupier of the land at that time did the act or thing, or took, used, consumed or diverted the water, as the case requires.

[Section 46A inserted by No. 32 of 1997 s. 6.]

Part VI — Water rates

Division 1 — Mining leases

[Heading inserted by No. 24 of 1987 s. 75.]

[47. *Repealed by No. 110 of 1985 s. 51.]*

[48. *Repealed by No. 76 of 1978 s. 13.]*

49. **Rating of persons residing on mining leases**

Any person in occupation of any portion of the surface of a mining lease granted or deemed to be granted under the *Mining Act 1978* shall be deemed an occupier and be liable to pay any water supply charge in respect of the land accordingly notwithstanding any want of title to occupy.

[Section 49 amended by No. 25 of 1985 s. 117; No. 24 of 1987 s. 77.]

[50. *Repealed by No. 24 of 1987 s. 78.]*

[51, 52. *Repealed by No. 25 of 1985 s. 119.]*

[53. *Repealed by No. 25 of 1985 s. 120.]*

[54-56. *Repealed by No. 24 of 1987 s. 78.]*

[57. *Repealed by No. 110 of 1985 s. 56.]*

Division 2 — Objections and review

[Heading amended by No. 76 of 1978 s. 16; No. 55 of 2004 s. 155.]

58. **Objection to entry in rate book**

- (1) Subject to section 61, any person who is dissatisfied with any entry in records kept under section 69A of the *Water Agencies (Powers) Act 1984*, and who is liable to a water supply 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 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) in the case of a charge assessed by reference to the area of any land, that the area shown in the records is in excess of the actual area of the relevant land; and
 - (b) that the relevant land is incorrectly classified for the purposes of applying the charge.
- (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 a review of the decision may be sought.

[Section 58 inserted by No. 76 of 1978 s. 17; amended by No. 25 of 1985 s. 115 and 123; No. 110 of 1985 s. 57; No. 27 of 1987 s. 79; No. 73 of 1995 s. 55, 63 and 65; No. 55 of 2004 s. 156.]

59. Review of 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 refer the relevant entry in the records to the State Administrative Tribunal for a review.
- (2) Upon receipt of such notice the Corporation shall promptly refer the relevant entry in the records to the State Administrative Tribunal for a review.
- (3) The Corporation is to effect the reference by forwarding the notice to the executive officer of the State Administrative Tribunal together with the objection and a copy certified by or on behalf of the Corporation of —
 - (a) the relevant entry in the records; and
 - (b) the reasons, if any, for the entry.

[Section 59 inserted by No. 76 of 1978 s. 18; amended by No. 25 of 1985 s. 115; No. 110 of 1985 s. 50; No. 24 of 1987 s. 80; No. 73 of 1995 s. 63; No. 55 of 2004 s. 157.]

60. Review of refusal to extend time for objection or review

- (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 refer the relevant entry in the records to the State Administrative Tribunal for a review may serve on the Corporation a notice requiring the

Corporation to refer the decision to refuse to extend time to the State Administrative Tribunal for a review.

- (2) Upon receipt of such notice the Corporation shall promptly refer the decision to the State Administrative Tribunal for a review.
- (3) The Corporation is to effect the reference by forwarding the notice to the executive officer of the State Administrative Tribunal together with the objection and a copy certified by or on behalf of the Corporation of —
 - (a) the decision to refuse to extend the time; and
 - (b) the reasons, if any, for the decision.

[Section 60 inserted by No. 76 of 1978 s. 19; amended by No. 22 of 1985 s. 115 and 124; No. 110 of 1985 s. 49; No. 24 of 1987 s. 81; No. 73 of 1995 s. 63; No. 55 of 2004 s. 158.]

60A. New matters raised on review

- (1) Upon a review by the State Administrative Tribunal on a reference under section 59 or 60, the State Administrative Tribunal may consider —
 - (a) grounds in addition to those stated in the notice of objection; and
 - (b) reasons in addition to any reasons previously given for the Corporation's decision that is under review.
- (2) The State Administrative Tribunal is to ensure, by adjournment or otherwise, that each party and any other person entitled to be heard has a reasonable opportunity of properly considering and responding to any new ground or reason that the State Administrative Tribunal proposes to consider in accordance with subsection (1).

[Section 60A inserted by No. 55 of 2004 s. 159.]

60B. Written reasons for certain determinations to be given and published

- (1) If the State Administrative Tribunal considers that an order it makes determining a matter coming before it on a reference under section 59 or 60 is of general interest or significance, it is to prepare written reasons for its order and give a copy of the reasons to each party and publish the written reasons.
- (2) The obligation imposed by subsection (1) is in addition to, and does not derogate from, any obligation of the State Administrative Tribunal under the *State Administrative Tribunal Act 2004*.

[Section 60B inserted by No. 55 of 2004 s. 159.]

61. Objections against, and review of, valuations

- (1) There shall be no objection or review in respect of a valuation of land for the purposes of a water supply charge, except in accordance with the *Valuation of Land Act 1978*.

[(2) repealed]

[Section 61 inserted by No. 76 of 1978 s. 20; amended by No. 92 of 1979 s. 4; No. 110 of 1985 s. 49; No. 24 of 1987 s. 82; No. 55 of 2004 s. 160.]

62. Objection not to affect liability to pay rates

The making of an objection, whether in respect of an entry in the records or in respect of a valuation of land or otherwise, shall not affect the liability of a person to pay the charges concerned pending determination of the objection.

[Section 62 inserted by No. 76 of 1978 s. 21; amended by No. 110 of 1985 s. 49; No. 24 of 1987 s. 83; No. 55 of 2004 s. 161.]

62A. Corporation to amend rate book and assessment consequent on objections or review

- (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 under this Act or under the *Valuation of Land Act 1978* or in consequence of a review by the State Administrative Tribunal.
- (2) The Corporation shall issue a notice of an amended assessment of a water supply charge when amendment of an assessment is necessary under subsection (1).

[Section 62A inserted by No. 76 of 1978 s. 22; amended by No. 25 of 1985 s. 115; No. 110 of 1985 s. 49; No. 24 of 1987 s. 84; No. 73 of 1995 s. 63; No. 55 of 2004 s. 162.]

[Division 3 (s. 63-69) repealed by No. 24 of 1987 s. 85.]

Part VII — Payment of water supply charges

[Heading inserted by No. 24 of 1987 s. 86.]

Division 1 — General

[70. Repealed by No. 24 of 1987 s. 87.]

[71. Repealed by No. 25 of 2005 s. 7(1).]

[72, 72A. Repealed by No. 24 of 1987 s. 89.]

73. Recovery of rates

If any person liable to pay money due for water supply charges fails to pay it within the time prescribed, notwithstanding any change of ownership or occupation, the Corporation may recover the amount of money due from the owner or occupier for the time being of the land in respect of which the amount is due in a court of competent jurisdiction.

[Section 73 amended by No. 25 of 1985 s. 132 and 134; No. 110 of 1985 s. 63; No. 24 of 1987 s. 90; No. 73 of 1995 s. 63; No. 59 of 2004 s. 141.]

74. In action on owner proof of demand on occupier not necessary

In any action or other proceeding against the owner of land for the recovery of money due for water supply charges it shall not be necessary to prove service on the occupier of any demand for payment.

[Section 74 amended by No. 24 of 1987 s. 91.]

75. Persons liable to be resorted to in succession

Any unsatisfied judgment or order of any Court against any person for the recovery of money due for water supply charges shall not be a bar to the recovery thereof from any other person liable to the payment thereof under the provisions of this Act.

[Section 75 amended by No. 24 of 1987 s. 91.]

76. Records to be evidence

In any proceeding to recover, or consequent on the recovering of, an amount due to the Corporation in respect of water supply charges or interest thereon, an official record verified by an officer of the Corporation or a copy or extract of any official record certified by an officer of the Corporation to be such a copy or extract, is sufficient evidence of the matters shown in the record and of the obligation of the person proceeded against to pay the amount without any further evidence being required as to any such matter.

[Section 76 inserted by No. 24 of 1987 s. 92; amended by No. 73 of 1995 s. 63.]

77. Recovery of rates and charges paid by owner from occupier

- (1) The amount of any water supply charges made in respect of land is payable to the Corporation by the owner of the land but, at the option of the Corporation, may instead in the first instance be recovered from the occupier of the land.

[(2) repealed]

- (3) Unless the Crown is the owner, the amount of any water supply charges, not being charges according to the quantity of water supplied, paid by an occupier shall, in the absence of special agreement to the contrary, be afterwards recoverable by the occupier from the owner and a receipt for any such amount so paid may be tendered to and shall be accepted by the owner in satisfaction, to the extent of the amount specified in the receipt, of any rent due to the owner.
- (4) The amount of any charges according to the quantity of water supplied and paid by an owner shall, in the absence of special agreement to the contrary, be deemed to be rent due and owing by the occupier to the owner in respect of the land, in addition to

any other rent so due and owing, and shall be recoverable as such.

[Section 77 inserted by No. 110 of 1985 s. 65; amended by No. 24 of 1987 s. 93; No. 73 of 1995 s. 63.]

78. Apportionment of rates between successive owners or occupiers

- (1) When an owner or occupier ceases to be the owner or occupier of the land in respect of which a water supply charge, not being a charge according to the quantity of water supplied, is made before the end of the period in respect of which the charge was made, the owner or occupier shall, as between himself and the succeeding owner or occupier, be liable to pay a portion only of the charge payable for the whole of the period proportionate to the time during which he continued to be the owner or occupier.
- (2) Any person who is the occupier or the owner of the land during the remainder of the period shall, as between himself and the preceding owner or occupier, be liable to pay a portion of the charge in proportion to the time during which he is such owner or occupier.
- (3) Notwithstanding subsection (1) or subsection (2), any water supply charge made in respect of the land shall remain payable and the amount thereof may be recovered by the Corporation from the owner or occupier for the time being without regard to any change in the ownership or occupation of the land.
- (4) Where any land that is, as one property, subject to a water supply charge for a period has been divided between 2 or more owners or occupiers any such charge, not being a charge according to the quantity of water supplied, shall as between the respective owners or occupiers, or both, and for the purposes of this section, be deemed to be apportionable between the different portions of the holding or land on the basis of the respective values or areas, according to the method of assessment adopted, of those portions.

[Section 78 amended by No. 43 of 1979 s. 4; No. 25 of 1985 s. 132; No. 110 of 1985 s. 66; No. 24 of 1987 s. 94; No. 73 of 1995 s. 63.]

79. Payment by mortgagee

If a mortgagee of land pays the amount of any water supply charges made in respect of the land, which may include any interest due thereon, the amount so paid shall be added to, and deemed to be part of, the principal moneys advanced by him under the mortgage, and shall be recoverable as such, with interest, accordingly.

[Section 79 inserted by No. 24 of 1987 s. 95.]

[80. Repealed by No. 24 of 1987 s. 96.]

81. How rates may be recovered

The amount payable to the Corporation in respect of any water supply charges, or interest due thereon shall be recoverable action in a court of competent jurisdiction, and that amount and the amount of all costs, charges and expenses of any proceedings to recover it shall constitute a charge and have priority to every security or claim, including rent, of any description against the estate, real and personal, of the person liable to make payment of the amount.

[Section 81 amended by No. 43 of 1979 s. 4(1)(l); No. 25 of 1985 s. 132; No. 24 of 1987 s. 97; No. 6 of 1994 s. 13; No. 14 of 1995 s. 44; No. 73 of 1995 s. 63; No. 59 of 2004 s. 141; No. 25 of 2005 s. 8.]

[82. Repealed by No. 25 of 2005 s. 9(1)]

83. Application and expiry of this Division

- (1) Notice cannot be given under section 85(1) after section 10 of the *Water Legislation Amendment (Competition Policy) Act 2005* comes into operation.

- (2) For the purposes of this section, the time when notice is given under section 85(1) is when —
- (a) it has been given to every person to whom that provision requires it to be given; and
 - (b) it has been affixed upon the relevant land as required by section 85(2).
- (3) When there is no longer any old section 85(1) notice in relation to which the other sections of this Division have any further effect, the Minister is required to publish a notice in the *Government Gazette* stating that this Division expires at the end of the day on which the notice is published in the *Government Gazette*.
- (4) In subsection (3) —
- “old section 85(1) notice”** means a notice that was given under section 85(1) at the time of, or before, the coming into operation of section 10 of the *Water Legislation Amendment (Competition Policy) Act 2005*.
- (5) This Division expires as stated in the Minister’s notice under subsection (3).

[Section 83 inserted by No. 25 of 2005 s. 10.]

Division 2 — Power to lease

84. Power to lease land on which arrears of rates are due

- (1) When in respect of any land any moneys due for water supply charges or interest thereon have, whether before or after or partly before and partly after the commencement of this Act been unpaid for 3 years or longer, the Corporation may, subject to the conditions hereinafter prescribed and notwithstanding anything to the contrary contained in the *Transfer of Land Act 1893*, the *Land Act 1933*³, or the *Mining Act 1904-1937*⁵, and notwithstanding any change that may have taken place in the meantime in the ownership of the land —
- (a) take possession of the land;

Country Areas Water Supply Act 1947

Part VII Payment of water supply charges

Division 2 Power to lease

s. 85

- (b) hold the land as against any person interested therein,
and
 - (c) from time to time grant leases of the land.
- (2) Land so taken possession of, held, or leased by the Corporation shall continue to be capable of being the subject of a further water supply charge.

[Section 84 amended by No. 25 of 1985 s. 132; No. 24 of 1987 s. 100; No. 73 of 1995 s. 63.]

85. Procedure

- (1) The Corporation shall not take possession of any land as provided for in the next preceding section of this Act until the expiration of 3 months after a notice in the prescribed form has been given to every person in the State appearing on search in the Department within the meaning of the *Transfer of Land Act 1893* or the Registry of Deeds or in the Department of Mines ⁶, as the case may be, to have any estate or interest in the land.
- (2) A copy of the notice shall also be affixed upon a conspicuous part of the land.
- (3) On such taking possession of any land the Corporation shall cause notice thereof in the prescribed form to be affixed upon a conspicuous part of the land.
- (4) Every lease granted under the authority of the next preceding section of this Act shall —
- (a) be for such term, not exceeding 7 years, as to the Corporation seems fit;
 - (b) reserve the best rent which in the opinion of the Corporation can be reasonably obtained for the land, and
 - (c) contain such other reservations and such exceptions, covenants and conditions as to the Corporation seem fit.
- (5) Any lease granted by the former Minister, the former Authority or the Corporation otherwise in accordance with the provisions

of this Act shall be valid notwithstanding the non-compliance with any of the provisions of this section.

- (6) The lessee shall be entitled during the term of the lease to possession of the land as against all persons interested therein.
- (7) The Registrar of Titles, the Registrar of Deeds, or the chief executive officer⁷ of the Department of Mines⁶, as the case may require, upon the production to him of any lease granted under the next preceding section of this Act shall register the same and, if necessary for that purpose, shall make such orders and publish such advertisements as are provided for in any Act in the case of dealings with land when the certificate of title, Crown lease, lease of Crown land, or other instrument of title is lost or not produced.

[Section 85 amended by No. 25 of 1985 s. 132 and 136; No. 73 of 1995 s. 57 and 63; No. 81 of 1996 s. 153(2); No. 31 of 1997 s. 18(6) and (7).]

86. Release of property after demand and payment of arrears

- (1) Upon demand made by any person, who but for the provisions of this Act, would be entitled to the possession of land, of which the former Minister, the former Authority or the Corporation has granted a lease under the authority of section 84, such demand being made within 25 years after the taking possession of the land by the former Minister, the former Authority or the Corporation, and upon payment of all moneys due in respect thereof, the Corporation shall, within 3 months after payment thereof, execute under seal a release of the land from the amount of the moneys paid.
- (2) If the Corporation makes default in executing the release the Supreme Court may at the suit of any person interested in that behalf order the Corporation to execute it.
- (3) Upon the execution of the release, the person, by whom or on whose behalf the release was obtained shall, subject to any lease theretofore granted by the former Minister, the former Authority

or the Corporation under the provisions of this Act, be entitled to the land and the possession thereof for the estate or interest, to which he would have been entitled if this Act had not been passed; and the tenant or lessee of the land under the lease shall attorn to that person accordingly.

[Section 86 amended by No. 25 of 1985 s. 132 and 137; No. 24 of 1987 s. 101; No. 73 of 1995 s. 58 and 63.]

87. Appropriation of rents received

- (1) All rent and other moneys payable under any lease granted by the former Minister, the former Authority or the Corporation under the provisions of section 84 shall, until the execution of a release as hereinbefore mentioned or the expiration of 25 years from the taking of possession of the land leased by the former Minister, the former Authority or the Corporation, whichever first happens, upon receipt thereof by the Corporation be applicable —

Firstly — in defraying the expenses of and incidental to the giving of the notices required by section 85, and the execution of the lease and the collection of the rents; and

Secondly — in payment to the Corporation of all moneys due in respect of the land leased and in arrear and in payment of all moneys from time to time accruing due on the land.

- (2) Any residue of the moneys shall belong to such person as would, when they respectively were received, have been entitled to receive the rents and profits of the land if this Act had not been passed.

[Section 87 amended by No. 25 of 1985 s. 132 and 138; No. 24 of 1987 s. 102; No. 73 of 1995 s. 59.]

88. Land when vested in the Corporation

Unless within 25 years after possession is taken of land under the authority of section 84, some person entitled in that behalf demands a release under section 86, the land and all accumulations of rent and other moneys received or recovered on account thereof shall vest absolutely in the Corporation.

[Section 88 amended by No. 25 of 1985 s. 132; No. 73 of 1995 s. 63.]

Division 3 — Power of sale

88A. Application and expiry of this Division

- (1) Notice cannot be given under section 90 after section 11 of the *Water Legislation Amendment (Competition Policy) Act 2005* comes into operation.
- (2) For the purposes of this section, the time when notice is given under section 90 is when all of the notice requirements of that section have been satisfied.
- (3) When there is no longer any old section 90 notice in relation to which the other sections of this Division have any further effect, the Minister is required to publish a notice in the *Government Gazette* stating that this Division expires at the end of the day on which the notice is published in the *Government Gazette*.
- (4) In subsection (3) —
“**old section 90 notice**” means a notice that was given under section 90 at the time of, or before, the coming into operation of section 11 of the *Water Legislation Amendment (Competition Policy) Act 2005*.
- (5) This Division expires as stated in the Minister’s notice under subsection (3).

[Section 88A inserted by No. 25 of 2005 s. 11.]

89. Land may be sold for arrears of rates etc., remaining unpaid for 5 years

- (1) When in respect of any land any moneys due for water supply charges or interest thereon have, whether before or after or partly before and partly after the commencement of this Act, remained unpaid for the term of 5 years or longer after becoming due and payable, the Corporation shall, by virtue of this Act, have power, subject to the provisions hereinafter made, to sell and transfer and convey the land.
- (2) The power of sale shall include power —
 - (a) to sell the land or any part thereof either together or in lots by public auction, or by private contract subject to terms and conditions with respect to the payment of the purchase money, or any other matter, including power to fix a reserve;
 - (b) to vary any contract of sale and to buy in at any auction;
 - (c) to rescind any contract for sale and to resell without being answerable for any loss occasioned thereby;
 - (d) to subdivide the land and make such streets and roads and grant such easements of right-of-way or drainage therein as the circumstances of the case may require and the Corporation thinks fit, subject to all laws relating thereto:

Provided that the land shall not be sold by private contract until it has been first offered for sale by public auction.

[Section 89 amended by No. 25 of 1985 s. 132; No. 24 of 1987 s. 103; No. 73 of 1995 s. 63.]

90. Conditions for exercise of power of sale

- (1) The Corporation shall not exercise the power of sale conferred by this Division until notice requiring payment of all moneys owing and referred to in the next preceding section in respect of the land has been —

- (a) in the case of land under the *Transfer of Land Act 1893*, served, in accordance with that Act, on the person who is the proprietor of the land for the purposes of that Act;
 - (b) in the case of land not under the *Transfer of Land Act 1893*, served on the owner in fee simple thereof or on the person appearing by the last memorial relating to the land in the Office of the Registrar of Deeds to be seized of the fee simple thereof, by being delivered to him or by being sent in a registered letter posted to him at his address (if any) appearing in the memorial;
 - (c) served on every person appearing by the Register within the meaning of the *Transfer of Land Act 1893* or any memorial in the Office of the Registrar of Deeds to have any estate or interest in the land by being delivered to him or by being sent in a registered letter posted to him at his address (if any) appearing in the Register or memorial;
 - (d) posted on the land for not less than one month; and
 - (e) posted in a conspicuous place at the office of the Corporation for not less than one month.
- (2) If in the case of any person required by this section to be served, no sufficient address appears in the Register or memorial, notice requiring payment shall be served on that person by being advertised once in a newspaper circulating in the neighbourhood of the land, and once in the *Gazette*. It shall be competent to include in the notice reference to lands in the same locality and belonging to more than one owner.

[Section 90 amended by No. 25 of 1985 s. 132; No. 73 of 1995 s. 63; No. 81 of 1996 s. 153(1).]

91. Contents of notice

Every notice requiring payment shall —

- (a) be in writing and be dated and be signed, or purport to have been signed, by an authorised officer of the Corporation;

- (b) specify the total of the moneys owing and of which payment is required;
- (c) specify the land in respect of which the moneys are owing by a sufficient description of the land and the name of the registered proprietor in fee simple or the person seized of the fee simple thereof; and
- (d) include a statement that in default of payment of the moneys specified therein, the land will be offered for sale by public auction after the expiration of 3 months from the date of notice at a time appointed by the Corporation.

[Section 91 amended by No. 25 of 1985 s. 139; No. 73 of 1995 s. 63.]

92. Fixing of time for sale by auction

The Corporation shall appoint a time not less than 3 months and not more than 12 months from the service of the notices required by section 90 at which the land may be offered for sale by public auction unless the moneys owing be paid.

[Section 92 amended by No. 25 of 1985 s. 132; No. 73 of 1995 s. 63.]

93. Advertisement for sale

- (1) The sale shall be advertised —
 - (a) twice at least in a newspaper circulating in the neighbourhood of the land;
 - (b) once at least in the *Gazette*;
 - (c) by posting and keeping posted a copy of the advertisement in a conspicuous place at the office of the Corporation for not less than 21 days;
 - (d) by delivering a memorial of the advertisement to the Registrar of Titles, Registrar of Deeds, or other person having the custody or control of any register or public record relating to the land, who, on payment of the

prescribed fee, shall register the memorial and endorse or note a reference to it on the title or land register of every piece of land comprised in the memorial;

- (e) by any other means which, in the circumstances, the Corporation regards as reasonable and proper.
- (2) The advertisement shall contain a sufficient description of the land and any improvements thereon.
- (3) In the advertisement it shall be competent to include reference to lands within the same locality and belonging to more than one owner.

[Section 93 amended by No. 25 of 1985 s. 132; No. 73 of 1995 s. 63.]

94. Right to pay rates

Up to the time of the actual sale of any land for non-payment of moneys payable and referred to in section 89, any person having any estate or interest in the land may pay all the moneys then payable, and the costs then incurred, and thereupon the proceedings shall be stayed, and the Corporation shall deliver to the Registrar of Titles, Registrar of Deeds or other person having the custody or control of any register or public record relating to the land for noting on the title or land register, a certificate under the hand of a duly authorised officer of the Corporation certifying that the moneys and costs have been paid, and the title or land register shall be noted accordingly by the proper officer, whereupon the land shall cease to be bound.

[Section 94 amended by No. 25 of 1985 s. 132 and 140; No. 73 of 1995 s. 63.]

95. Power to transfer or convey land

The Corporation in exercising the power of sale conferred by this Division, shall have power by proper transfer (where the land is under the *Transfer of Land Act 1893*, and subject to registration under that Act), and by proper deed or transfer (where the land is not under the *Transfer of Land Act 1893*), to

transfer or convey an indefeasible estate in fee simple, or (if such land has not been alienated from the Crown in fee simple) all the estate and interest therein of every person (other than the Crown), but all the estate and interest which any such person is entitled or able to transfer, assign, convey or dispose of therein, and the estate of the purchaser shall be subject to the exceptions, conditions and powers (if any) in force and contained in the grant or Crown lease or conditional purchase lease of the land, or in the certificate of title, certificate of Crown land title, qualified certificate of Crown land title or lease of Crown land relating to the land, and to any public rights of way and to any other easements acquired by enjoyment or user or subsisting over and upon or affecting the land, and to any charge imposed by a law of the Commonwealth, and to any rates and taxes imposed or to be imposed on or in respect of the land after the date of the sale but free from other encumbrances and charges.

[Section 95 amended by No. 25 of 1985 s. 132; No. 6 of 1994 s. 13; No. 14 of 1995 s. 44; No. 73 of 1995 s. 63; No. 31 of 1997 s. 18(8).]

96. Statutory declaration

A transfer or conveyance expressed to be in exercise of the power of sale conferred by this Division shall, if accompanied by a statutory declaration made by a duly authorised officer of the Corporation on behalf of the Corporation that the provisions of this Division have been complied with, be accepted by the Registrar of Titles, the Registrar of Deeds, or other person having the custody or control of any register or public record relating to the land, as sufficient evidence that the power of sale has been properly exercised.

[Section 96 amended by No. 25 of 1985 s. 141; No. 73 of 1995 s. 63; No. 31 of 1997 s. 18(9).]

97. Functions of Corporation and Registrar relating to transfer or conveyance

- (1) The transfer or conveyance shall be in the proper form prescribed by the Act or law governing the registration of transfers or conveyances of the land, and shall be executed by or on behalf of the Corporation.
- (2) The transfer or conveyance shall be forwarded to the Registrar of Titles, Registrar of Deeds, or other person having the custody or control of the public record relating to the land, for registration, and shall be accompanied by the prescribed registration fees.
- (3) Where the land sold is under the *Transfer of Land Act 1893*, the Registrar of Titles, upon production to him of the transfer and declaration, shall register the transfer, and notwithstanding any provision of that Act to the contrary, production of the duplicate certificate of title shall not be required, but, for the purposes of registration, the Registrar may, if he thinks fit, make such orders and publish such advertisements as are provided for in the case of dealings with land when the duplicate certificate of title is lost or not produced.
- (4) Where any transfer or conveyance is expressed to be in exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall, subject to this Act, have his remedy in damages against the Corporation, but shall have no other remedy in damages or for compensation against the Crown.

[Section 97 amended by No. 25 of 1985 s. 142; No. 73 of 1995 s. 63; No. 81 of 1996 s. 153(1); No. 31 of 1997 s. 18(10).]

98. Combination of all lands of same owner

If moneys referred to in section 89 are owing for the period of 5 years in respect of more than one piece of land in the name of the same owner, all the moneys and all the land may be referred to in one notice requiring payment and in one advertisement of sale.

99. Application of purchase money

The money arising from the sale and received by the Corporation shall, notwithstanding the disability of any person or any statute of limitations, be held by the Corporation to be applied as follows: —

Firstly — In payment of the costs, charges and expenses properly incurred by the Minister as incidental to the sale or attempted sale or otherwise.

Secondly — In payment of all moneys owing and referred to in section 89.

Thirdly — In payment of all unpaid moneys owing for rates and taxes and any costs or other moneys due to or imposed by the Crown in right of the State or any department, agency, instrumentality or branch of Her Majesty's Government of the State in respect of the land at the time of the sale:

Provided that where the moneys remaining after the payments provided for in the next 2 preceding paragraphs have been made are not sufficient for the payment in full of all of the items mentioned and provided for in this paragraph, such moneys as shall remain shall be distributed between the Crown, the department, the agency, the instrumentality and the branch *pro rata* with the amounts of their claims respectively, unless the Governor or the Minister controlling the department, agency, instrumentality or branch, as the case may require, shall consent to the

Crown or the department, agency, instrumentality or branch which the Minister controls being excluded wholly or partly from the *pro rata* distribution.

Fourthly — In payment of all unpaid rates due or imposed by the local government, in whose district the land is situated, under the Act, by which it is constituted, or under the *Health Act 1911*:

Provided that, when land is sold under this Act and the land is situated, in 2 or more local government districts, the Governor may determine for the purpose of this paragraph the proportionate part of the whole of the purchase price which shall be allocated to that part of the land situated in each district.

Fifthly — In payment of all vendor's costs and expenses of and in connection with conferring upon the purchaser a clear title to the land.

Sixthly — In or towards the discharge of all or any other mortgages, encumbrances, whether registered or not, according to their respective priorities, so far as the same can be ascertained by the Corporation.

Seventhly — In payment of the residue of the money within 12 months after the receipt thereof to the person who would, but for the proceedings for sale, be entitled to the land, or if there be several persons who would be so entitled, then to those persons in the proportions in which they would be respectively so entitled:

Provided that, if any person is entitled to an estate in reversion or remainder in the land, the money may be paid in to the Supreme Court under section 99 of the *Trustees Act 1962*, and thereafter the money so paid into Court shall be subject to the provisions of that Act so far as the same are applicable; but any petition, claim, suit or action for or in respect of that money

shall be presented within 6 years after payment into the Supreme Court, and after the expiration of that period, the money then in the Supreme Court to the credit of the particular trust concerned shall, if there be no petition, claim, suit or action pending, or any order of the Supreme Court to the contrary, be paid into and form part of the general revenue of the State.

[Section 99 amended by No. 66 of 1964 s. 23; No. 25 of 1985 s. 143; No. 6 of 1994 s. 13; No. 14 of 1995 s. 44; No. 73 of 1995 s. 63; No. 14 of 1996 s. 4; No. 57 of 1997 s. 43(2).]

100. Receipt a discharge

The receipt in writing of the Corporation or a duly authorised officer of the Corporation on behalf of the Corporation shall be a sufficient discharge for any money paid on the exercise of the power of sale conferred by this Division, and a person paying the money shall not be concerned to inquire whether any money referred to in section 89 remains due in respect of the land sold.

[Section 100 amended by No. 25 of 1985 s. 144; No. 73 of 1995 s. 63.]

101. Power to sell after advertisement lapses if sale not made within a year

If the land is not sold, and in the case of land under the *Transfer of Land Act 1893*, a transfer thereof is not registered within 12 months of the date of the delivery to the Registrar of Titles of a memorial of the advertisement referred to in section 93 then, subject to the next succeeding section of this Act, the advertisement and all subsequent proceedings under this Division shall no longer be in force, and shall cease to bind the land.

102. Power to transfer land to Crown

- (1) If land is offered for sale by auction pursuant to this Division, but no bid is made for the land at the auction and the land is

unsold within the period of 12 months mentioned in the last preceding section, and has been alienated from the Crown in fee simple, the Corporation with the consent of the Governor, shall have power by transfer (where the land is under the *Transfer of Land Act 1893*) and by deed (where the land is not under the *Transfer of Land Act 1893*) to transfer or convey an estate in fee simple to Her Majesty:

Provided that the Governor shall not consent, unless he is satisfied that there is no reasonable prospect of selling the land pursuant to this Division within a reasonable time.

[(2) *repealed*]

- (3) Upon the transfer or conveyance being lodged with him, or the conveyance being registered, the Registrar of Titles, or Registrar of Deeds, as the case may be, shall make any entry in the Register within the meaning of the *Transfer of Land Act 1893* or the Book of Registry of the Office of the Registrar of Deeds, which may be necessary or proper to evidence that the land is vested in Her Majesty, and thereupon and notwithstanding the provisions of the *Transfer of Land Act 1893*, the land shall be deemed to be, and may be dealt with as, Crown lands free from any mortgage, lease, tenancy, encumbrance, charge or reservation of any kind.

If the land is under the *Transfer of Land Act 1893*, the Registrar of Titles shall cancel any certificate of title relating to the land by indorsing thereon “Cancelled, the within land having been acquired by the Crown and removed from the operation of the *Transfer of Land Act 1893*,” and the land shall, for the purpose of that Act, and until again alienated from the Crown, be dealt with and regarded in all respects as if it had never been alienated from the Crown.

If the land is not under the *Transfer of Land Act 1893*, the Registrar of Deeds may require the Corporation to deposit with him a plan or map of the land as if an application had been made to bring the land under the *Transfer of Land Act 1893*.

- (4) No stamp duty nor fee of any kind shall be payable upon any transfer or conveyance referred to in this section upon lodging or registering it in the Department within the meaning of the *Transfer of Land Act 1893* or the Office of the Registrar of Deeds.
- (5) A transfer or conveyance expressed to be in exercise of the power conferred by this section —
- (a) shall, if accompanied by a statutory declaration made by a duly authorised officer of the Corporation on behalf of the Corporation that the provisions of this Division have been properly complied with, be accepted by the Registrar of Titles or the Registrar of Deeds, as the case may be, as sufficient evidence that the power has been so exercised;
 - (b) shall not be impeachable on the ground that no case had arisen to authorise the exercise of the power, or that proper notice was not given, or that the power was otherwise improperly or irregularly exercised, but any person damnified by an unauthorised or irregular exercise of the power shall, subject to this Act, have his remedy in damages against the Corporation but shall have no other remedy in damages or for compensation against the Crown.

[Section 102 amended by No. 25 of 1985 s. 145; No. 73 of 1995 s. 63; No. 81 of 1996 s. 153(1) and (2).]

103. Discharge of liability on sale of land

Any sale of land by the Corporation pursuant to this Division, or any transfer or conveyance made pursuant to the next preceding section of this Act, shall discharge the land and all owners and occupiers thereof, and all previous owners and occupiers thereof, from any liability to the Corporation for moneys referred to in section 89 and then due to the Corporation or other moneys then due to the Corporation for any purpose which, at the time of the sale or the transfer or the conveyance, were a

charge upon the land, or which were otherwise recoverable by the Corporation in respect of the land, whether pursuant to this Act or any other Act.

[Section 103 amended by No. 25 of 1985 s. 132; No. 73 of 1995 s. 63.]

104. Saving provision

Subject to the next preceding section of this Act, the powers conferred by this Division shall not affect any other remedy of the Corporation for the recovery of moneys referred to in section 89.

[Section 104 amended by No. 14 of 1982 s. 18; No. 25 of 1985 s. 132; No. 24 of 1987 s. 104; No. 73 of 1995 s. 63.]

Part VIII — By-laws and regulations

105. Minister may make 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: —

[(i) deleted]

- (ii) For the prevention of the pollution of water within any water reserve or catchment area.

[(iii)-(xi) deleted]

- (xii) 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.

- (xiii) Prescribing the quantity of water a consumer may take or consume for any specified purposes.

- (xiv) Fixing the level beyond which water supplied from the water works of the Corporation may not be allowed to rise at any particular place within a country water area.

[(2) repealed]

[Section 105 amended by No. 25 of 1985 s. 146; No. 24 of 1987 s. 105; No. 73 of 1995 s. 63 and 65; No. 39 of 1999 s. 11(3).]

[106, 107. *Repealed by No. 25 of 1985 s. 147.]*

Part IX — Miscellaneous

108. Notice when name of owner or occupier is unknown

When a notice or 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, it shall not be necessary to name the owner or occupier and the notice or demand may be served by placing it on some conspicuous part of the land of the 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 locality in which the land is situated.

[Section 108 amended by No. 25 of 1985 s. 148; No. 73 of 1995 s. 64.]

109. 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.

[110. Repealed by No. 25 of 1985 s. 149.]

111. 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 or the Corporation or any person aggrieved may be entitled to in any civil proceedings.

[Section 111 amended by No. 25 of 1985 s. 148; No. 73 of 1995 s. 64.]

112. Obstructing Commission or the Corporation or officers in performance of duty

Every person who obstructs the Commission or the Corporation, any officer of the Commission or the Corporation or any person authorised by the Commission or the Corporation in the

s. 113

performance of any act or thing which the Commission or the Corporation, that officer or that person is authorised or required to do in the execution of this Act or any regulation or by-law made for the purposes of this Act shall be guilty of an offence.

Penalty: \$5 000.

[Section 112 amended by No. 113 of 1965 s. 8; No. 41 of 1984 s. 18; No. 25 of 1985 s. 150; No. 73 of 1995 s. 64; No. 25 of 2005 s. 12.]

113. Penalty for refusing to give up possession of works

- (1) Any person, who has charge of any water works, acquired, held or used by the Commission or the Corporation, and who refuses, on lawful demand to give up peaceable and quiet possession of them to any person entitled to possession under the provisions of this Act, shall be guilty of an offence.

Penalty: \$10 000.

- (2) A court of summary jurisdiction dealing with an offence under this section is to be constituted by a magistrate.

[Section 113 amended by No. 113 of 1965 s. 8; No. 41 of 1984 s. 18; No. 25 of 1985 s. 148; No. 51 of 1992 s. 16(1); No. 73 of 1995 s. 64; No. 59 of 2004 s. 141; No. 25 of 2005 s. 13.]

114. Offender may be arrested

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

[Section 114 amended by No. 25 of 1985 s. 148 and 151; No. 73 of 1995 s. 64; No. 25 of 2005 s. 14.]

115. Proceedings

- (1) Proceedings for an offence against a provision of this Act —
- (a) referred to in Table 1 to this section may be taken by the Commission or an officer of the Commission;

- (b) referred to in Table 2 to this section may be taken by the Corporation or an officer of the Corporation.

Table 1 — Proceedings by the Commission

12B(1)	113 (where the offence relates to water works acquired, held or used by the Commission)
12C(5)	
12C(7a)	
45(1)(ca)	
112 (where the offence relates to obstruction of the Commission)	

Table 2 — Proceedings by the Corporation

43B(1)	112 (where the offence relates to obstruction of the Corporation)
45(1)(a)	
45(1)(b)	
45(1)(c)	113 (where the offence relates to water works acquired, held or used by the Corporation)
45(1)(d)	
46(1)	

- (2) A prosecution for an offence against this Act shall be commenced within 2 years after the commission of the offence.
- (3) Subject to sections 46 and 113, proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

[Section 115 inserted by No. 73 of 1995 s. 60; amended by No. 10 of 1998 s. 23(1); No. 84 of 2004 s. 80; No. 25 of 2005 s. 7(2) and (3), and 9(2).]

116. Commission or the Corporation may be represented by officer

In any proceedings in the Children's Court or the Magistrates Court any authorised officer of the Commission or the

s. 120

Corporation may represent the Commission or the Corporation in all respects as if he were the party concerned.

[Section 116 amended by No. 25 of 1985 s. 148; No. 73 of 1995 s. 64; No. 59 of 2004 s. 141.]

[117. Repealed by No. 73 of 1954 s. 8.]

[118, 119. Repealed by No. 25 of 1985 s. 153.]

120. Proof of ownership or occupancy

In any legal proceedings under the *Water Agencies (Powers) Act 1984* or this Act —

- (1) in addition to any other method of proof available —
 - (a) evidence that the person proceeded against has been charged as owner or occupier of any land; or
 - (b) evidence by certificate in writing of —
 - (i) 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*, as proprietor of any land; or
 - (ii) 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; or
 - (iii) the Under Secretary for Lands, that any person is registered in the Department of Lands and Surveys⁸ as the owner, occupier or lessee of any land; or
 - (iv) the chief executive officer⁷ of the Department of Mines⁶, that any person is registered in the Department of Mines

- as the lessee or holder of any mining lease or other mining tenement; or
- (v) the Surveyor General, that any plan or reproduction of a plan represents part of the State —

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

- (2) judicial notice shall be taken of the signatures and appointments of persons for the time being appointed to or acting in and discharging the duties of the offices referred to in the next preceding subsection.

[Section 120 amended by No. 25 of 1985 s. 154; No. 24 of 1987 s. 106; No. 73 of 1995 s. 65; No. 81 of 1996 s. 153(1).]

121. Certificate of chief executive officer of the Commission or the Corporation evidence of certain facts

A certificate under the hand of the chief executive officer of the Commission or the Corporation that any specified land, reservoir, dam, drain, channel, pipe or other work or portion thereof is included in any water works constructed prior or subsequent to the commencement of this Act shall for all purposes and in all courts be sufficient evidence of the fact as stated in the certificate.

[Section 121 amended by No. 25 of 1985 s. 155; No. 73 of 1995 s. 61.]

122. Power to suspend certain provisions of local government Acts

The Governor may, by Order in Council, from time to time, wholly or in part, suspend the operation of the provisions of any local government Act, relating to water supply.

[First Schedule omitted under the Reprints Act 1984 s. 7(4)(f).]

Second Schedule

(Section 12AA)

Controlled land

The land comprised within the boundaries of—

- (a) the Wellington Dam Catchment Area;
- (aa) the Harris River Dam Catchment Area;
- (b) the Mundaring Weir Catchment Area;
- (c) the Denmark River Catchment Area;
- (d) the Kent River Water Reserve;
- (e) the Warren River Water Reserve.

[Second Schedule inserted by No. 95 of 1978 s. 17; amended by No. 41 of 1984 s. 17; amended in Gazette 14 Dec 1990 p. 6181 (lapsed 27 Mar 1991 under the Interpretation Act 1984 s. 42(2)); 19 Jul 1991 p. 3692.]

Notes

- ¹ This is a compilation of the *Country Areas Water Supply Act 1947* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Country Areas Water Supply Act 1947</i>	62 of 1947	10 Jan 1948	1 Jan 1949 (see s. 1 and <i>Gazette</i> 24 Dec 1948 p. 3038-9)
<i>Country Areas Water Supply Act Amendment Act 1950</i>	22 of 1950	29 Nov 1950	29 Nov 1950
<i>Acts Amendment (Fire Brigades Board and Fire Hydrants) Act 1951 s. 6</i>	41 of 1951	20 Dec 1951	4 Apr 1952 (see s. 2 and <i>Gazette</i> 4 Apr 1952 p. 799-800)
<i>Limitation Act 1935 s. 48A(1)</i>	35 of 1935 (as amended by No. 73 of 1954 s. 8)	14 Jan 1955	Relevant amendments (see s. 48A and Second Sch. ⁹) took effect on 1 Mar 1955 (see No. 73 of 1954 s. 2 and <i>Gazette</i> 18 Feb 1955 p. 343)
<i>Country Areas Water Supply Act Amendment Act 1957</i>	14 of 1957	30 Sep 1957	30 Sep 1957
<i>Country Areas Water Supply Act Amendment Act 1960</i>	56 of 1960	2 Dec 1960	2 Dec 1960
Reprint of the <i>Country Areas Water Supply Act 1947</i> approved 9 Jul 1963 (not in Volume) (includes amendments listed above)			
<i>Country Areas Water Supply Act Amendment Act 1964</i>	66 of 1964	4 Dec 1964	4 Dec 1964
Reprint of the <i>Country Areas Water Supply Act 1947</i> approved 30 Mar 1965 in Vol. 19 of Reprinted Acts (includes amendments listed above)			
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
Reprint of the <i>Country Areas Water Supply Act 1947</i> authorised 8 Jul 1971 (includes amendments listed above)			

Country Areas Water Supply Act 1947

Short title	Number and year	Assent	Commencement
<i>Metric Conversion Act 1972 s. 4</i>	94 of 1972 (as amended by No. 19 of 1973 s. 4)	4 Dec 1972	Relevant amendments (see Second Sch. ¹⁰) took effect on 1 May 1974 (see <i>Gazette</i> 26 Apr 1974 p. 1393)
<i>Country Areas Water Supply Act Amendment Act 1974</i>	78 of 1974	10 Dec 1974	1 Jul 1974 (see s. 2)
<i>Country Areas Water Supply Act Amendment Act 1976</i>	81 of 1976	14 Oct 1976	15 Nov 1976 (see s. 2 and <i>Gazette</i> 12 Nov 1976 p. 4268)
<i>Country Areas Water Supply Act Amendment Act 1977</i>	13 of 1977	11 Oct 1977	11 Oct 1977
<i>Acts Amendment and Repeal (Valuation of Land) Act 1978 Pt. IV</i>	76 of 1978	20 Oct 1978	1 Jul 1979 (see s. 2 and <i>Gazette</i> 11 May 1979 p. 1211)
<i>Country Areas Water Supply Act Amendment Act 1978</i>	95 of 1978	17 Nov 1978	15 Dec 1978 (see s. 2 and <i>Gazette</i> 15 Dec 1978 p. 4691)
<i>Country Areas Water Supply Act Amendment Act (No. 2) 1979</i>	43 of 1979	25 Oct 1979	1 Jul 1979 (see s. 2)
<i>Country Areas Water Supply Act Amendment Act (No. 3) 1979</i>	92 of 1979	17 Dec 1979	17 Dec 1979
Reprint of the Country Areas Water Supply Act 1947 approved 18 Apr 1980 (includes amendments listed above)			
<i>Country Areas Water Supply Amendment Act 1980</i>	75 of 1980	5 Dec 1980	5 Dec 1980
<i>Acts Amendment (Statutory Designations) and Validation Act 1981 s. 4</i>	63 of 1981	13 Oct 1981	13 Oct 1981
<i>Country Areas Water Supply Amendment Act 1981</i>	97 of 1981	4 Dec 1981	4 Dec 1981
<i>Acts Amendment (Country Water and Sewerage) Act 1982 Pt. II</i>	14 of 1982	14 May 1982	11 Jun 1982 (see s. 2 and <i>Gazette</i> 11 Jun 1982 p. 1911)

Short title	Number and year	Assent	Commencement
<i>Country Areas Water Supply Amendment Act 1984</i>	41 of 1984	20 Jun 1984	Act other than s. 13, 15, 16 and 18: 20 Jun 1984 (see s. 2(1)); s. 13 and 18: 18 Jul 1984 (see s. 2(2)); s. 15 and 16: repealed by No. 25 of 1985 s. 156
<i>Acts Amendment and Repeal (Water Authorities) Act 1985 Pt. VI</i>	25 of 1985	6 May 1985	1 Jul 1985 (see s. 2 and <i>Gazette</i> 7 Jun 1985 p. 1931)
<i>Acts Amendment (Water Authorities) Act 1985 Pt. V</i>	110 of 1985 (as amended by No. 74 of 2003 s. 24)	17 Dec 1985	Act other than s. 43, 44, 59(b), 63(b), 65 and 68(a): 14 Mar 1986 (see s. 2 and <i>Gazette</i> 14 Mar 1986 p. 726); s. 59(b), 63(b), and 65: 1 Jul 1986 (see s. 2 and <i>Gazette</i> 14 Mar 1986 p. 726); s. 44: 14 Jul 1987 (see s. 2 and <i>Gazette</i> 14 Jul 1987 p. 2647); s. 43: 1 Feb 1990 (see s. 2 and <i>Gazette</i> 5 Jan 1990 p. 38); s. 68(a) repealed by No. 74 of 2003 s. 24
<i>Acts Amendment (Water Authority Rates and Charges) Act 1987 Pt. IV</i>	24 of 1987	25 Jun 1987	14 Jul 1987 (see s. 2 and <i>Gazette</i> 14 Jul 1987 p. 2647)
<i>Country Areas Water Supply (Controlled Land) Notice 1990</i> ¹¹ published in <i>Gazette</i> 14 Dec 1990 p. 6181			14 Dec 1990 (see cl. 2)
<i>Country Areas Water Supply (Controlled Land) Notice 1991</i> published in <i>Gazette</i> 19 Jul 1991 p. 3692			19 Jul 1991 (see cl. 2)
<i>Criminal Law Amendment Act (No. 2) 1992 s. 16(1)</i>	51 of 1992	9 Dec 1992	6 Jan 1993
<i>R&I Bank Amendment Act 1994 s. 13</i>	6 of 1994	11 Apr 1994	26 Apr 1994 (see s. 2(2) and <i>Gazette</i> 26 Apr 1994 p. 1743)
<i>Bank of Western Australia Act 1995 s. 44(1)</i>	14 of 1995	4 Jul 1995	1 Dec 1995 (see s. 2 and <i>Gazette</i> 29 Nov 1995 p. 5529)

Country Areas Water Supply Act 1947

Short title	Number and year	Assent	Commencement
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> Pt. 3	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Sentencing (Consequential Provisions) Act 1995</i> s. 147 ¹²	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
Reprint of the Country Areas Water Supply Act 1947 as at 27 May 1996 (includes amendments listed above except those in the <i>Acts Amendment (Water Authorities) Act 1985</i> s. 68(a) and the <i>Sentencing (Consequential Provisions) Act 1995</i>)			
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Transfer of Land Amendment Act 1996</i> s. 153(1) and (2)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 16, s. 141 and 142	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Water Legislation Amendment Act 1997</i> Pt. 2	32 of 1997	3 Oct 1997	15 Apr 1998 (see s. 2 and <i>Gazette</i> 15 Apr 1998 p. 2041)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 43	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 23	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998</i> s. 38	42 of 1998	4 Nov 1998	1 Jan 1999 (see s. 2 and <i>Gazette</i> 22 Dec 1998 p. 6833)
Reprint of the Country Areas Water Supply Act 1947 as at 19 Mar 1999 (includes amendments listed above except those in the <i>Acts Amendment (Water Authorities) Act 1985</i> s. 68(a))			

Short title	Number and year	Assent	Commencement
<i>Water Services Coordination Amendment Act 1999</i> s. 11(3)	39 of 1999	9 Nov 1999	19 Jun 2000 (see s. 2 and <i>Gazette</i> 16 Jun 2000 p. 2939)
<i>Rights in Water and Irrigation Amendment Act 2000</i> s. 83	49 of 2000	28 Nov 2000	10 Jan 2001 (see s. 2 and <i>Gazette</i> 10 Jan 2001 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 28 ^{13, 14}	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Water Legislation Amendment (Competition Policy) Act 2005</i> Pt. 2	25 of 2005	12 Dec 2005	3 Jun 2006 (see s. 2 and <i>Gazette</i> 2 Jun 2006 p. 1985)

Reprint 7: The Country Areas Water Supply Act 1947 as at 7 Apr 2006 (includes amendments listed above except those listed in the *Water Legislation Amendment (Competition Polity) Act 2005*)

- ² The provision in this Act repealing that Act has been omitted under the *Reprints Act 1984* s. 7(4)(f).
- ³ Under the *Land Administration Act 1997* s. 281(3) a reference in a written law to the *Land Act 1933* is, unless the contrary intention appears, to be construed as if that reference were a reference to the *Land Administration Act 1997*.
- ⁴ Repealed by section 4 of this Act.
- ⁵ Repealed by the *Mining Act 1978*.
- ⁶ Under the *Alteration of Statutory Designations Order 2003*, a reference in any law to the Department of Mines is, unless the contrary intention appears, to be read and construed as a reference to the Department of Industry and Resources.
- ⁷ Under the *Acts Amendment (Public Service) Act 1987* s. 31(1)(f) a reference in a written law to “Permanent Head” is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to chief executive officer. This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

⁸ Under the *Public Sector Management Act 1994* the names of departments may be changed. At the date of this reprint the former Department of Lands and Surveys is called the Department of Land Information.

⁹ Section 48A and the Second Schedule were inserted by the *Limitation Act Amendment Act 1954* s. 8.

¹⁰ The Second Schedule was inserted by the *Metric Conversion Act Amendment Act 1973* s. 4.

¹¹ Lapsed on 27 March 1991 under the *Interpretation Act 1984* s. 42(2).

¹² The *Sentencing (Consequential Provisions) Act 1995* Pt. 16 is not included because it had been repealed by the *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* s. 23(2) prior to commencement.

¹³ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

¹⁴ The *State Administrative Tribunal Regulations 2004* r. 43 reads as follows:

“

43. Country Areas Water Supply Act 1947

(1) In this regulation —

“**commencement day**” means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 28 comes into operation;

“**Corporation**” has the meaning given to that term in the CWS Act section 5(1);

“**the CWS Act**” means the *Country Areas Water Supply Act 1947*.

(2) If the Corporation receives, before the commencement day, a notice in accordance with the CWS Act section 59(1) (as in force when the notice was received by the Corporation) but does not before the commencement day refer the objection referred to in the notice to a Land Valuation Tribunal as an appeal, on and after the commencement day the Corporation must refer the relevant entry in the records to the State Administrative Tribunal for a review as if the notice were a notice served on the Corporation under the CWS Act section 59(1).

(3) If the Corporation receives, before the commencement day, a notice in accordance with the CWS Act section 60(1) (as in force when the notice was received by the Corporation) but does not before the commencement day refer a decision referred to in the notice to a Land Valuation Tribunal as an appeal, on and after the

commencement day the Corporation must refer the decision to the State Administrative Tribunal for a review as if the notice were a notice served on the Corporation under the CWS Act section 60(1).

- (4) If a notice has been given under the CWS Act section 58(7) before the commencement day, on or after the commencement day the notice is to be taken to refer to the time within which and the manner in which a review of the decision may be sought.

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