

Western Australia

**Rights in Water and Irrigation Amendment Act
2000**

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No. 49 of 2000

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Rights in Water and Irrigation Amendment Act 2000

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	The Act amended	2

Part 2 — Amendments relating to the long title, definitions and other miscellaneous matters

4.	Long title replaced	3
5.	Section 2 amended	3
6.	Section 3 inserted	5
	3. Meaning of “watercourse”	5
7.	Division 1 inserted in Part III	6
	Division 1 — Objects and application of this Part	
	4. Objects	6
	4A. Meaning of “watercourse” in this Part	7
	5. Waters to which this Part does not apply	7
8.	Section 9 amended	8
9.	Section 16 amended	9
10.	Section 20 amended	9
11.	Section 21 amended	9
12.	Section 26H amended	10
13.	Section 38 amended	10
14.	References to “wetland” inserted instead of certain words in various sections	10

15.	References to “water-course” changed to “watercourse” in various sections	11
16.	Section 70 amended	12
	Part 3 — Amendments relating to water rights	
17.	Heading to Part III amended	13
18.	Division 1A inserted in Part III	13
	Division 1A — Ownership and control of waters	
	5A. Natural waters vest in Crown	13
	5B. Saving for works	13
	5C. Unauthorized taking of water prohibited	14
	5D. Rights cannot be acquired by length of use	15
	5E. Civil remedy where unlawful taking of water or degradation of water resource	15
19.	Heading to Division 1 of Part III amended	16
20.	Section 6 amended	16
21.	Section 8 repealed	18
22.	Section 9 amended	18
23.	Section 10 amended	19
24.	Section 11 replaced	19
	11. Works for purposes of section 10	19
25.	Section 12 repealed	20
26.	Section 13 repealed	20
27.	Section 19 amended	20
28.	Section 20 amended	20
29.	Section 21 amended	22
30.	Section 21A inserted	23
	21A. Works for purposes of section 21	23
31.	Section 22 amended	24
32.	Section 24 amended	25
33.	Section 26 repealed and sections 25A and 26 inserted	25
	25A. Rights to take water from non-artesian wells in prescribed areas	25
	26. Local by-laws for section 25A	26
34.	Section 26A amended	26
35.	Section 26B amended	26
36.	Section 26C amended	28
37.	Section 26D amended	29
38.	Section 26F amended	29

39.	Section 26G amended	30
40.	Division 3A inserted in Part III	31
	Division 3A — Limitations on rights conferred by and under Divisions 1B, 2 and 3	
	Subdivision 1 — Limitations where water is augmented	
	26GA. Rights under sections 9, 10, 20 and 21 do not extend to augmented volume of water	31
	Subdivision 2 — Limitations imposed by direction	
	26GB. Definition	32
	26GC. Commission may give directions	33
	26GD. When section 26GC applies	34
	26GE. Further provisions as to orders and determinations	35
	26GF. Directions override other rights	35
41.	Section 26H amended	36
42.	Section 27 amended	36
43.	Section 28 amended	36
	Part 4 — Amendments relating to local by-laws, water resources management committees and plans for the management of water resources	
44.	Divisions 3C and 3D inserted in Part III	37
	Division 3C — Local water resources management committees	
	26GK. Establishment of committees	37
	26GL. Certain requirements for orders under section 26GK	38
	26GM. Functions of committees	39
	26GN. Particular duties of members	40
	26GO. Procedure	42
	26GP. Delegation	42
	26GQ. Commission to provide support	42
	26GR. Remuneration	42
	26GS. Protection from liability	43
	26GT. Execution of documents by committee	43
	Division 3D — Plans for management of water resources	
	Subdivision 1 — Plans and their contents	
	26GU. Preparation of plans	44
	26GV. Classification of plans	44

	26GW.	Purposes of regional management plans	44
	26GX.	Purposes of sub-regional management plans	45
	26GY.	Purposes of local area management plans	46
	26GZ.	Consultation with water resources management committees	48
	Subdivision 2 — Public consultation and approval of plans		
	26GZA.	Plan to be publicly notified	48
	26GZB.	Public submissions	49
	26GZC.	Referral of plan to other bodies	49
	26GZD.	Modification of plan	50
	26GZE.	Approval of plan	50
	26GZF.	Notice and commencement	51
	26GZG.	Review, revocation, amendment and correction of plan	52
45.	Section 26K amended		53
46.	Sections 26L, 26M and 26N inserted		54
	26L.	Local by-laws	54
	26M.	Licensing schemes under local by-laws	56
	26N.	Prerequisites for making local by-laws	56
47.	Section 39 replaced		58
	39.	Appropriation of water for irrigation	58
48.	Section 59 amended		58
	Part 5 — Amendments relating to licensing		
49.	Division 3E inserted in Part III		59
	Division 3E — Register of instruments		
	26GZH.	Definition	59
	26GZI.	Register	59
	26GZJ.	Information to be included in register	60
	26GZK.	Transfer of licence to be recorded	61
	26GZL.	Application for notation of security interest	61
	26GZM.	Notation of security interest	61
	26GZN.	Commission not to be concerned with certain matters	62
	26GZO.	Person who has security interest to be notified of certain events	62
	26GZP.	Coordinator of Water Services to be notified of certain events	63
	26GZQ.	Removal or variation of notation	63
	26GZR.	Register may be amended	64
	26GZS.	No compensation payable	64
	26GZT.	Regulations relating to register	65
50.	Section 26Q inserted		65
	26Q.	Commission may undertake certain work	65

51.	Sections 27A, 27B and 27C inserted	66
	27A. Regulations may require other acts to be licensed	66
	27B. Regulations as to licences and permits	67
	27C. Minister to review and report on this Part	68
52.	Schedule 1 added	69
	Schedule 1 — Licensing and related provisions	
	Division 1 — Preliminary	
	1. Definition	69
	2. Licences for different purposes	69
	3. Persons who are eligible to hold licences	69
	Division 2 — Applications and licensing decisions	
	4. Applications for licences	70
	5. Advertising of applications	71
	6. Right to make representations	71
	7. Grant or refusal at Commission's discretion	72
	8. When Commission must refuse licence	73
	9. Where applicant is not a person eligible to hold a licence	73
	10. Commission to give certain information	74
	11. Licences may be combined	74
	12. Duration of licences	74
	13. Licensee becoming ineligible	76
	14. Licensee ceasing to be owner or occupier of land	76
	Division 3 — Terms, conditions and restrictions	
	15. Inclusion of terms, conditions and restrictions in licences	77
	16. Compliance with condition when licence inoperative	77
	17. Condition for payment of money to another licensee	78
	18. Commission may direct compliance with licence condition	79
	Division 4 — Notation on licence of interest of third party	
	19. When clause 20 applies	80
	20. Restrictions on dealing with licence	80
	21. Further provisions as to notation	81
	Division 5 — Renewal of licences	
	22. Renewal of licences	81
	Division 6 — Amendment, suspension, cancellation and surrender of licences	
	23. Application by licensee for amendment of licence	82

Contents

24.	Commission may amend licence	82
25.	Commission may suspend or cancel licence	84
26.	Licensee's rights before licence amended, suspended or cancelled	86
27.	Surrender of licences	87
Division 7 — Transfers of licences and water entitlements and agreements with licensees to take water		
28.	Definition	87
29.	Transfers of licences and entitlements	87
30.	Agreements with licensees to take water	87
31.	Approval of Commission required	88
32.	Application for Commission's approval	89
33.	Commission may direct that assessment be made	90
34.	Consent of persons having a security interest	90
35.	Requirement for notice of application in certain cases	90
36.	Endorsement and record of dealings	91
Division 8 — Transfer of licences and water entitlements to the Commission		
37.	Definition	92
38.	Authority of Commission to receive transfers	92
Division 9 — Compensation		
39.	Compensation	93
Division 10 — Issue of licences and transfer of licences and water entitlements by the Commission for a premium		
40.	Authority of Commission to issue licences at a premium	96
41.	Authority of Commission to transfer licences etc. for a premium	96
Division 11 — Miscellaneous		
42.	Notification to be given to Registrars	97
43.	Licensee to maintain facilities	98
44.	Licensee to notify change of circumstances	98
45.	Duplicate licences	98
46.	Meters	99
47.	Meter reading to be presumed correct	100

Appendix to Schedule 1

**Part 6 — Amendments relating to
dams and drainage**

53.	Section 17 amended	102
54.	Sections 17A and 17B inserted	103
	17A. Saving for existing dams	103
	17B. Regulations as to permits for section 17	103
55.	Sections 26O and 26P inserted	104
	26O. Local by-laws for control of drainage	104
	26P. Local by-laws relating to flood protection works	104

**Part 7 — Amendments relating to
penalties and appeals**

56.	Section 14 repealed	106
57.	Section 22 amended	106
58.	Section 23 repealed	106
59.	Section 26A amended	106
60.	Section 26B amended	106
61.	Section 26D amended	106
62.	Section 26E amended	106
63.	Section 26F amended	107
64.	Section 26G amended	107
65.	Division 3B inserted in Part III	107

Division 3B — Appeals

	26GG. Appeals relating to licences to take water	107
	26GH. Appeals relating to directions as to the taking of water	108
	26GI. Appeals relating to licences under Division 3	108
	26GJ. Schedule 2 applies to appeals	109
66.	Section 27 amended	109
67.	Section 70 amended	109
68.	Section 71 amended	109
69.	Section 72 amended	109
70.	Schedule 2 added	110

Schedule 2 — Appeal provisions

1.	Definition	110
2.	Bringing an appeal	110
3.	Notice of appeal	110
4.	Decision may be suspended	111

Contents

5.	Referral of appeals to tribunal	111
6.	Hearings	112
7.	Proceedings at hearing	113
8.	Case stated	113
9.	Costs	113
10.	Tribunal may dismiss frivolous or vexatious appeals	113
11.	Powers of tribunal	114
12.	Offences	114
13.	Staff of tribunals	115
14.	Regulations relating to tribunals	115

Part 8 — Transitional provisions

71.	Definitions	117
72.	<i>Interpretation Act 1984</i> not affected	117
73.	Appeals in progress	117
74.	Applications made for licences to take water	118
75.	Applications made for licences in respect of wells	119
76.	Licences under section 12 or 13	119
77.	Licences under section 26D	120
78.	Civil remedy under section 5E	121
79.	Time running for purposes of section 26B(4) or (5)	121
80.	Existing augmentations of water volumes	121
81.	Orders under section 26C	122
82.	Powers in relation to transitional provisions	122

Part 9 — Consequential amendments to other Acts

83.	<i>Country Areas Water Supply Act 1947</i>	123
84.	<i>Environmental Protection Act 1986</i>	123
85.	<i>Metropolitan Water Supply, Sewerage, and Drainage Act 1909</i>	123
86.	<i>Mining Act 1978</i>	123

Western Australia

Rights in Water and Irrigation Amendment Act 2000

No. 49 of 2000

An Act to amend the *Rights in Water and Irrigation Act 1914* and to make consequential amendments to the —

- *Country Areas Water Supply Act 1947;*
- *Environmental Protection Act 1986;*
- *Metropolitan Water Supply, Sewerage, and Drainage Act 1909;* and
- *Mining Act 1978.*

[Assented to 28 November 2000]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Rights in Water and Irrigation Amendment Act 2000*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. The Act amended

The amendments in this Act are to the *Rights in Water and Irrigation Act 1914**, unless otherwise indicated.

[* *Reprinted as at 2 April 1996.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 217.]

**Part 2 — Amendments relating to the long title,
definitions and other miscellaneous matters**

4. Long title replaced

The long title is repealed and the following long title is inserted
instead —

“

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

”.

5. Section 2 amended

Section 2(1) is amended as follows:

- (a) in the definition of “bed”, by deleting “, lake, lagoon,
swamp or marsh” where it first occurs and inserting
instead —

“ or wetland ”;

- (b) in the definition of “bed”, by deleting “, lake, lagoon,
swamp or marsh,” and inserting instead —

“ or wetland ”;

- (c) after the definition of “Crown land”, by inserting the
following definition —

“

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

”;

- (d) by deleting the definition of “irrigation”;

s. 5

- (e) by deleting the definition of “Lake, lagoon, swamp or marsh” and inserting instead —

“

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

”;

- (f) by deleting the definition of “spring” and inserting instead the following definitions —

“

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

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

- (a) pumping or siphoning water;
- (b) stopping, impeding or diverting the flow of water;
- (c) releasing water from a wetland;
- (d) permitting water to flow under natural pressure from a well; or
- (e) permitting stock to drink from a watercourse or wetland,

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

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

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

”;

- (g) by deleting the definition of “water-course” and inserting the following definitions —

“

“**watercourse**” has the meaning given by section 3;

“**water resources**” includes —

- (a) watercourses and wetlands together with their beds and banks;
- (b) other surface waters; and
- (c) aquifers and underground water;

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

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

- (a) any lake, lagoon, swamp or marsh; and
- (b) a natural collection of water that has been artificially altered, but does not include a watercourse.

”.

6. Section 3 inserted

After section 2 the following section is inserted —

“

3. Meaning of “watercourse”

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

“**watercourse**” means —

- (a) any river, creek, stream or brook in which water flows;
- (b) any collection of water (including a reservoir) into, through or out of which any thing coming within paragraph (a) flows;

s. 7

- (c) any place where water flows that is prescribed by local by-laws to be a watercourse,
and includes the bed and banks of any thing referred to in paragraph (a), (b) or (c).
- (2) For the purposes of the definition in subsection (1) —
 - (a) a flow or collection of water comes within that definition even though it is only intermittent or occasional;
 - (b) a river, creek, stream or brook includes a conduit that wholly or partially diverts it from its natural course and forms part of the river, creek, stream or brook; and
 - (c) it is immaterial that a river, creek, stream or brook or a natural collection of water may have been artificially improved or altered.

”.

7. Division 1 inserted in Part III

Immediately after the heading to Part III the following Division is inserted —

“

Division 1 — Objects and application of this Part

4. Objects

- (1) The objects of this Part are —
 - (a) to provide for the management of water resources, and in particular —
 - (i) for their sustainable use and development to meet the needs of current and future users; and
 - (ii) for the protection of their ecosystems and the environment in which water

resources are situated, including by the regulation of activities detrimental to them;

- (b) to promote the orderly, equitable and efficient use of water resources;
 - (c) to foster consultation with members of local communities in the local administration of this Part, and to enable them to participate in that administration; and
 - (d) to assist the integration of the management of water resources with the management of other natural resources.
- (2) The reference to **“use and development”** in subsection (1)(a)(i) includes use and development for domestic, commercial, recreational, cultural and navigational purposes.
- (3) The Commission is to seek to ensure that the objects stated in subsection (1) are achieved, and other persons are to do so to the extent that they have relevant functions under this Part.

4A. Meaning of “watercourse” in this Part

In this Part —

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

5. Waters to which this Part does not apply

- (1) This Part does not apply to or in relation to —
- (a) the water flowing from any spring the water of which rises to the surface on land that has been granted or demised by the Crown until it has passed beyond the boundaries of the land

belonging to the owner or occupier of the land on which the water so rises; or

- (b) the water in any wetland the bed of which is on land that has been granted or demised by the Crown and is wholly within the boundaries of the land belonging to the owner or occupier of the land on which it is situated,

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

- (2) A spring or wetland may not be prescribed as a spring or wetland to which this Part applies unless —
 - (a) taking water from the spring or wetland will, in the opinion of the water resources management committee established under Division 3C for the locality or localities in which the by-law is intended to apply, have a significant impact on the flow or level of a watercourse or wetland;
 - (b) that committee recommends to the Commission that this Part applies to or in relation to the spring or wetland; and
 - (c) the Commission recommends to the Minister that this Part applies to or in relation to the spring or wetland.

”.

8. Section 9 amended

- (1) Section 9(1) is amended by deleting “any lake, lagoon, swamp or marsh” and inserting instead —

“ any wetland ”.
- (2) Section 9(1) is amended by deleting “, lake, lagoon, swamp or marsh,” and inserting instead —

“ or wetland ”.

- (3) Section 9(2)(a) is amended as follows:
- (a) by deleting “lake, lagoon, swamp or marsh” and inserting instead —
“ wetland ”;
 - (b) in subparagraph (i), by deleting “, lake, lagoon, swamp or marsh” and inserting instead —
“ or wetland ”.

9. Section 16 amended

Section 16(1)(a) is amended by deleting “, lake, lagoon, swamp, or marsh,” and inserting instead —

“ or wetland ”.

10. Section 20 amended

- (1) Section 20(1) is amended by deleting “any lake, lagoon, swamp or marsh” and inserting instead —

“ any wetland ”.

- (2) Section 20(1) is amended by deleting “, lake, lagoon, swamp or marsh,” and inserting instead —

“ or wetland ”.

- (3) Section 20(1)(c) is amended by deleting “the lake, lagoon, swamp or marsh” and inserting instead —

“ the wetland ”.

11. Section 21 amended

- (1) Section 21(1)(c) is amended by deleting “lake, lagoon, swamp or marsh” and inserting instead —

“ wetland ”.

s. 12

- (2) Section 21(1) is amended by deleting “, lake, lagoon, swamp or marsh” and inserting instead —

“ or wetland ”.

12. Section 26H amended

Section 26H(1) is amended by deleting “water-courses, lakes, lagoons, swamps, marshes or underground” and inserting instead —

“ watercourses, wetlands or underground water ”.

13. Section 38 amended

Section 38(c) is amended by deleting “or water-course, lake, lagoon, swamp or marsh” and inserting instead —

“ , watercourse or wetland ”.

14. References to “wetland” inserted instead of certain words in various sections

- (1) The Act is amended by deleting “, lake, lagoon, swamp or marsh” where it occurs in the provisions referred to in the table to this subsection and inserting instead —

“ or wetland ”.

Table

section 15(1) and (2)	section 17(6)
section 16(2)	section 25(4)

- (2) The Act is amended by deleting “, lake, lagoon, swamp or marsh,” where it occurs in the provisions referred to in the table to this subsection and inserting instead —

“ or wetland ”.

Table

section 6(5)	section 10(1)
--------------	---------------

- (3) The Act is amended by deleting “, lake, lagoon, swamp, or marsh” where it occurs in the provisions referred to in the table to this subsection and inserting instead —

“ or wetland ”.

Table

section 6(2), (3) and (5)	section 19(1)
section 16(2)	section 22(1)(a)(i) and (ii)

- (4) The Act is amended by deleting “lake, lagoon, swamp or marsh” where it occurs in the provisions referred to in the table to this subsection and inserting instead —

“ wetland ”.

Table

section 17(3)	section 25(1)
---------------	---------------

- (5) The Act is amended by deleting “lake, lagoon, swamp, marsh” where it occurs in the provisions referred to in the table to this subsection and inserting instead —

“ wetland ”.

Table

section 26J(1) and (2)

15. References to “water-course” changed to “watercourse” in various sections

The Act is amended by deleting “water-course” where it occurs in the provisions referred to in the table to this section and inserting instead —

“ watercourse ”.

Table

definition of “bed”(twice)	section 17(2), (3) and (6)
section 6(2) and (3)	section 18
section 6(5) (twice)	section 19(1)
section 9(1) (twice)	section 20(1) (twice)
section 9(2)(a)	section 20(1)(c)
section 9(2)(a)(i)	section 21(1)(c)

Rights in Water and Irrigation Amendment Act 2000

Part 2 Amendments relating to the long title, definitions and other

s. 16

section 10(1)	section 21(1)
section 15(1), (2) and (4)(b)	section 22(1)(a)(i) and (ii)
	section 25(1) and (4)
section 16(1)(a)	section 26H(1)
section 16(2) (twice)	section 26J(1) and (2)
section 17(1) (twice)	section 39C

16. Section 70 amended

Section 70 is amended by inserting after “Act,” —

“ shall be guilty of an offence and ”.

Part 3 — Amendments relating to water rights

17. Heading to Part III amended

The heading to Part III is amended by deleting “WATERS” and inserting instead —

“ **Water Resources** ”.

18. Division 1A inserted in Part III

After Division 1 the following Division is inserted —

“

Division 1A — Ownership and control of waters

5A. Natural waters vest in Crown

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

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

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

5B. Saving for works

(1) The operation of section 5A does not prevent the owner or occupier of land —

- (a) subject to any relevant local by-laws, from —
 - (i) draining the land; or
 - (ii) making any dam or tank on the land, not on a watercourse or wetland,

if as a result of doing so —

- (iii) the flow of water in a watercourse, or the amount of water in a wetland, is not diminished; or

- (iv) there is no significant adverse effect on the quality of water, or any ecosystem, in a watercourse, or a wetland; or
 - (b) from making any dam or tank on the land, not on a watercourse or wetland, for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4).
- (2) In subsection (1) —
- “diminished”** means —
- (a) sensibly diminished; or
 - (b) if local by-laws prescribe a greater diminution of the flow or amount of water for the purposes of this section, diminished to a greater extent than is so prescribed.

5C. Unauthorized taking of water prohibited

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

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

- (2) This section applies to —
- (a) a watercourse or wetland to which Division 1B applies;
 - (b) a watercourse or wetland to which Division 2 applies if it is —
 - (i) prescribed by the regulations to be subject to the operation of this section; or
 - (ii) situated within an area that is so prescribed;
 - (c) any artesian underground water; and
 - (d) any other underground water if it is —
 - (i) in a proclaimed area under section 26B; or
 - (ii) in an area that is prescribed by the regulations for the purposes of section 26B(3a).
- (3) Schedule 1 has effect to make provision for and in relation to the licences referred to in subsection(1)(d).

5D. Rights cannot be acquired by length of use

A right —

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

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

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

- (1) Subsection (2) applies if —
- (a) a person contravenes section 5C and

the contravention affects —

- (i) the exercise by a person of a right referred to in section 5C(1)(c); or
 - (ii) the taking of water by a person under a licence under section 5C; or
- (b) a person taking or using water from a water resource does not take all reasonable steps to minimise the degradation of the water resource.
- (2) The contravention is a breach of statutory duty that is actionable at the suit of —
- (a) in respect of subsection (1)(a), a person referred to in subsection (1)(a)(i) or (ii); or
 - (b) in respect of subsection (1)(b), a person directly affected by the degradation of the water resource referred to in that subsection.
- (3) Subsection (2) has effect subject to the defences and other incidents applying to actions for breach of statutory duty.

”.

19. Heading to Division 1 of Part III amended

The heading to Division 1 of Part III is amended by deleting “Division 1” and inserting instead —

“ **Division 1B** ”.

20. Section 6 amended

- (1) Section 6(1) is repealed.
- (2) Section 6(2) is amended by deleting “subsection (1)” and inserting instead —
“ section 5 ”.

- (3) Section 6(4) is repealed and the following subsection is inserted instead —

“

- (4) A proclamation under subsection (3) shall not be made unless —
- (a) the Commission has given notice of the proposed proclamation —
 - (i) to each interested local government, within the meaning of subsection (5); and
 - (ii) to each water resources management committee established under Division 3C for the locality or localities to which the proclamation is intended to apply;
 - (b) the local governments and water resources management committees have been given the opportunity to make submissions on the proposal to the Commission;
 - (c) the Commission has called for public comment on the proposal in accordance with subsection (6); and
 - (d) the Commission has considered any submissions made under this section and given a report on them to the Minister.

”.

- (4) After section 6(5) the following subsections are inserted —

“

- (6) The Commission is taken to comply with subsection (4)(c) by —
- (a) publishing in 2 issues of a daily newspaper circulating in the locality concerned a notice

s. 21

stating the proposal to make the proclamation;
and

- (b) including in the notice a statement —
 - (i) specifying the places at which a copy of the proposed proclamation may be inspected or obtained;
 - (ii) indicating that written submissions on the proposed proclamation may be made by any person within a specified period; and
 - (iii) showing the address to which submissions may be delivered or posted.

- (7) The period specified under subsection (6)(b)(ii) is to be not less than 30 days after both of the notices referred to in paragraph (a) of that subsection have been published.

”.

21. Section 8 repealed

Section 8 is repealed.

22. Section 9 amended

- (1) Section 9(1) is amended as follows:

- (a) by deleting paragraph (b) and inserting instead —

“

- (b) for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4),

”;

- (b) by inserting after “extent” —

“ and from which no produce is sold ”.

- (2) Section 9(3) and (4) are repealed and the following subsection is inserted instead —

“

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

”.

23. Section 10 amended

- (1) Section 10(1) is amended as follows:

- (a) by inserting after “stock” —

“

, other than those being raised under intensive conditions as defined in section 21(4),

”;

- (b) by inserting after “reserve” —

“ at the point at which the water is taken ”.

- (2) Section 10(2) is repealed and the following subsection is inserted instead —

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

24. Section 11 replaced

Section 11 is repealed and the following section inserted instead —

“

11. Works for purposes of section 10

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

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

interference with a road or reserve, unless the person is authorized to do so by the body in which the control and management of the road or reserve is vested.

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

”.

25. Section 12 repealed

Section 12 is repealed.

26. Section 13 repealed

Section 13 is repealed.

27. Section 19 amended

- (1) Section 19(1) is amended as follows:

- (a) by deleting “subsection (2)” and inserting instead —
“ section 5 ”;
- (b) by deleting “Division 1” and inserting instead —
“ Division 1B ”.

- (2) Section 19(2) is repealed.

28. Section 20 amended

- (1) Section 20(1) is amended as follows:

- (a) by inserting after “occupier of any land” —
“ (**“riparian land”**) ”;
- (b) in paragraph (b) by inserting after “stock” —
“

, other than those being raised under intensive conditions as defined in section 21(4)

”;

- (c) by deleting the passage from “thereby sensibly diminished” to the end of the subsection and inserting instead —

“

thereby sensibly diminished, for any other purpose,

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

”.

- (2) Section 20(2) is repealed and the following subsections are inserted instead —

“

- (2) Every owner of riparian land that was —

- (a) alienated from the Crown before the commencement of this Act; or
- (b) in the process of alienation at that commencement,

has the right, in addition to the rights conferred by subsection (1), to take water described in that subsection for the irrigation of a garden not exceeding 2 hectares if no produce is sold from the garden and the garden —

- (c) is part of that land; and
- (d) is used in connection with a dwelling.

- (3) The owner of riparian land also has the right conferred by subsection (2) in relation to a watercourse or wetland where, although paragraph (a) or (b) of that subsection does not apply —

- (a) Division 1B has ceased to apply to the watercourse or wetland; and

s. 29

- (b) immediately before that cessation a right of the kind described in subsection (2), in relation to that watercourse or wetland, was appurtenant to the land by virtue of section 9(1).
- (4) The operation of this section does not prevent the owner or occupier of land from making any dam or tank on the land as long as the owner or occupier is taking water in accordance with this section.
- (5) This section has effect subject to Division 3A.

”.

29. Section 21 amended

(1) Section 21(1) is amended as follows:

(a) after paragraph (a) the following paragraph is inserted —

“ (aa) for firefighting; ”;

(b) in paragraph (b) by inserting after “stock” —

“

other than those being raised under intensive conditions

”;

(c) in paragraph (c) by inserting before “to the” —

“ subject to subsection (2), ”;

(d) by deleting “reserve” and inserting instead —

“

by a reserve for public access at the point where the water is taken

”.

- (2) Section 21(2) is repealed and the following subsections are inserted instead —

“

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

”.

30. Section 21A inserted

After section 21 the following section is inserted —

“

21A. Works for purposes of section 21

- (1) Section 21 does not authorize a person for the purpose of taking water under that section —
- (a) to do anything, or install any works or object, that causes obstruction of or interference to a watercourse or wetland or its bed or banks, unless the person holds a permit granted by the Commission authorizing the person to do so; or
- (b) to do anything, or install any works or object, that causes obstruction or disturbance of or interference with a road or reserve, unless the

s. 31

person is authorized to do so by the body in which the control and management of the road or reserve is vested.

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

”.

31. Section 22 amended

- (1) Section 22(1)(a)(i) is amended by inserting after “Division” the following —

“

or is not taking all reasonable steps to minimise the degradation of the watercourse or wetland

”.

- (2) Section 22(2) is repealed and the following subsections are inserted instead —

“

- (2) A direction given by the Commission under subsection (1) —

- (a) is to contain reasons for the direction; and
- (b) may be varied or cancelled by the Commission by subsequent notice in writing.

- (2a) Clause 7(2) of Schedule 1 applies, with all necessary changes, when the Commission is considering whether to give or make, or is determining the contents of —

- (a) any direction under subsection (1) as to the diversion, taking or use of water otherwise than in the exercise of a right referred to in that subsection; or

(b) any variation of such a direction,
or is considering whether to cancel any such direction.

- (3) Section 22(4) is amended by inserting after “of the notice” —
“ or such shorter time as is specified in the notice ”.

32. Section 24 amended

Section 24 is amended by inserting after “section 22” —
“
or authorized by a licence under section 5C or by a
local by-law

33. Section 26 repealed and sections 25A and 26 inserted

Section 26 is repealed and the following sections are inserted
instead —

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

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

s. 34

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

26. Local by-laws for section 25A

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

”.

34. Section 26A amended

Section 26A(1) is amended by deleting “, alter, or draw water from” and inserting instead —

“ or alter ”.

35. Section 26B amended

- (1) Section 26B(3), (4) and (5) are repealed and the following subsections are inserted instead —

“

- (3) A person must not —
- (a) commence, construct, enlarge, deepen or alter any non-artesian well that is situate in a proclaimed area; or
 - (b) cause, suffer or permit any of those things to be done,

unless one of the following applies —

- (c) the person does so under and in accordance with a licence under section 26D;
- (d) the well is in an area specified in an order under section 26C(2) and is used, or to be used, for a purpose allowed by that order;
- (e) an exemption or exclusion contained in local by-laws referred to in section 26L(3)(c) applies; or
- (f) the work is allowed by subsection (4)(d).

(3a) Subsection (3) also applies to —

- (a) all wells; or
- (b) all wells of a class prescribed by the regulations,

that are not situated in a proclaimed area but are situated in an area that is prescribed by the regulations to be subject to the operation of that subsection.

(4) Where any work required by this section to be the subject of a licence has been commenced and is not completed at the time when —

- (a) a proclamation made under subsection (1); or
- (b) regulations referred to in subsection (3a),

come into operation, the occupier of the land on which the work was commenced —

- (c) must, within 2 months after that coming into operation, apply for a licence under section 26D for that work; and
- (d) may continue the work during that period and until the application is finally determined whether by the Commission or on appeal under section 26GI.

s. 36

(5) Subject to section 26C, where an existing non-artesian well is, by operation of —

- (a) a proclamation made under subsection (1) brought into a proclaimed area; or
- (b) regulations referred to in subsection (3a) brought under the operation of subsection (3),

the occupier of the land on which the well is situated —

- (c) must, within 2 months after the proclamation or regulations come into operation, apply for a licence under section 5C to take water from that well; and
- (d) may continue to take water from the well without a licence during that period and until the application is finally determined whether by the Commission or on appeal under section 26GI.

”.

(2) Section 26B(6) is amended by deleting “not authorized by a licence issued under section 26D” and inserting instead —

“ prohibited by that subsection ”.

36. Section 26C amended

(1) Section 26C(2) is amended as follows:

- (a) by inserting after “declare that sections” —
“ 5C and ”;
- (b) by inserting after “non-artesian well” —
“ , or a type or types of non-artesian wells, ”;

- (c) by deleting from “drawing” to the end of the subsection and inserting instead —

“

taking of water and an Order published under this subsection shall have effect according to its tenor.

”.

- (2) After section 26C(3) the following subsection is inserted —

“

- (3a) Clause 7(2) of Schedule 1 applies, with all necessary changes, when the Governor is considering whether to make, or is determining the contents of —

- (a) any order under subsection (1); or
(b) any variation of such an order,

or is considering whether to cancel any such order.

”.

- (3) Section 26C(4) is amended as follows:

- (a) in paragraph (a) by inserting after “contravene section” —

“ 5C or ”;

- (b) in paragraph (c) by deleting “drawing” and inserting instead —

“ taking ”.

37. Section 26D amended

Section 26D(1) is amended by deleting “, or the drawing of water from,”.

38. Section 26F amended

Section 26F(1) is amended by deleting “nor shall the water from the well be used for purposes other than those authorized by the licence”.

39. Section 26G amended

- (1) Section 26G(1) is amended —
- (a) by deleting “drawn” and inserting instead —
“ taken ”;
 - (b) by inserting after paragraph (b) the following paragraph —
“
(ba) is being taken or used without all reasonable steps being taken to minimise the degradation of the water resource
”; and
 - (c) by inserting after “(b),” the following —
“ (ba), ”.
- (2) Section 26G(2) is amended as follows:
- (a) by deleting “drawn” in both places where it appears and inserting instead —
“ taken ”;
 - (b) by deleting “of draw, for” and inserting instead —
“ at which it may be taken, from ”;
 - (c) by deleting “draws water from” and inserting instead —
“ relates to ”.
- (3) After section 26G(2) the following subsections are inserted —
“
- (2a) A notice served on a person under this section —
 - (a) is to contain reasons for the direction; and
 - (b) takes effect —
 - (i) when it is served; or
 - (ii) at the later time provided for in the notice.

- (2b) The Commission may at any time revoke or vary a notice by further notice served on the person concerned.

”.

40. Division 3A inserted in Part III

After Division 3 of Part III the following Division is inserted —

“

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

Subdivision 1 — Limitations where water is augmented

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

- (1) Where the volume of water in any watercourse or wetland is augmented by the introduction of water by works constructed for that purpose, the rights conferred by sections 9, 10, 20 and 21 to take water in that watercourse or wetland —
- (a) are subject to the limitations set out in subsection (2); and
 - (b) may be exercised only in accordance with that subsection and the regulations.
- (2) A person is not entitled by section 9, 10, 20 or 21 to take any more of the water of the watercourse or wetland concerned than —
- (a) the amount prescribed by local by-laws; or
 - (b) if paragraph (a) does not apply, the amount calculated in accordance with subsection (3).

- (3) The amount for the purposes of subsection (2)(b) is —
- (a) the aggregate of —
 - (i) 14 kilolitres per day for —
 - (I) domestic and ordinary use; and
 - (II) watering cattle or other stock, in respect of every kilometre of frontage measured by the general course to the watercourse or wetland; and
 - (ii) where section 9 or 20 applies, 8 500 cubic metres per annum for the irrigation of a garden as mentioned in those sections;
 - or
 - (b) the amount of water that would be available to the person and to which the person would be so entitled but for the augmentation referred to in subsection (1),
- whichever is the lesser.
- (4) Local by-laws may, for particular cases or classes of cases, specify the amount of water to which subsection (3)(b) refers, and any such specification is conclusive as to that amount.

Subdivision 2 — Limitations imposed by direction

26GB. Definition

In this Subdivision —

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

26GC. Commission may give directions

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

or
 - (c) imposing on the person obligations in terms of any combination of the matters in paragraphs (a) and (b).
- (2) A person on whom a notice is served under subsection (1) must not —
 - (a) take or use water; or
 - (b) cause or permit water to be taken or used,

in contravention of the directions given to the person in the notice.

Penalty: \$4 000 and a daily penalty of \$400.

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

26GD. When section 26GC applies

- (1) Section 26GC applies to a watercourse, wetland or underground water source if the Commission —
 - (a) has made a determination that the quantity of water in the water resource is, or is likely to be, insufficient to meet demand, including any demand made by the needs of the environment; or
 - (b) has made, and published in the *Gazette*, an order declaring that a water shortage exists in the area in which the water resource is situated,and so long as any such determination or order has not been revoked.
- (2) Section 26GC also applies so as to enable the Commission to give directions to a person who is taking water from a water resource if in the opinion of the Commission the taking of the water is having a harmful effect on the water resource or the water being taken —
 - (a) is being improperly used;
 - (b) is being wasted;
 - (c) is having a harmful effect; or
 - (d) is not being used to the best advantage.

26GE. Further provisions as to orders and determinations

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

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

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

26GF. Directions override other rights

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

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

s. 41

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

”.

41. Section 26H amended

Section 26H(1) is amended by deleting “drawing” and inserting instead —

“ taking ”.

42. Section 27 amended

- (1) Section 27(1)(b), (c) and (d) are deleted.
- (2) Section 27(1)(g) is amended by inserting after “licences” —
“ under section 26D ”.

43. Section 28 amended

Section 28 is amended as follows:

- (a) after paragraph (1)(e) by deleting the semi-colon and inserting a full stop;
- (b) by deleting paragraph (1)(f); and
- (c) by repealing subsection (3).

Part 4 — Amendments relating to local by-laws, water resources management committees and plans for the management of water resources

44. Divisions 3C and 3D inserted in Part III

After Division 3B of Part III, as inserted by section 65, the following Divisions are inserted —

“

Division 3C — Local water resources management committees

26GK. Establishment of committees

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

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

26GL. Certain requirements for orders under section 26GK

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

- (iv) are members of the board of management of the Commission, or members of staff as defined in the *Water and Rivers Commission Act 1995*.
- (2) An order made under section 26GK must also make provision for the members of a committee, so far as is practicable and, with respect to the functions of the committee, relevant, to be collectively persons who have knowledge of and experience in the following —
 - (a) the management or development of water resources or other natural resources;
 - (b) the use of water resources;
 - (c) conservation of ecosystems;
 - (d) local government.
- (3) If the functions of a committee relate mainly to the use of water resources, persons who are users of those resources are, as far as is practicable, to form a majority of committee members.
- (4) An order made under section 26GK must make provision for notice of appointments to a committee to be published in the *Gazette* for public information.

26GM. Functions of committees

- (1) The functions of a committee are, in respect of the locality or area for which it is established —
 - (a) to provide the Commission with —
 - (i) assistance; and
 - (ii) advice,on matters relating to the functions of the Commission to the extent that the Commission asks the committee to do so;
 - (b) to perform the functions given to it —

- (i) by section 26N(2), in respect of local by-laws; and
 - (ii) by section 26GZ, in respect of a plan under Division 3D;
 - (c) to perform any function of the Commission that may be delegated to it by the Commission under section 26GP;
 - (d) to ensure that the Commission is informed of, and has access to, community views on matters relating to water resources; and
 - (e) to assist the Commission in the resolution of disputes about the use of water resources involving persons having rights under this Act or persons affected by the exercise of those rights.
- (2) A committee in performing its functions is subject to the direction and control of the Commission.

26GN. Particular duties of members

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

is not to vote on any determination of, the matter.

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

- (8) This section is in addition to and not in derogation of any other law relating to the duty or liability of the holder of a public office.

26GO. Procedure

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

26GP. Delegation

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

26GQ. Commission to provide support

The Commission is to provide a committee with such —

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

as it reasonably requires for the performance of its functions.

26GR. Remuneration

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

26GS. Protection from liability

- (1) An action in tort does not lie against a member of a committee for anything that the member has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The protection given by this section applies even though the thing done in the performance or purported performance of a function of a committee may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), neither the Commission nor the State is relieved of any liability that it might have for a member of a committee having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

26GT. Execution of documents by committee

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

**Division 3D — Plans for management of
water resources**

Subdivision 1 — Plans and their contents

26GU. Preparation of plans

- (1) A plan for the purposes of this Act —
 - (a) is to be prepared by the Commission if the Minister directs the Commission to do so; and
 - (b) may be prepared by the Commission if in the opinion of the Commission it is desirable to do so.
- (2) A plan does not have effect unless it is approved under section 26GZE after the requirements of Subdivision 2 have been complied with.

26GV. Classification of plans

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

26GW. Purposes of regional management plans

- (1) A regional management plan must indicate the region to which it applies.

- (2) The purpose of a regional management plan is to set out the matters that are to guide the general management by the Commission of water resources in the region to which it applies, in relation to —
 - (a) the definition of water resource values, including environmental values, and the protection of those values;
 - (b) the use of water resources; and
 - (c) the integration of water resources planning and management with land use planning and management.
- (3) A regional management plan is to specify the monitoring and reporting (which is to occur at least once in every 7 years) to be carried out by the Commission to ensure, as far as is practicable, that the objects of this Part are achieved in the implementation of the plan.

26GX. Purposes of sub-regional management plans

- (1) A sub-regional management plan must indicate the part of a region to which it applies.
- (2) The purpose of a sub-regional management plan is to set out particular matters that are to guide the management by the Commission of water resources in the sub-region to which it applies, including —
 - (a) how the investigation and development of water resources are to be facilitated by the Commission;
 - (b) how rights in respect of water are to be allocated to meet various needs, including the needs of the environment;

- (c) the matters of sub-regional significance that, consistently with this Act, will be taken into account by the Commission in considering —
 - (i) applications for licences made under Division 2 of Schedule 1;
 - (ii) the exercise of powers to renew, amend, suspend and cancel licences under Divisions 5 and 6 of that Schedule; and
 - (iii) applications for the Commission’s approval of transfers of licences and water entitlements, and of agreements, made under Division 7 of that Schedule;
 - (d) the Commission’s assessment of —
 - (i) the capacity of water sources to provide water at sustainable levels of use; and
 - (ii) the environmental impact of developing those sources;and
 - (e) the strategies that will be adopted or developed to implement the plan.
- (3) A sub-regional management plan is to specify the monitoring and reporting (which is to occur at least once in every 7 years) to be carried out by the Commission to ensure, as far as is practicable, that the objects of this Part are achieved in the implementation of the plan.
- (4) A sub-regional management plan must not be inconsistent with the relevant regional management plan.

26GY. Purposes of local area management plans

- (1) A local area management plan must indicate the area or areas in the relevant sub-region to which it applies.

- (2) The purpose of a local area management plan is to set out particular matters that are to guide the management by the Commission of water resources in the area or areas to which it applies, including —
- (a) how rights in respect of water are to be allocated, and water may be taken and used, to meet various needs including the needs of the environment;
 - (b) the matters that, consistently with this Act, will be taken into account by the Commission in considering —
 - (i) applications for licences made under Division 2 of Schedule 1;
 - (ii) the exercise of powers to renew, amend, suspend and cancel licences under Divisions 5 and 6 of that Schedule; and
 - (iii) applications for the Commission's approval of transfers of licences and water entitlements, and of agreements, made under Division 7 of that Schedule;and
 - (c) the nature and extent of the delegated authority that will be conferred on a relevant water resources management committee under section 26GP, and the conditions and restrictions that will apply to the exercise of that authority.
- (3) A local area management plan is to specify the monitoring and reporting (which is to occur at least once in every 7 years) to be carried out by the Commission to ensure, as far as is practicable, that the objects of this Part are achieved in the implementation of the plan.

- (4) A local area management plan must not be inconsistent with the relevant regional management plan and sub-regional management plan.

26GZ. Consultation with water resources management committees

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

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

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

Subdivision 2 — Public consultation and approval of plans

26GZA. Plan to be publicly notified

- (1) Public notification that a proposed plan has been prepared must be given in accordance with subsections (2) and (3).
- (2) A notice complying with subsection (3) must be published —
 - (a) in the *Gazette*; and
 - (b) in 2 issues of a daily newspaper circulating throughout the State.
- (3) The notice must —
 - (a) specify the region, sub-region or area to which the plan relates;
 - (b) describe in general terms the purpose for which the plan is to be made;

- (c) specify the places at which —
 - (i) a copy of the plan may be inspected;
and
 - (ii) copies of the plan may be obtained;
and
- (d) state the effect of section 26GZB and specify the period and the address or addresses referred to in that section.

26GZB. Public submissions

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

- (a) within a period determined by the Commission, which period must be not less than 2 months after the day on which the notice under section 26GZA is published in the *Gazette*; and
- (b) by delivering or posting them, so that they are received within that period at an address designated by the Commission.

26GZC. Referral of plan to other bodies

- (1) If in the opinion of the Commission the proposed plan may affect the functions of a body that is responsible for the planning for, or management of, a natural resource, the Commission must submit the proposed plan to that body.

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

26GZD. Modification of plan

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

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

26GZE. Approval of plan

- (1) The Commission must, except where subsection (4) applies, submit the proposed plan, modified as it thinks fit under section 26GZD, to the Minister for approval.
- (2) The plan as so submitted must be accompanied by —
 - (a) a summary of all submissions made under section 26GZB and requests made under section 26GZC(4); and

- (b) a report of the Commission indicating its opinion of the merits of those submissions and requests.
- (3) The Minister may approve the proposed plan, or approve it with such modifications as the Minister thinks fit.
- (4) The Minister may by instrument delegate to the Commission the exercise of the powers vested in the Minister by subsection (3) in relation to —
 - (a) all plans to which this Division applies; or
 - (b) any particular class or description of plans.
- (5) Anything done by the Commission under such a delegation is to be taken to have been done by the Minister.

26GZF. Notice and commencement

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

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

- (1) A plan may be amended, or revoked and a new plan substituted for it, subject to compliance with sections 26GZA to 26GZF which are to apply with all necessary changes.
- (2) Without limiting when action may be taken under subsection (1), the Commission, within 7 years from the day —
 - (a) on which a plan had effect; or
 - (b) the Commission last considered whether action under subsection (1) needed to be carried out in respect of a plan,

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

- (3) Notice that the Commission is to consider whether action needs to be taken in respect of a regional management plan under subsection (1) must be published in a newspaper circulating throughout the State, and is to specify —
 - (a) the places at which —
 - (i) a copy of the plan may be inspected; and
 - (ii) copies of the plan may be obtained; and
 - (b) the effect of subsection (4) and the period and the address or addresses referred to in that subsection.

- (4) Written submissions on the need for action to be taken under subsection (1) may be made by any body or person —
- (a) within the period determined by the Commission, which must be not less than 2 months after the day on which the notice under subsection (3) is published in the newspaper; and
 - (b) by delivering or posting them, so that they are received within that period at an address designated by the Commission.
- (5) The Commission may —
- (a) correct any clerical mistake, error or inaccuracy in, or accidental omission from, a plan; or
 - (b) replace any factual information set out in a plan if the information has become out of date.
- (6) Notice of any such correction or replacement must be published in the *Gazette* for public information.

”.

45. Section 26K amended

Section 26K(3) is amended by inserting after “legislation” the following —

“

and section 42 of that Act applies to such an order as if the order were a regulation

”.

46. Sections 26L, 26M and 26N inserted

After section 26K the following sections are inserted —

“

26L. Local by-laws

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

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

26M. Licensing schemes under local by-laws

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

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

26N. Prerequisites for making local by-laws

- (1) Before the Minister makes, amends or repeals any local by-laws under section 26L the Minister is to be satisfied that the requirements of this section, and where relevant, section 5, have been complied with.
- (2) The requirements are that —
 - (a) a draft of a proposed legislative scheme for the by-laws, or the amendment or the repeal, must have been referred by the Commission to any water resources committee established under Division 3C for the locality or localities in which the by-laws are intended to apply;

- (b) any such committee must have been given the opportunity to make submissions on the proposal to the Commission;
 - (c) if the Commission is of the opinion that the proposal may affect the functions of a body that is responsible for the planning for, or management of, a natural resource, the Commission is to submit the proposal to that body;
 - (d) the Commission must have called for public comment on the proposal in accordance with subsection (3); and
 - (e) the Commission must have considered any submissions made under this section and given a report on them to the Minister.
- (3) The Commission is taken to comply with subsection (2)(c) by —
- (a) publishing in 2 issues of a daily newspaper circulating in the locality concerned a notice stating the proposal to make, amend or repeal the by-laws; and
 - (b) including in the notice a statement —
 - (i) specifying the places at which a copy of the proposed legislative scheme for the by-laws, or the amendment or repeal, may be inspected or obtained;
 - (ii) indicating that written submissions on the proposed scheme or amendment or repeal may be made by any person within a specified period; and
 - (iii) showing the address to which submissions may be delivered or posted.

s. 47

- (4) The period specified under subsection (3)(b)(ii) is not to be less than 30 days after both of the notices referred to in paragraph (a) of that subsection have been published.

”.

47. Section 39 replaced

Section 39 is repealed and the following section is inserted instead —

“

39. Appropriation of water for irrigation

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

”.

48. Section 59 amended

Section 59(1)(10) is deleted.

Part 5 — Amendments relating to licensing

49. Division 3E inserted in Part III

After Division 3D of Part III, as inserted by section 44, the following Division is inserted —

“

Division 3E — Register of instruments

26GZH. Definition

In this Division —

“**instrument**” means —

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

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

26GZI. Register

- (1) The Commission is to keep a register of instruments.
- (2) The register may be kept in such form as the Commission thinks fit.
- (3) The register must be available for public inspection, subject to payment of the prescribed fee (if any), during normal office hours at —
 - (a) the Commission’s principal office; and
 - (b) at other offices of the Commission determined by the Commission.
- (4) A person may, upon application to the Commission and payment of the prescribed fee, if any, obtain a copy of an entry in, or an extract from, the register.

- (5) The Commission may, subject to payment of the prescribed fee, if any, allow a person access to the register in electronic form.

26GZJ. Information to be included in register

- (1) The register must set out the following details in respect of each instrument —
- (a) the nature of the instrument and the provision or provisions of this Act under which it has effect;
 - (b) the period for which it is in force;
 - (c) the name and business address —
 - (i) in the case of a licence under section 5C, of the person who for the time being holds the licence; or
 - (ii) in the case of a direction under section 22, 26G or 26GC, of the person who is bound by the direction;
 - (d) a description of the water resource to which the instrument relates, including the locality in which, and a legal description of the land on which, it is situated;
 - (e) in the case of a licence, details relating to any security interest in the licence that the Commission is required to note on the register under section 26GZM;
 - (f) details of any conviction of a person referred to in paragraph (c) for an offence against this Act; and
 - (g) any other details that are prescribed by the regulations.
- (2) In the case of a licence under section 5C held by the holder of an operating licence, the details referred to in subsection (1) are to be set out in a separate part of the register.

- (3) In subsection (2) —
 “operating licence” means —
- (a) an operating licence (water supply services);
 or
 - (b) an operating licence (irrigation services),
 under the *Water Services Coordination Act 1995*.

26GZK. Transfer of licence to be recorded

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

26GZL. Application for notation of security interest

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

26GZM. Notation of security interest

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

- (b) the name and business address of the person who has the security interest; and
- (c) such other details, if any, as are prescribed.

26GZN. Commission not to be concerned with certain matters

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

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

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

- (a) the licensee is convicted of an offence against this Act;
- (b) application is made to the Commission —
 - (i) under clause 23 of Schedule 1 to amend the licence; or
 - (ii) under clause 32 of that Schedule for approval of the transfer of the licence or a water entitlement under the licence;

- (c) the Commission proposes —
 - (i) not to renew the licence under clause 22 of Schedule 1;
 - (ii) to amend the licence under clause 24 of that Schedule; or
 - (iii) to cancel or suspend the licence under clause 25 of that Schedule;

or

- (d) the Commission is notified that the licensee wishes to surrender the licence under clause 27 of Schedule 1,

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

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

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

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

- (2) In subsection (1) —

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

26GZQ. Removal or variation of notation

- (1) If the register contains a notation that a person has a security interest in a licence, the licensee may apply to

the Commission in a form approved by the Commission to —

- (a) remove the notation from the register; or
 - (b) vary any details relating to the security interest.
- (2) Where an application is made under subsection (1), the Commission —
- (a) is to give notice of the application to a person noted on the register as having a security interest in the licence; and
 - (b) must not remove the notation of the security interest from the register or vary the details in the register (as the case requires) unless —
 - (i) each person noted on the register as having a security interest in the licence consents in writing to it doing so; or
 - (ii) a court authorizes or directs the Commission to do so, at the suit of the licensee, a person referred to in subparagraph (i) or some other interested person.

26GZR. Register may be amended

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

26GZS. No compensation payable

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

26GZT. Regulations relating to register

The regulations may —

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

”.

50. Section 26Q inserted

After section 26P, as inserted by section 55, the following section is inserted —

“

26Q. Commission may undertake certain work

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

”.

51. Sections 27A, 27B and 27C inserted

After section 27 the following sections are inserted —

“

27A. Regulations may require other acts to be licensed

- (1) The regulations may —
- (a) prohibit a person from engaging in any work or activity to which this section applies unless the person is authorized to do so by a licence granted by the Commission under the regulations;
 - (b) impose penalties —
 - (i) not exceeding \$10 000 and a daily penalty of \$1 000 for engaging in any work or activity to which this section applies otherwise than under such a licence; and
 - (ii) not exceeding \$2 000 and a daily penalty of \$200 for any other breach of regulations made under this section;and
 - (c) confer on the Commission powers —
 - (i) to direct that works that contravene regulations so made be removed at the expense of the owner or occupier of the land on which the works are situate; and
 - (ii) if a direction is not complied with to —
 - (I) effect the removal; and
 - (II) recover the cost of doing so from that owner or occupier,and making provision incidental and supplementary to those powers.

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

27B. Regulations as to licences and permits

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

- (a) the matters that are to be, or may be, taken into account by the Commission in considering applications for licences or permits;
- (b) fees that are to be paid in connection with licences or permits;
- (c) different licences or permits to authorize the doing of different things under the regulations;
- (d) the conditions and restrictions that may be attached to licences or permits, whether at the time of grant or later, and the cancellation, variation and enforcement of conditions and restrictions;
- (e) the duration of licences or permits and their renewal;
- (f) the cancellation, suspension, amendment and transfer of licences or permits;

- (g) the combination of a licence or permit under the regulations and a licence under section 5C in a single instrument; and
- (h) appeals against decisions relating to applications made and licences or permits granted under the regulations.

27C. Minister to review and report on this Part

- (1) The Minister is to carry out a review of the operation and effectiveness of this Part as soon as is practicable after the expiry of 5 years from the commencement of the *Rights in Water and Irrigation Amendment Act 2000*.
- (2) In the course of that review the Minister is to consider and have regard to —
 - (a) the effectiveness of the operations of the Commission under this Part;
 - (b) the attainment of the objects of this Part and the need for the continuation of this Part; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Part.
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

”.

52. Schedule 1 added

After Part XI the following Schedule is added —

“

Schedule 1 — Licensing and related provisions

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

Division 1 — Preliminary

1. Definition

In this Schedule, unless the contrary intention appears —

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

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

2. Licences for different purposes

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

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

3. Persons who are eligible to hold licences

A person is eligible to hold a licence if —

- (a) the person is an owner or occupier of the land to which the licence relates;

- (b) the person does not come within paragraph (a) but satisfies the Commission —
 - (i) that the owner and any occupier of the land to which the licence relates have agreed in writing to the person —
 - (I) being on the land; and
 - (II) doing there the things that may be done under the licence;
 - and
 - (ii) that the agreement is likely to have effect for a sufficient period to enable the licence concerned to operate;
- (c) the person is a public utility that has powers under a written law in relation to water on or under any land, but those powers are exercisable in accordance with a licence;
- (d) the person is —
 - (i) authorized by or under a written law to engage in an activity in relation to land or water; and
 - (ii) satisfies the Commission that the doing of the things that may be done under the licence is recognized by that written law as being related or incidental to that activity;
- or
- (e) the person is within a class or description of persons that is prescribed by local by-laws for the purposes of this clause.

Division 2 — Applications and licensing decisions

4. Applications for licences

- (1) An application for a licence —
 - (a) may only be made by a person who is eligible to hold the licence, or who satisfies the Commission

- that he or she is interested in being such a person and is likely to do so;
- (b) must be made in the form specified for the purpose by the Commission;
 - (c) must include, or be accompanied by, any plans or other information that are stated in the form to be required; and
 - (d) must be accompanied by the prescribed fee.
- (2) An applicant for a licence must provide the Commission with any further information that the Commission may require.
- (3) Paragraph (a) of subclause (1) does not prevent an agent from signing an application made by a person referred to in that paragraph.

5. Advertising of applications

The regulations may provide for and in relation to —

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

6. Right to make representations

- (1) This clause applies where the Commission proposes —
- (a) to refuse an application for a licence; or
 - (b) to grant, or undertake to grant, a licence subject to the inclusion of a term, condition or restriction that it considers is inconsistent with the terms of the application.

- (2) The Commission is to notify the applicant —
 - (a) of its proposal; and
 - (b) that the applicant has a right to be heard by, or to make written submissions to, the Commission before the Commission makes a decision on the application.
- (3) Written submissions may be made by the applicant, as mentioned in subclause (2)(b), within 30 days after the applicant is given notice under that subclause.
- (4) The Commission is to have regard to any submissions made by the applicant under subclause (3) before it makes its final decision.

7. Grant or refusal at Commission's discretion

- (1) The grant or refusal of an application for a licence and the terms, conditions and restrictions to be included in the licence are, subject to clause 8, at the discretion of the Commission.
- (2) In exercising that discretion the Commission is to have regard to all matters that it considers relevant, including whether the proposed taking and use of water —
 - (a) are in the public interest;
 - (b) are ecologically sustainable;
 - (c) are environmentally acceptable;
 - (d) may prejudice other current and future needs for water;
 - (e) would, in the opinion of the Commission, have a detrimental effect on another person;
 - (f) could be provided for by another source;
 - (g) are in keeping with —
 - (i) local practices;
 - (ii) a relevant local by-law;
 - (iii) a plan approved under Part III Division 3D Subdivision 2; or

- (iv) relevant previous decisions of the Commission;
- or
- (h) are consistent with —
 - (i) land use planning instruments;
 - (ii) the requirements and policies of other government agencies; or
 - (iii) any intergovernmental agreement or arrangement.
- (3) The Commission may refuse to grant a licence to a person on the ground that the person has been convicted of an offence against this Act.
- (4) The Commission may refuse to grant a licence to a person if it is not satisfied that the person has the resources, including the financial resources, to carry out the activities to which the licence relates.
- (5) Without limiting subclause (1), terms, conditions and restrictions prescribed or imposed for the purposes of that subclause may relate to any matter provided for by the Appendix to this Schedule.

8. When Commission must refuse licence

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

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

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

person becomes eligible to hold the licence within the period of time specified in the undertaking.

10. Commission to give certain information

(1) The Commission is to notify the outcome of the application, including details of any undertaking given under clause 9 and the terms, conditions and restrictions to be included in the licence —

- (a) to the applicant for a licence; and
- (b) if the application was required to be publicly notified under regulations referred to in clause 5, to any person who made a submission under those regulations.

(2) If the Commission —

- (a) refuses the application; or
- (b) grants, or undertakes to grant, the application subject to the inclusion of a term, condition or restriction that the Commission considers is inconsistent with the terms of the application,

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

11. Licences may be combined

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

12. Duration of licences

(1) A licence may be granted or renewed for —

- (a) a fixed period; or
- (b) an indefinite duration,

as stated in the licence or the renewal.

(2) A licence for an indefinite duration continues in force until it is —

- (a) terminated under clause 13(1);

- (b) suspended or cancelled under clause 25; or
 - (c) surrendered under clause 27.
- (3) If a licence is granted to an owner or occupier of land —
- (a) authorizing the continued taking of water —
 - (i) from a water resource which is below the land, or runs through, is contiguous to or partly situated within the land; and
 - (ii) which, before, and at the time of, the application of section 5C to that water resource, was taken periodically or continually from the water resource;
 - and
 - (b) the application for the licence is made within 12 months after the day on which section 5C became applicable to the water resource,

the licence is to be granted for a period of 10 years from the day on which section 5C became applicable to the water resource.

- (4) In subclause (3) —
- “water resource”** means a watercourse, wetland or underground water source to which section 5C applies.
- (5) Sufficient details to identify a licence granted for a period exceeding —
- (a) a period specified in a relevant plan approved under Part III Division 3D Subdivision 2 in respect of that type of licence; or
 - (b) if a period is not specified in such a plan in respect of that type of licence, 10 years or such period as is prescribed in respect of that type of licence,

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

13. Licensee becoming ineligible

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

14. Licensee ceasing to be owner or occupier of land

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

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

Division 3 — Terms, conditions and restrictions

15. Inclusion of terms, conditions and restrictions in licences

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

16. Compliance with condition when licence inoperative

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

17. Condition for payment of money to another licensee

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

18. Commission may direct compliance with licence condition

- (1) If a licensee fails to comply with any term, condition or restriction included in a licence, the Commission may direct the licensee to comply with that term, condition or restriction.
- (2) A direction under subclause (1) must —
 - (a) be given by notice in writing served on the licensee; and
 - (b) specify the time within which the direction is to be complied with.
- (3) If a licensee to whom a direction has been given does not comply with the direction within the specified time, or any additional time allowed by the Commission —
 - (a) the licensee commits an offence and is liable to a fine of \$2 500 and a daily penalty of \$250; and
 - (b) the Commission may —
 - (i) do all or part of whatever the direction requires to be done; and
 - (ii) recover the costs and expenses incurred by it as a debt due by the licensee.
- (4) In this clause —

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

- (b) gave that person sufficient written notice of that term, condition or restriction for the person to comply with it.

Division 4 — Notation on licence of interest of third party

19. When clause 20 applies

Clause 20 applies where —

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

20. Restrictions on dealing with licence

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

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

21. Further provisions as to notation

A notation referred to in clause 19(b) —

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

Division 5 — Renewal of licences

22. Renewal of licences

- (1) An application for the renewal of a licence that is in force for a fixed period —
 - (a) must be made in the form specified for the purpose by the Commission; and
 - (b) must be accompanied by the prescribed fee.
- (2) On an application for renewal of a licence, the licence is to be renewed unless —
 - (a) the renewal would be inconsistent with —
 - (i) a relevant local by-law; or
 - (ii) a plan approved under Part III Division 3D Subdivision 2;
 - (b) the Commission is of the opinion that, if the application for renewal was an application for the grant of a licence, it would exercise its discretion under clause 7(2) to refuse to grant the licence;
 - (c) it is a term of the licence that it is not renewable;
 - (d) a term, condition or restriction included in the licence has not been complied with; or
 - (e) in the opinion of the Commission there are sufficient grounds for the exercise of the power to cancel the licence under clause 25.
- (3) Clause 6(2), (3) and (4) apply where the Commission proposes —
 - (a) to refuse an application for renewal of a licence; or

- (b) to renew a licence subject to the inclusion of a term, restriction or condition that it considers is inconsistent with the terms of the application for renewal,

in the same way as they apply to an application for a licence.

- (4) Clauses 8 and 10(2) apply to an application for renewal in the same way as they apply to an application for a licence.
- (5) A licence which would otherwise expire after application has been made for its renewal but before the Commission has made a decision as to that renewal remains in force until that decision is made.

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

23. Application by licensee for amendment of licence

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

24. Commission may amend licence

- (1) The Commission may, subject to this clause and clause 26, by notice in writing given to the licensee —
 - (a) vary the duration of a licence;
 - (b) vary, add to or remove any term, condition or restriction included in the licence; or
 - (c) include any new term, condition or restriction in the licence.

- (2) The Commission may only exercise a power described in subclause (1) in relation to a licence if —
- (a) the licensee consents to the Commission doing so;
 - (b) in the opinion of the Commission, the exercise of the power is necessary or desirable —
 - (i) due to the detrimental effect of actions authorized by the licence on another person;
 - (ii) to protect the water resource to which the licence relates from unacceptable damage; or
 - (iii) to protect the associated environment from unacceptable damage;
 - (c) in the opinion of the Commission, the exercise of the power is necessary to prevent serious damage to life or property;
 - (d) in the opinion of the Commission, the quantity of water that may be taken under the licence has consistently not been taken;
 - (e) in the opinion of the Commission, the exercise of the power is necessary or desirable —
 - (i) in the public interest;
 - (ii) because the water resource to which the licence relates is insufficient to meet demand or expected demand; or
 - (iii) otherwise to more effectively regulate the use of that water resource;
 - (f) in the opinion of the Commission, the exercise of the power is necessary to prevent a serious inconsistency arising as a result of —
 - (i) the approval of a plan, or the alteration, revocation or substitution of a plan, under Part III Division 3D Subdivision 2; or
 - (ii) the making, amendment or repeal of relevant local by-laws;
 - (g) the licensee, or a person whose name is endorsed on the licence as a person with whom the licensee has

an agreement referred to in clause 30, is convicted of an offence against this Act;

- (h) in the opinion of the Commission, the exercise of the power is necessary to comply with another written law of the State or a law of the Commonwealth;
- (i) the licensee has applied under clause 32 for approval of the transfer of the licence or a water entitlement under the licence or of an agreement referred to in clause 30, and the exercise of the power is necessary or desirable to give effect to the transfer or agreement; or
- (j) the licence confers authority for the Commission to do so.

25. Commission may suspend or cancel licence

- (1) The Commission may, subject to this clause and clause 26, by notice in writing given to the licensee —
 - (a) suspend a licence —
 - (i) for a fixed period specified in the notice; or
 - (ii) until such time as the licensee is notified by the Commission that the suspension no longer applies;
 - or
 - (b) cancel a licence.
- (2) The Commission may only exercise a power described in subclause (1) in relation to a licence if —
 - (a) in the opinion of the Commission, the exercise of the power is necessary or desirable —
 - (i) due to the detrimental effect of actions authorized by the licence on another person;
 - (ii) to protect the water resource to which the licence relates from unacceptable damage;
 - or

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

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

27. Surrender of licences

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

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

28. Definition

In this Division —

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

29. Transfers of licences and entitlements

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

30. Agreements with licensees to take water

- (1) Subject to this Division, the holder of a licence may enter into an agreement with another person (“**the third party**”) relating to the taking of water under the licence by the third party for a limited period of time.

- (2) An agreement referred to in subclause (1) is of no effect to the extent that a relevant local by-law prohibits such agreements in relation to licences, licences of a particular kind or in particular circumstances.
- (3) An agreement referred to in subclause (1) is of no effect unless —
 - (a) it is entered into with a person who holds, or is eligible in terms of clause 3 to hold, a licence of the same kind;
 - (b) it has been approved by the Commission; and
 - (c) the licence is endorsed in accordance with clause 36(d).
- (4) Subject to clauses (2) and (3)(a), the grant or undertaking to grant approval under clause (3)(b) is at the discretion of the Commission.
- (5) In exercising that discretion the Commission is to have regard to all matters it considers relevant, including those set out in clause (7)(2).
- (6) If the Commission would approve an agreement referred to in subclause (1) but for the fact that the third party is not a person who is eligible in terms of clause 3 to hold such a licence, the Commission may undertake to approve the agreement if the third party becomes a person who is eligible to hold the licence within the period of time specified in the undertaking.
- (7) Without limiting subclause (4), the Commission may refuse to approve an agreement, or to undertake to approve an agreement, if the third party is a person who has committed an offence against this Act.

31. Approval of Commission required

- (1) A transfer of a licence or a water entitlement cannot be made without the approval of the Commission.

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

32. Application for Commission's approval

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

33. Commission may direct that assessment be made

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

34. Consent of persons having a security interest

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

35. Requirement for notice of application in certain cases

- (1) This clause applies to applications under clause 32 of a kind prescribed by local by-laws for the purposes of this clause.
- (2) Notice of the application must be given by the Commission to any person required by local by-laws to be notified.
- (3) A person to whom notice has been given may, in accordance with the regulations, make submissions in writing to the Commission in relation to the grant or refusal of the application.
- (4) The Commission must give the applicant a copy of any submissions made and allow the applicant an opportunity to respond in writing to the submissions.
- (5) The response referred to in subclause (4) must be made within the number of days prescribed by the regulations after the relevant material is given to the applicant.
- (6) The Commission may allow a person, who, in submissions made, requested an appearance before the Commission, a reasonable opportunity to appear personally or by representative before and make submissions to —
 - (a) the Commission; or

- (b) a water resources management committee established for the area under Part III Division 3C.
- (7) If a person so appears, the Commission must also allow the applicant a reasonable opportunity, on request, to appear personally or by representative in order to respond to any relevant matter.
- (8) The Commission must give to each person who made submissions notice of —
 - (a) its decision on the application; and
 - (b) the date of the decision.
- (9) A notice under subclause (8) must be given not later than 7 days after the date of the decision.

36. Endorsement and record of dealings

The Commission must —

- (a) in the case of the transfer of a licence, endorse on the licence as licensee the name of the person to whom the licence has been transferred;
- (b) in the case of the transfer of a water entitlement under a licence to a person who does not hold a licence of the same kind, issue a licence to the person to whom a water entitlement has been transferred endorsed with such particulars as the Commission thinks fit relating to the transfer;
- (c) in the case of the transfer of a water entitlement under a licence to a person who holds a licence of the same kind, endorse on the licences affected such particulars as it thinks fit relating to the transfer; and
- (d) in the case of an agreement referred to in clause 30 between the holder of a licence and a third party relating to the taking of water under the licence by the third party, endorse on the licence the name of the third party, the period of the agreement and any other particulars it thinks fit relating to the agreement.

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

37. Definition

In this Division —

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

38. Authority of Commission to receive transfers

- (1) This clause applies in relation to a licence if —
 - (a) the regulations authorize the Commission to enter into an agreement under this clause in relation to licences of the class to which the licence belongs;
 - (b) the Commission considers that the water entitlement under the licence is not being used in whole or in part;
 - (c) the purpose for which water taken under the licence is being used is no longer a purpose for which a licence would be granted by the Commission; or
 - (d) the Commission considers that it would be in the public interest for it to enter into an agreement under this clause in relation to the licence.
- (2) Where this clause applies in relation to a licence, the Commission may enter into and give effect to an agreement with the licensee under which —
 - (a) the licensee is to transfer —
 - (i) the licence; or
 - (ii) a water entitlement,to the Commission; and
 - (b) the Commission is to pay an agreed amount to the licensee as consideration for the transfer.

- (3) An agreement under subclause (2) may also contain provisions incidental and supplementary to the matters mentioned in that subclause.
- (4) Where a person is noted on the register referred to in section 26GZI as having a security interest (as defined in Part III Division 3E) in a licence, the Commission must not enter into an agreement under subclause (2) in respect of the licence without the written consent of that person.

Division 9 — Compensation

39. Compensation

- (1) If a person suffers damage, including loss of profit —
 - (a) due to the exercise of a power under clause 24(2)(e)(i) in relation to a licence held by the person;
 - (b) due to the exercise of a power under clause 25(2)(e) in relation to a licence held by the person;
 - (c) due to the exercise of a power under —
 - (i) clause 24(2)(b), (e)(ii) or (iii), (f) or (h);
 - (ii) clause 25(2)(a), (b) or (d); or
 - (iii) if so prescribed for the purposes of this paragraph, in particular circumstances prescribed under clause 25(2)(g) in relation to a licence held by the person;
 - (d) due to the exercise of a power under clause 7(1) to refuse an application for a licence, as a result of which the continued taking of water from a water resource to which section 5C applies is not authorized, where, before, and at the time of, the application of section 5C to that water resource, water was taken periodically or continually from the water resource; or
 - (e) in circumstances prescribed by a local by-law,

the Commission is, in accordance with this clause, to compensate that person for the damage, to the extent that it

was due solely to the exercise of a power referred to in paragraph (a), (b), (c) or (d) or is in a circumstance prescribed under paragraph (e), if the person requests compensation.

- (2) Damage may be compensated for only if —
 - (a) it is due to the loss of a use which was —
 - (i) reasonable;
 - (ii) authorized by the relevant licence, or not inconsistent with this Act; and
 - (iii) consistent with the objects of Part III; and
 - (b) the person requesting compensation is not responsible for the damage and has attempted to offset or mitigate the damage as far as is practicable.
- (3) Local by-laws may prescribe —
 - (a) the time within which compensation may be claimed and the procedures for making claims;
 - (b) the types of damage for which compensation is to be made; and
 - (c) how compensation is to be assessed.
- (4) The Commission may require the person requesting compensation to provide information to it to enable it to make a decision with respect to compensation, and may require that person to verify that information by statutory declaration.
- (5) Compensation is not payable in respect of an exercise of power referred to in subclause (1)(c) to a person who has requested compensation, unless —
 - (a) the effect of the exercise of the power on the person is permanent; and
 - (b) the Commission is of the opinion that the effect of the exercise of the power on the person is not fair and reasonable having regard to the exercise of the

power in respect of other licence holders in the surrounding area.

- (6) Compensation is not payable in respect of an exercise of power referred to in subclause (1)(d) to a person who has requested compensation, unless —
- (a) the effect of the exercise of the power on the person is permanent;
 - (b) the Commission is of the opinion that the effect of the exercise of the power on the person is not fair and reasonable having regard to the exercise of the power in respect of other applications for a licence in the surrounding area; and
 - (c) the Commission is of the opinion that the damage suffered by the person is in respect of the lawful taking and use of water by that person since 1 July 1999 or before.
- (7) The Commission is to notify the person who made the request for compensation of the outcome of the request and, if the request is refused, the Commission is to notify that person of the reasons for that decision.
- (8) A dispute about the amount of compensation is to be determined by arbitration under the provisions of the *Commercial Arbitration Act 1985*, unless the parties agree on some other method of determination.
- (9) Compensation under this clause, and any costs incurred by the Commission under subclause (8), are to be charged to the Consolidated Fund, which this section appropriates to the necessary extent.

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

40. Authority of Commission to issue licences at a premium

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

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

- (1) This clause applies in relation to a licence or a water entitlement if —
 - (a) the regulations authorize the Commission to enter into an agreement under this clause in relation to licences or water entitlements of the class to which the licence belongs; or
 - (b) the licence or water entitlement has been transferred to the Commission by an agreement made under clause 38.

- (2) Where this clause applies in relation to a licence or a water entitlement, the Commission may enter into and give effect to an agreement with a person who is eligible to hold a licence under which —
 - (a) the Commission is to transfer —
 - (i) the licence; or
 - (ii) the water entitlement,
to the person; and
 - (b) the person is to pay an agreed amount to the Commission as consideration for the transfer.
- (3) The amount to be paid as consideration may be established by public auction or tender or by private treaty.
- (4) An agreement under subclause (2) may also contain provisions incidental and supplementary to the matters mentioned in that subclause.

Division 11 — Miscellaneous

42. Notification to be given to Registrars

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

- (ii) the notation referring to such a security interest is removed from the register or any details of the notation in the register are varied, under section 26GZQ,

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

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

- (3) In this clause —

“Registrar” means the Registrar of Titles under the *Transfer of Land Act 1893* or the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*, as the case requires.

43. Licensee to maintain facilities

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

Penalty: \$2 000.

44. Licensee to notify change of circumstances

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

Penalty: \$2 000.

45. Duplicate licences

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

46. Meters

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

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

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

Penalty: \$2 000.

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

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

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

47. Meter reading to be presumed correct

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

Appendix to Schedule 1

Matters to which licence terms, conditions or restrictions may relate

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

1. The taking, use or disposal of water, including —
 - (a) arrangements for water, whether from one source or different sources, to be shared by a licensee with, or supplied by a licensee to, other persons; and
 - (b) requirements to be met in relation to the taking, use or disposal of water by a licensee who is the holder of an operating licence under the *Water Services Coordination Act 1995*.
2. The use, management, protection and enhancement of —
 - (a) any water resource and its ecosystem; or
 - (b) the environment in which the water resource is situated.
3. The amendment, renewal or surrender of a licence.
4. The transfer of a licence or water entitlement (as defined in Division 7) by the licensee to another person, including a prohibition or restriction on any such transfer of a licence or water entitlement.

5. The transfer of a licence or water entitlement (as defined in Division 7) that relates to any place so that it relates to another place of the same kind, including a prohibition or restriction on any such transfer of a licence or water entitlement.
6. An agreement referred to in clause 30, including a prohibition or restriction on any such agreement.
7. The construction, alteration, maintenance or operation of works, structures and equipment including the qualifications of persons who are responsible for any of those things.
8. The removal of works, structures and equipment, the making good of land or premises, or the condition in which works, structures, equipment, land or premises are to be left.
9. The monitoring of —
 - (a) any water resource and its ecosystem; or
 - (b) the environment in which the water resource is situated.
10. The provision of information to the Commission including information by way of periodical returns at specified times.

”.

Part 6 — Amendments relating to dams and drainage

53. Section 17 amended

- (1) Section 17(1) and (3) are amended by deleting “or under this or” and inserting instead —

“ a permit or by ”.

- (2) After section 17(3) the following subsection is inserted —

“

- (3a) Without limiting subsection (1) or (3) —

- (a) the construction or alteration of a dam is to be taken to be prohibited by that subsection; and
- (b) the reference in that subsection to a permit is a reference to the grant of a permit by the Commission under regulations referred to in section 17B.

”.

- (3) After section 17(4) the following subsections are inserted —

“

- (4a) Despite subsections (1) and (3), this section does not apply to the construction or alteration of a dam in an area, or of a size or type, excluded from the operation of this section by local by-laws if the dam is constructed or altered in accordance with such by-laws.

- (4b) Despite section 19, this section applies to a watercourse to which Division 2 applies that is —

- (a) prescribed for the purposes of this section by local by-laws; or
- (b) situated within an area that is so prescribed.

”.

(4) After section 17(7) the following subsection is inserted —

“

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

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

”.

54. Sections 17A and 17B inserted

After section 17 the following sections are inserted —

“

17A. Saving for existing dams

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

(2) Subsection (1) does not affect —

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

17B. Regulations as to permits for section 17

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

”.

55. Sections 26O and 26P inserted

After section 26N, as inserted by section 46, the following sections are inserted —

“

26O. Local by-laws for control of drainage

- (1) Local by-laws may be made to provide for the regulation and control of drainage and dewatering so far as they affect or are likely to affect the use or management of water resources under this Act.
- (2) By-laws referred to in subsection (1) may —
 - (a) prohibit the construction, use, alteration or removal of drainage and dewatering works except under and in accordance with a licence; and
 - (b) impose penalties —
 - (i) not exceeding \$5 000 and a daily penalty of \$500 for a breach of any such prohibition; and
 - (ii) not exceeding \$2 000 and a daily penalty of \$200 for any other breach of by-laws made under this section.
- (3) In this section —

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

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

Local by-laws may be made —

- (a) providing for the regulation and control of flood protection levees so far as they obstruct or interfere with the flow of a watercourse, including the flow of its flood waters;

- (b) imposing penalties —
 - (i) not exceeding \$5 000 and a daily penalty of \$500 for a breach of any prohibition on the construction, alteration, use or removal of a flood protection levee; and
 - (ii) not exceeding \$2 000 and a daily penalty of \$200 for any other breach of by-laws made under this section;and
- (c) conferring on the Commission powers —
 - (i) to direct that works that contravene the by-laws be removed at the expense of the owner or occupier of the land on which the works are situate; and
 - (ii) if a direction is not complied with to —
 - (I) effect the removal; and
 - (II) recover the cost of doing so from that owner or occupier,and making provision incidental and supplementary to those powers.

”.

Part 7 — Amendments relating to penalties and appeals

56. Section 14 repealed

Section 14 is repealed.

57. Section 22 amended

Section 22(4) is amended by deleting the passage from “\$500; and” to the end of the subsection and inserting instead —

“ \$4 000 and a daily penalty of \$400. ”.

58. Section 23 repealed

Section 23 is repealed.

59. Section 26A amended

Section 26A(2) is amended by deleting the passage from “\$2 000 and,” to the end of the subsection and inserting instead —

“ \$10 000 and a daily penalty of \$1 000. ”.

60. Section 26B amended

Section 26B(6) is amended by deleting the passage from “\$2 000 and,” to the end of the subsection and inserting instead —

“ \$10 000 and a daily penalty of \$1 000. ”.

61. Section 26D amended

Section 26D(4) and (5) are repealed.

62. Section 26E amended

Section 26E(1) is amended, in the penalty provision at the foot of the subsection, by deleting “\$500” and inserting instead —

“ \$1 000 ”.

63. Section 26F amended

Section 26F(2) is amended by deleting “\$2 000 and a further penalty of \$200 for each day during which the offence continues after conviction” and inserting instead —

“ \$10 000 and a daily penalty of \$1 000 ”.

64. Section 26G amended

Section 26G(3) is amended by deleting the penalty provision at the foot of the subsection and inserting the following provision instead —

“ Penalty: \$5 000 and a daily penalty of \$500. ”.

65. Division 3B inserted in Part III

After Part III Division 3A, as inserted by section 40, the following Division is inserted —

“

Division 3B — Appeals

26GG. Appeals relating to licences to take water

- (1) A person referred to in subsection (2) may appeal under Schedule 2 if the person is aggrieved by a decision of the Commission under Schedule 1 —
 - (a) to refuse an application for the grant or renewal of a licence under section 5C (“**a licence**”);
 - (b) as to the period for which a licence is granted or renewed;
 - (c) as to any term, condition or restriction included in a licence;
 - (d) to undertake to grant a licence, including as to any term, condition, or restriction undertaken to be included in the licence;
 - (e) to amend, suspend or cancel a licence; or

- (f) to refuse to approve the transfer of a licence or of a water entitlement under a licence, or an agreement referred to in clause 30 of Schedule 1.
- (2) A person may appeal under subsection (1) only if the person is an applicant for the licence, the licensee or, if the appeal is made under subsection (1)(f), a person to whom the licence or water entitlement would be transferred or a person who is a party to the agreement.

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

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

26GI. Appeals relating to licences under Division 3

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

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

26GJ. Schedule 2 applies to appeals

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

”.

66. Section 27 amended

Section 27 is amended as follows:

- (a) after paragraph (ga) by inserting —
“ and ”;
- (b) by deleting paragraph (h) and “and” after it.

67. Section 70 amended

Section 70 is amended by deleting “\$1 000” and inserting instead —

“ \$5 000 ”.

68. Section 71 amended

Section 71 is amended by deleting “\$2 000” and inserting instead —

“ \$10 000 ”.

69. Section 72 amended

Section 72 is amended by deleting “\$2 000” and inserting instead —

“ \$10 000 ”.

70. Schedule 2 added

After Schedule 1, added by section 52, the following Schedule is added —

“

Schedule 2 — Appeal provisions

[s. 26GJ]

1. Definition

In this Schedule —

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

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

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

2. Bringing an appeal

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

3. Notice of appeal

A notice of appeal must —

- (a) state the name and address of the appellant;
- (b) set out or otherwise identify sufficiently the decision appealed against;
- (c) set out the grounds of the appeal and state briefly the facts on which the appellant relies; and

- (d) indicate whether the appellant wishes the Minister to exercise the power conferred on the Minister by clause 4.

4. Decision may be suspended

The Minister may suspend the operation of the decision appealed against during the period when the appeal is pending, but otherwise the bringing of an appeal does not affect the decision during that period.

5. Referral of appeals to tribunal

- (1) If a notice of appeal is lodged with the Minister under clause 2 the Minister, with as much speed as possible, is to —
 - (a) establish a tribunal consisting of not less than one person and not more than 3 persons appointed by the Minister —
 - (i) from a panel of names submitted to the Minister in accordance with the regulations; and
 - (ii) who in the Minister's opinion have suitable expertise to hear and determine the matter; and
 - (b) refer the notice of appeal and any other relevant materials to the tribunal for the hearing of the matter.
- (2) Subject to subclause (3), the tribunal is to hear and determine the matter and is to make such decision as it thinks fit.
- (3) Before taking action under subclause (2), the tribunal may appoint a person to assist the Commission and the appellant to resolve the issues on which the appeal is brought with a view to the appeal being withdrawn in whole or in part.

s. 70

- (4) The Minister may —
 - (a) direct that any person who is appointed under subclause (1) or (3) is to be paid remuneration or allowances, or both; and
 - (b) determine the amount of any such payments on the recommendation of the Minister for Public Sector Management.
- (5) A decision of the tribunal on an appeal is final and must be given effect to by the Commission.
- (6) The tribunal is to give notice of the decision on an appeal and of the reasons for the decision in writing, or in such other manner as is prescribed, to —
 - (a) the appellant;
 - (b) the Commission; and
 - (c) any water resources management committee established under Part III Division 3C for a locality to which the subject matter of the appeal relates.

6. Hearings

- (1) A tribunal may sit at such place and time as it considers appropriate or the Minister directs.
- (2) The tribunal is to afford —
 - (a) every person who has appealed; and
 - (b) any other person who, in the tribunal's opinion, should be given the opportunity to respond to any appeal,

a reasonable opportunity to call or give evidence and to make submissions (whether written or oral) to the tribunal.
- (3) A person may appear before the tribunal personally or be represented by counsel or, with the leave of the tribunal, by any other person.

- (4) The chief executive officer of the Commission, counsel for the Commission, or a person employed or engaged in the Commission and authorized by the chief executive officer to do so, may appear before the tribunal to represent the Commission.

7. Proceedings at hearing

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

8. Case stated

- (1) If a question of law arises in proceedings before the tribunal, the tribunal may, in accordance with the rules of court, state a case for the opinion of the District Court upon the question.
- (2) The District Court has jurisdiction to consider and determine any case stated and to make such orders as it thinks fit with regard to the case and to the costs of and incidental to the consideration and determination of the case.

9. Costs

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

10. Tribunal may dismiss frivolous or vexatious appeals

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

11. Powers of tribunal

The tribunal may —

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

12. Offences

- (1) A person who —
 - (a) having been served with a summons to attend before a tribunal, fails without reasonable excuse to attend in obedience to the summons;
 - (b) having been served with a summons to produce before a tribunal any document, fails without reasonable excuse to comply with the summons;
 - (c) misbehaves before a tribunal, wilfully insults a tribunal or a member of the tribunal, or interrupts the proceedings of a tribunal;
 - (d) refuses or fails without reasonable excuse to swear, or to answer any question, when required to do so by a tribunal; or

- (e) makes, before a tribunal, a statement that —
 - (i) the person knows to be false or misleading in a material particular; or
 - (ii) omits anything without which the statement is, to the person's knowledge, misleading in a material particular,

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

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

13. Staff of tribunals

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

14. Regulations relating to tribunals

- (1) The regulations may provide for any matter necessary or convenient to give effect to this Schedule.
- (2) Without limiting subclause (1), the regulations may —
 - (a) provide for the procedure for selecting a panel of names with relevant expertise for submission to the Minister under clause 5(1)(a)(i), including, but not limited to, the persons who are to select the panel, the number of persons in the panel, and the collective expertise of the panel;

s. 70

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

”.

Part 8 — Transitional provisions

71. Definitions

In this Part, unless the contrary intention appears —

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

72. Interpretation Act 1984 not affected

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

73. Appeals in progress

(1) If —

(a) before —

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

but

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

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

s. 74

- (2) After the commencement of this Act but before regulations under Schedule 2 of the Principal Act regarding a panel of names from which a tribunal is to be appointed are made, an appeal to which that Schedule applies —
- (a) if the appellant so agrees, is to be heard and determined as if clause 5(1)(a)(i) of that Schedule were deleted; or
 - (b) if the appellant does not so agree, is to be heard and determined as soon as is practicable after those regulations are made.

74. Applications made for licences to take water

- (1) This clause applies to an application for —
- (a) a special licence under section 12 of the principal Act that was made before the commencement of section 25 of this Act; and
 - (b) a licence under section 13 of the principal Act that was made before the commencement of section 26 of this Act,

but that was not before the relevant commencement finally disposed of by the grant or refusal of a licence or withdrawn.

- (2) An application to which this clause applies is to continue to be governed by the principal Act, including section 14, as if this Act had not been enacted.
- (3) However, if a licence is granted on the application —
- (a) it is to be treated after the grant as if it were a licence under section 5C of the principal Act; and
 - (b) after the grant, the provisions of the principal Act apply to it in the same way as they apply to a licence under section 5C granted under the principal Act as amended by this Act.

75. Applications made for licences in respect of wells

- (1) This clause applies to an application for a licence under section 26D of the principal Act that —
 - (a) was made before the commencement of section 37 of this Act; but
 - (b) was not before that commencement finally disposed of by the grant or refusal of a licence or withdrawn.
- (2) An application to which this clause applies is to continue to be governed by the principal Act, including section 26D(4) and (5), as if this Act had not been enacted.
- (3) However, if a licence is granted on the application —
 - (a) it is to be treated after the grant as if it were —
 - (i) so far as it relates to the taking of water, a licence under section 5C of the principal Act authorizing that taking; and
 - (ii) so far as it relates to the carrying out of work, a licence under section 26D of the principal Act authorizing the carrying out of that work;
 - (b) those licences may be combined in a single instrument; and
 - (c) after the grant, the provisions of the principal Act apply to the licences in the same way as they apply to a licence under section 5C or 26D, as the case may be, granted under the principal Act as amended by this Act.

76. Licences under section 12 or 13

- (1) This section applies to a licence that —
 - (a) immediately before the commencement of section 25 of this Act was in force under section 12 of the principal Act; or

s. 77

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

77. Licences under section 26D

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

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

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

78. Civil remedy under section 5E

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

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

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

80. Existing augmentations of water volumes

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

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

81. Orders under section 26C

An order under section 26C of the principal Act that was in force immediately before the commencement of section 36 of this Act is taken on that commencement to declare that section 5C, as well as section 26B(3) to (6), is not to apply in relation to the non-artesian well or wells specified in the order and on and after that commencement has effect accordingly.

82. Powers in relation to transitional provisions

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

Part 9 — Consequential amendments to other Acts

83. *Country Areas Water Supply Act 1947*

Section 11(2)(a) of the *Country Areas Water Supply Act 1947* * is amended by deleting “Division 1” and inserting instead —

“ Division 1B ”.

[* *Reprinted as at 19 March 1999.*]

84. *Environmental Protection Act 1986*

Section 57(5)(c) of the *Environmental Protection Act 1986** is amended by deleting “Division 1” and inserting instead —

“ Division 1B ”.

[* *Reprinted as at 7 March 1996.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 83.]

85. *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*

Section 14(2)(a) of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909** is amended by deleting “Division 1” and inserting instead —

“ Division 1B ”.

[* *Reprinted as at 28 May 1996.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 163.]

86. *Mining Act 1978*

Section 162(2)(p) of the *Mining Act 1978** is deleted.

[* *Reprinted as at 27 February 1996.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 167.]

